

Academic year 2022—23

PhD course and seminar series “The Place of Values in the Composite
Constitution of the EU”

Jean Monnet Module ENACTING

TRAINING MATERIALS



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Summary

Section 1 – Legislative framework and soft law

Consolidated version of the Treaty on European Union

Declaration of European Identity (Copenhagen, 14 December 1973)

Joint Declaration by the European Parliament, Council and the Commission concerning the protection of fundamental rights and the ECHR (Luxembourg, 5 April 1977)

Second Copenhagen Declaration (Copenhagen, 7-8 April 1978)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on A new EU Framework to strengthen the Rule of Law COM(2014) 158 final, 11 March 2014

Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget

Regulation (EU, EURATOM) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

Section 2 – Case law

Court of Justice of the European Union, Judgment of the Court of 16 February 2022, Case C-156/21, *Hungary v. Parliament and Council*

Court of Justice of the European Union, Judgment of the Court of 5 April 2016, Case C-Joined Cases C-404/15 and 659/15 PPU, *Aranyosi and Căldăraru*

Court of Justice of the European Union, Judgment of the Court of 25 July 2018, Case C-216/18 PPU *Minister for Justice and Equality (Deficiencies in the system of justice)*

**CONSOLIDATED VERSION OF
THE TREATY ON EUROPEAN UNION**

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ⁽¹⁾,

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

⁽¹⁾ The Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden have since become members of the European Union.

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 42, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries:

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I COMMON PROVISIONS

Article 1 (ex Article 1 TEU) ⁽¹⁾

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

⁽¹⁾ These references are merely indicative. For more ample information, please refer to the tables of equivalences between the old and the new numbering of the Treaties.

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.
2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.
3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 5

(ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 6

(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 7

(ex Article 7 TEU)

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

Article 8

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

TITLE II

PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 9

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 10

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 11

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

Article 12

National Parliaments contribute actively to the good functioning of the Union:

- (a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty;
- (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
- (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
- (f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

TITLE III

PROVISIONS ON THE INSTITUTIONS

Article 13

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

3. The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the Treaty on the Functioning of the European Union.

4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 14

1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.

2. The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

3. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.
4. The European Parliament shall elect its President and its officers from among its members.

Article 15

1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.
3. The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.
4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.
5. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.
6. The President of the European Council:
 - (a) shall chair it and drive forward its work;
 - (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
 - (c) shall endeavour to facilitate cohesion and consensus within the European Council;
 - (d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

The President of the European Council shall not hold a national office.

Article 16

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.
2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.
3. The Council shall act by a qualified majority except where the Treaties provide otherwise.
4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.

6. The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union.

The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

8. The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

9. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union.

Article 17

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the Functioning of the European Union.

6. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

- (c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.

7. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

8. The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 234 of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.

Article 18

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.

2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The High Representative shall preside over the Foreign Affairs Council.

4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article 19

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
- (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
- (c) rule in other cases provided for in the Treaties.

TITLE IV

PROVISIONS ON ENHANCED COOPERATION

Article 20

(ex Articles 27a to 27e, 40 to 40b and 43 to 45 TEU and ex Articles 11 and 11a TEC)

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

TITLE V

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

CHAPTER 1

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 21

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 22

1. On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

CHAPTER 2

SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

SECTION 1

COMMON PROVISIONS

Article 23

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.

Article 24

(ex Article 11 TEU)

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the High Representative shall ensure compliance with these principles.

Article 25

(ex Article 12 TEU)

The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting decisions defining:
 - (i) actions to be undertaken by the Union;
 - (ii) positions to be taken by the Union;
 - (iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);and by
- (c) strengthening systematic cooperation between Member States in the conduct of policy.

Article 26

(ex Article 13 TEU)

1. The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

2. The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council.

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

Article 27

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his proposals to the development of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.
2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

Article 28

(ex Article 14 TEU)

1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of that decision and take the necessary decisions.

2. Decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.
3. Whenever there is any plan to adopt a national position or take national action pursuant to a decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.
4. In cases of imperative need arising from changes in the situation and failing a review of the Council decision as referred to in paragraph 1, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of that decision. The Member State concerned shall inform the Council immediately of any such measures.
5. Should there be any major difficulties in implementing a decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the decision referred to in paragraph 1 or impair its effectiveness.

Article 29

(ex Article 15 TEU)

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions.

Article 30

(ex Article 22 TEU)

1. Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it, respectively, initiatives or proposals.

2. In cases requiring a rapid decision, the High Representative, of his own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

Article 31

(ex Article 23 TEU)

1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),
- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,

- when adopting any decision implementing a decision defining a Union action or position,
- when appointing a special representative in accordance with Article 33.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.
4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.
5. For procedural questions, the Council shall act by a majority of its members.

Article 32

(ex Article 16 TEU)

Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach. Before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach.

Article 33

(ex Article 18 TEU)

The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.

Article 34

(ex Article 19 TEU)

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. In accordance with Article 24(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.

Article 35

(ex Article 20 TEU)

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented.

They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty.

Article 36

(ex Article 21 TEU)

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

Article 37

(ex Article 24 TEU)

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

Article 38

(ex Article 25 TEU)

Without prejudice to Article 240 of the Treaty on the Functioning of the European Union, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative.

Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 43.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.

Article 39

In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 40

(ex Article 47 TEU)

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Article 41

(ex Article 28 TEU)

1. Administrative expenditure to which the implementation of this Chapter gives rise for the institutions shall be charged to the Union budget.

2. Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:

- (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
- (b) the procedures for administering the start-up fund;

(c) the financial control procedures.

When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

SECTION 2

PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY

Article 42

(ex Article 17 TEU)

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as 'the European Defence Agency') shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 44.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Article 43

1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article 44

1. Within the framework of the decisions adopted in accordance with Article 43, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary decisions.

Article 45

1. The European Defence Agency referred to in Article 42(3), subject to the authority of the Council, shall have as its task to:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article 46

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 42(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

TITLE VI

FINAL PROVISIONS

Article 47

The Union shall have legal personality.

Article 48

(ex Article 48 TEU)

1. The Treaties may be amended in accordance with an ordinary revision procedure. They may also be amended in accordance with simplified revision procedures.

Ordinary revision procedure

2. The Government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may, *inter alia*, serve either to increase or to reduce the competences conferred on the Union in the Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

3. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 4.

The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

4. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

5. If, two years after the signature of a treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Simplified revision procedures

6. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

7. Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.

Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the decisions referred to in the first and second subparagraphs, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

Article 49

(ex Article 49 TEU)

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Article 51

The Protocols and Annexes to the Treaties shall form an integral part thereof.

Article 52

1. The Treaties shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

2. The territorial scope of the Treaties is specified in Article 355 of the Treaty on the Functioning of the European Union.

Article 53

(ex Article 51 TEU)

This Treaty is concluded for an unlimited period.

Article 54

(ex Article 52 TEU)

1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. This Treaty shall enter into force on 1 January 1993, provided that all the Instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step.

Article 55

(ex Article 53 TEU)

1. This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

2. This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

Done at Maastricht on the seventh day of February in the year one thousand nine hundred and ninety-two.

(List of signatories not reproduced)

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Declaration on European Identity (Copenhagen, 14 December 1973)

Caption: At the Copenhagen European Summit of 14 and 15 December 1973, the Heads of State or Government of the nine Member States of the enlarged European Community affirm their determination to introduce the concept of European identity into their common foreign relations.

Source: Bulletin of the European Communities. December 1973, No 12. Luxembourg: Office for official publications of the European Communities. "Declaration on European Identity", p. 118-122.

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URL: http://www.cvce.eu/obj/declaration_on_european_identity_copenhagen_14_december_1973-en-02798dc9-9c69-4b7d-b2c9-f03a8db7da32.html

Publication date: 18/12/2013

Document on The European Identity published by the Nine Foreign Ministers on 14 December 1973, in Copenhagen

The Nine Member Countries of the European Communities have decided that the time has come to draw up a document on the European Identity. This will enable them to achieve a better definition of their relations with other countries and of their responsibilities and the place which they occupy in world affairs. They have decided to define the European Identity with the dynamic nature of the Community in mind. They have the intention of carrying the work further in the future in the light of the progress made in the construction of a United Europe.

Defining the European Identity involves:

- reviewing the common heritage, interests and special obligations of the Nine, as well as the degree of unity so far achieved within the Community,
- assessing the extent to which the Nine are already acting together in relation to the rest of the world and the responsibilities which result from this,
- taking into consideration the dynamic nature of European unification.

I. The Unity of the Nine Member Countries of the Community

1. The Nine European States might have been pushed towards disunity by their history and by selfishly defending misjudged interests. But they have overcome their past enmities and have decided that unity is a basic European necessity to ensure the survival of the civilization which they have in common.

The Nine wish to ensure that the cherished values of their legal, political and moral order are respected, and to preserve the rich variety of their national cultures. Sharing as they do the same attitudes to life, based on a determination to build a society which measures up to the needs of the individual, they are determined to defend the principles of representative democracy, of the rule of law, of social justice — which is the ultimate goal of economic progress — and of respect for human rights. All of these are fundamental elements of the European Identity. The Nine believe that this enterprise corresponds to the deepest aspirations of their peoples who should participate in its realization, particularly through their elected representatives.

2. The Nine have the political will to succeed in the construction of a united Europe. On the basis of the Treaties of Paris and Rome setting up the European Communities and of subsequent decisions, they have created a common market, based on a customs union, and have established institutions, common policies and machinery for co-operation. All these are an essential part of the European Identity. The Nine are determined to safeguard the elements which make up the unity they have achieved so far and the fundamental objectives laid down for future development at the Summit Conferences in The Hague and Paris. On the basis of the Luxembourg and Copenhagen reports, the Nine Governments have established a system of political co-operation with a view to determining common attitudes and, where possible and desirable, common action. They propose to develop this further. In accordance with the decision taken at the Paris conference, the Nine reaffirm their intention of transforming the whole complex of their relations into a European Union before the end of the present decade.

3. The diversity of cultures within the framework of a common European civilization, the attachment to common values and principles, the increasing convergence of attitudes to life, the awareness of having specific interests in common and the determination to take part in the construction of a United Europe, all give the European Identity its originality and its own dynamism.

4. The construction of a United Europe, which the Nine Member Countries of the Community are undertaking, is open to other European nations who share the same ideals and objectives.

5. The European countries have, in the course of their history, developed close ties with many other parts of the world. These relationships, which will continue to evolve, constitute an assurance of progress and

international equilibrium.

6. Although in the past the European countries were individually able to play a major rôle on the international scene, present international problems are difficult for any of the Nine to solve alone. International developments and the growing concentration of power and responsibility in the hands of a very small number of great powers mean that Europe must unite and speak increasingly with one voice if it wants to make itself heard and play its proper rôle in the world.

7. The Community, the world's largest trading group, could not be a closed economic entity. It has close links with the rest of the world as regards its supplies and market outlets. For this reason the Community, while remaining in control of its own trading policies, intends to exert a positive influence on world economic relations with a view to the greater well-being of all.

8. The Nine, one of whose essential aims is to maintain peace, will never succeed in doing so if they neglect their own security. Those of them who are members of the Atlantic Alliance consider that in present circumstances there is no alternative to the security provided by the nuclear weapons of the United States and by the presence of North American forces in Europe: and they agree that in the light of the relative military vulnerability of Europe, the Europeans should, if they wish to preserve their independence, hold to their commitments and make constant efforts to ensure that they have adequate means of defence at their disposal.

II. The European Identity in Relation to the World

9. The Europe of the Nine is aware that, as it unites, it takes on new international obligations. European unification is not directed against anyone, nor is it inspired by a desire for power. On the contrary, the Nine are convinced that their union will benefit the whole international community since it will constitute an element of equilibrium and a basis for co-operation with all countries, whatever their size, culture or social system. The Nine intend to play an active rôle in world affairs and thus to contribute, in accordance with the purposes and principles of the United Nations Charter, to ensuring that international relations have a more just basis; that the independence and equality of States are better preserved; that prosperity is more equitably shared; and that the security of each country is more effectively guaranteed. In pursuit of these objectives the Nine should progressively define common positions in the sphere of foreign policy.

10. As the Community progresses towards a common policy in relation to third countries, it will act in accordance with the following principles:

- (a) The Nine, acting as a single entity, will strive to promote harmonious and constructive relations with these countries. This should not however jeopardize, hold back or affect the will of the Nine to progress towards European Union within the time limits laid down.
- (b) In future when the Nine negotiate collectively with other countries, the institutions and procedures chosen should enable the distinct character of the European entity to be respected.
- (c) In bilateral contacts with other countries, the Member States of the Community will increasingly act on the basis of agreed common positions.

11. The Nine intend to strengthen their links, in the present institutional framework, with the Member Countries of the Council of Europe, and with other European countries with whom they already have friendly relations and close co-operation.

12. The Nine attach essential importance to the Community's policy of association. Without diminishing the advantages enjoyed by the countries with which it has special relations, the Community intends progressively to put into operation a policy for development aid on a worldwide scale in accordance with the principles and aims set out in the Paris Summit Declaration.

13. The Community will implement its undertakings towards the Mediterranean and African countries in order to reinforce its long-standing links with these countries. The Nine intend to preserve their historical

links with the countries of the Middle East and to co-operate over the establishment and maintenance of peace, stability and progress in the region.

14. The close ties between the United States and Europe of the Nine — we share values and aspirations based on a common heritage — are mutually beneficial and must be preserved. These ties do not conflict with the determination of the Nine to establish themselves as a distinct and original entity. The Nine intend to maintain their constructive dialogue and to develop their co-operation with the United States on the basis of equality and in a spirit of friendship.

15. The Nine also remain determined to engage in close co-operation and to pursue a constructive dialogue with the other industrialized countries, such as Japan and Canada, which have an essential rôle in maintaining an open and balanced world economic system. They appreciate the existing fruitful co-operation with these countries, particularly within the OECD.

16. The Nine have contributed, both individually and collectively to the first results of a policy of détente and co-operation with the USSR and the East European countries. They are determined to carry this policy further forward on a reciprocal basis.

17. Conscious of the major rôle played by China in international affairs, the Nine intend to intensify their relations with the Chinese Government and to promote exchanges in various fields as well as contacts between European and Chinese leaders.

18. The Nine are also aware of the important rôle played by other Asian countries. They are determined to develop their relations with these countries as is demonstrated, as far as commercial relations are concerned, by the Declaration of Intent made by the Community at the time of its enlargement.

19. The Nine are traditionally bound to the Latin American countries by friendly links and many other contacts; they intend to develop these. In this context they attach great importance to the agreements concluded between the European Community and certain Latin American countries.

20. There can be no real peace if the developed countries do not pay more heed to the less favoured nations. Convinced of this fact, and conscious of their responsibilities and particular obligations, the Nine attach very great importance to the struggle against under-development. They are, therefore, resolved to intensify their efforts in the fields of trade and development aid and to strengthen international co-operation to these ends.

21. The Nine will participate in international negotiations in an outward-looking spirit, while preserving the fundamental elements of their unity and their basic aims. They are also resolved to contribute to international progress, both through their relations with third countries and by adopting common positions wherever possible in international organizations, notably the United Nations and the specialized agencies.

III. The Dynamic Nature of the Construction of a United Europe

22. The European identity will evolve as a function of the dynamic construction of a United Europe. In their external relations, the Nine propose progressively to undertake the definition of their identity in relation to other countries or groups of countries. They believe that in so doing they will strengthen their own cohesion and contribute to the framing of a genuinely European foreign policy. They are convinced that building up this policy will help them to tackle with confidence and realism further stages in the construction of a United Europe thus making easier the proposed transformation of the whole complex of their relations into a European Union.

Joint Declaration by the European Parliament, Council and the Commission concerning the protection of fundamental rights and the ECHR (Luxembourg, 5 April 1977)

Caption: On 5 April 1977, the Presidents of the European Parliament, the Council and the Commission of the European Communities sign a joint declaration in Luxembourg affirming that they will do their utmost to protect the fundamental rights enshrined in both in the constitutions of the Member States and the European Convention on Human Rights (ECHR).

Source: Official Journal of the European Communities (OJEC). 27.04.1977, No C 103. [s.l.].

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Publication date: 05/09/2012

Joint Declaration by the European Parliament, the Council and the Commission (Luxembourg, 5 April 1977)

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION,

Whereas the Treaties establishing the European Communities are based on the principle of respect for the law;

Whereas, as the Court of Justice has recognized, that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based;

Whereas, in particular, all the Member States are Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

HAVE ADOPTED THE FOLLOWING DECLARATION:

1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.

Done at Luxembourg on the fifth day of April in the year one thousand nine hundred and seventy-seven.

For the European Parliament
E. COLOMBO

For the Council
D. OWEN

For the Commission
R. JENKINS

Conclusions of the Presidency

I. The Economic and Social Situation

The European Council agreed that the Community and its Member Countries will over the coming three months develop a common strategy designed to reverse the present unsatisfactory trend in the Community's economic and social situation. The European Council was convinced that this course of action will constitute an important contribution to overall international action to promote world economic recovery. It will at the same time facilitate progress towards economic and monetary union.

The common strategy will cover economic and monetary affairs, employment, energy, trade, industrial affairs, and relations with the developing world.

The European Council asked the Council (General Affairs) to co-ordinate the efforts of the Council in its various formations, and to prepare the necessary conclusions of the European Council at its session in July 1978.

1. The Council considers it essential that the Community will have achieved an annual growth rate of 4.5% by the middle of 1979.

With this in mind the Community will in the coming months assess the effects of present national economic policies and on this basis define the need for - and in appropriate cases - the margin of manoeuvre open to Member States for co-ordinated additional measures designed to realize the necessary growth within the Community.

During the same period the Community will through common measures support the action of Member States and make better use of existing common facilities to alleviate present restraints on Member Countries' possibilities for action. In this connection the Council referred to the so-called Community Loan Facility. It also invited the Governing Board of the EIB to adopt at its meeting in June a decision to double the capital of the Bank.

2. The European Council discussed the need for increased monetary stability both within the Community and on a world-wide basis. In this context it recognized the need to avoid disruptive capital flows.
3. The European Council expressed its deep concern over the persistent high rate of unemployment and agreed that an improvement in the employment situation is a key objective of the common overall strategy of the Community. It stressed the importance of the Community's growth objective in this context.

The European Council agreed that the need for complementary specific measures to combat unemployment, particularly with respect to young people, should be examined.

The European Council agreed with the Standing Committee on Employment that the best way of dealing with unemployment is to create new jobs through active economic, employment and investment policies, but that it should be further examined whether work-sharing measures could have a supplementary part to play in alleviating the present grave employment problems.

4. The European Council was convinced that sustained international economic stability depends significantly on vigorous efforts in all industrialized countries to reduce dependence on imported oil through energy savings and increased energy production.

The European Council agreed that the high demand for imported oil is a critical problem for the Community. More comprehensive and vigorous efforts at national and Community level to reduce demand and increase supply of energy within the Community are urgently needed. It recognized that this presupposes large scale investments. Such efforts will be given high priority, because they will at the same time promote economic activity, create new jobs and improve the balance of payments.

5. The European Council agreed that sustained growth in world trade is essential for the promotion of world economic recovery. Therefore protectionist tendencies must be resisted. A rapid and successful conclusion of the Multilateral Trade Negotiations will increase confidence in the world trade system.

The European Council agreed that further progress should be made to eliminate obstacles to the free movement of goods within the Community.

6. The European Council emphasized the need to restore the competitiveness of industries in distress. This remains the basic aim of national and Community policies in this field.

In this connection it underlined the necessity to set up tripartite frameworks on a European level to overcome the serious problems of structural over-capacity in several industries and to promote an industrial structure that can maintain itself in world-wide competition.

7. The European Council pointed out that the pursuit of greater internal cohesion implying also a reduction in regional imbalances, constitutes one of the key objectives of the Community enterprise.

8. The European Council recall the Resolutions of the Council of Ministers of November 1975 and July 1976 recognizing the need for a re-examination of the agricultural problems affecting the Mediterranean regions of the Community.

In this spirit the European Council was of the opinion that the Council (Agriculture) should endeavour to reach a decision by the end of April taking into account the proposals from the Commission.

9. The European Council noted that an overall increase in the flow of aid to the developing countries will facilitate their possibilities of playing a greater part in a general recovery of the world economy.

The European Council reaffirmed the will of the Community to contribute constructively to progress in the North/South dialogue in order to promote a more just and equitable world economic order.

10. The European Council asked the Council in its various formations to take the necessary steps over the coming three months towards the achievement of the objectives mentioned above.

II. The Economic and Social Committee

The European Council agreed on the text contained in Annex A.

III. Relations with Japan

The European Council agreed on the text contained in Annex B.

IV. Direct Elections and Declaration on Democracy

The European Council agreed on the text contained in Annex C. At the same time it adopted a declaration on democracy as contained in Annex D.

V. European Foundation

In pursuance of the decision of principle taken at the meeting of the European Council on 5 and 6 December 1977 the Heads of State and of Government laid down the scope and objectives of the Foundation and agreed on the framework for its structure and financing as contained in Annex E and F. The European Council decided that formal discussions on setting up the Foundation should be conducted as soon as possible.

The seat of the Foundation will be Paris.

VI. Marine pollution

The European Council agreed to the text contained in Annex G.

VII. Turkey and other third countries

The Ministers for Foreign Affairs will discuss the question of the credibility of EEC policy towards third countries, especially in the Mediterranean, at the informal meeting at Hesselet in May after preparation by the Political Directors.

VIII. East-West relations after Belgrade

The European Council held an exchange of views on recent developments in East-West relations. It noted that detente was influenced by events throughout the world. It stressed the importance of continuing the multilateral discussions begun at Belgrade on the implementation of the Final Act of Helsinki. The Nine consequently intended to continue to co-operate closely among themselves and with other participating States in preparation for the next meeting of the CSCE to be held in Madrid in 1980.

IX. Middle East

The European Council laid down the following guidelines for the press conference given by the President of the European Council following the meeting:

"The Heads of State or Government reviewed the situation in Lebanon and the Middle East.

They deplored all recent acts of violence in the area, and wished to express their deep concern over the tragic events in Southern Lebanon. They reiterated their support for UN Security Council Resolutions 425 and 426 and called for the speedy and complete implementation of these resolutions. They urged all parties to co-operate fully with the UN Interim Force for Lebanon in the execution of its mandate.

They emphasized their commitment to the unity, sovereignty and territorial integrity of Lebanon.

Developments in Lebanon must not be allowed to prejudice efforts for a comprehensive negotiated settlement of the Arab-Israeli conflict. The momentum of the peace process in the Middle East must be maintained.

They reiterated their position that a settlement must be based upon Security Council Resolution 242 applied in all its parts and on all fronts.

The Heads of State or Government confirmed the principles set out in their declaration of 29 June 1977 which remain entirely valid."

It agreed that the Cairo Ambassador of the Member State holding the presidency would inform the Egyptian Minister for Foreign Affairs of the comments of the President of the European Council. The Ambassador would submit the text to the Egyptian Minister but point out that it was not a formal declaration of the Nine.

.../...

X. Africa

(a) Namibia

The declaration contained in Annex H was issued in the name of the European Council on 7 April 1978;

(b) Zimbabwe

The Nine considered the Salisbury internal agreement to be inadequate. They were of the opinion that the Anglo-American plan remained the best basis for an internationally acceptable settlement. They considered that, in order to avoid a dangerous escalation of the conflict, all sides involved in it should be brought together in the near future.

(c) Horn of Africa

The Heads of State and of Government exchanged views on the disturbing situation in the Horn of Africa. The Nine gave their backing to the efforts of the OAU to mediate and expressed the hope that the search for a negotiated settlement would benefit from the forthcoming meeting in Lagos.

XI. Terrorism

The European Council issued the declaration contained in Annex I.

ANNEX A

The Economic and Social Committee

"The European Council declared the importance it attaches to the activities of the Economic and Social Committee. It calls on all parties concerned in connection with the renewal of the Committee in September 1978 to co-operate in increasing the Committee's effectiveness as regards its role in the Community's decision-making process."

Relations with Japan

The European Council heard the report from the President of the Commission on the progress made in fulfilling the mandate given to him by the European Council at its last meeting in December to continue and intensify his consultations with the Japanese Government with special reference to Japanese balance of payments surpluses in the context of the world economy as a whole.

The European Council agreed that the EEC-Japan joint communiqué of 24 March could be regarded only as a first step in continuing consultations which shall be pursued vigorously with the Japanese Government on the basis of the guidelines agreed by the Council of Ministers in February. The European Council noted with approval the conclusions reached by the Council of Ministers on 3 and 4 April and drew attention to the need for Japan to take appropriate measures for the rapid reduction of its current account surplus, which continues to cause concern.

The European Council asked the President of the Commission and the Council of Ministers to keep the question under review and complete the report to be considered at its next meeting in July.

Date for direct elections to the European Parliament

The Heads of State and of Government note with satisfaction that the legislative procedures in the member countries for the holding of direct general elections to the European Parliament are now nearing completion. After examining dates suitable for the election they have reached agreement that the election to the European Parliament shall be held from 7 to 10 June 1979.

Declaration on Democracy

The Heads of State or of Government of the Member States meeting within the European Council make the following declaration.

The election of the Members of the European Parliament by direct universal suffrage is an event of outstanding importance for the future of the European Communities and a vivid demonstration of the ideals of democracy shared by the peoples within them.

The creation of the Communities, which is the foundation of the ever closer union among the peoples of Europe called for in the Treaty of Rome, marked the determination of their founders to strengthen the protection of peace and freedom.

The Heads of State or of Government confirm their will, as expressed in the Copenhagen Declaration on the European identity, to ensure that the cherished values of their legal, political and moral order are respected and to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights.

The application of these principles implies a political system of pluralist democracy which guarantees both the free expression of opinions within the constitutional organization

.../...

of powers and the procedures necessary for the protection of human rights.

The Heads of State or of Government associate themselves with the Joint Declaration by the European Parliament, the Council and the Commission whereby these Institutions expressed their determination to respect fundamental rights in pursuing the aims of the Communities.

They solemnly declare that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities.

European Foundation

I. LEGAL BASE

1. The Foundation will be set up by means of agreements concluded by the Representatives of the Governments of the Member States meeting within the Council. In order that the Foundation may come into operation without delay, the Representatives will ensure that provisions which do not require action on the part of national parliaments enter into force immediately in accordance with procedures to be determined by the Representatives themselves.

II. SCOPE AND OBJECTIVES

2. The objective of the Foundation is to improve mutual understanding among the peoples of the Community, to promote a better understanding of the European cultural heritage in its rich diversity and oneness and to further a greater understanding of European integration.
3. The activities of the Foundation will be complementary to those of other institutions or organizations active in the same area at national, bilateral or international level, and to Community programmes. The Foundation will act as a catalyst for schemes undertaken, and at the same time will respect the autonomy of the existing institutions or organizations and take constant care to avoid duplication.

The Foundation's activities will in principle be indirect: it will guide and stimulate projects undertaken by the other institutions or organizations, if necessary by making a financial contribution.

The Foundation will also be able to take the initiative in starting new direct projects in line with its objectives.

4. The Foundation will develop the activities necessary to attain its objectives, as far as possible in a trans-national context, paying particular attention to young people.

To this end the Foundation will draw up its programme.

III. STRUCTURES

5. In order to carry out its task, the Foundation should have maximum independence, which should be guaranteed by its structure and its constituent act. As part of its administrative autonomy, it should have maximum flexibility, while ensuring the balanced administration of the resources made available to it.
6. The structures of the Foundation should be light and its administrative arrangements modest.
7. The Foundation's authorities will be the Board of the Foundation and the Executive Committee.

They will be assisted by a Secretary-General.

8. The members of the Board will be chosen from among high-level personalities on the basis of their competence and experience.

They will be appointed from among Community nationals in accordance with a procedure to be determined:

.../...

- (i) by the Council on a proposal from the Commission after consulting the Assembly,
- (ii) by the Member States,
- (iii) by co-option, in particular from among the heads of institutions or organizations active in the same areas.

They will be completely independent in the performance of their duties.

9. The Board will be responsible for managing the Foundation. It will have to take the main decisions and draw up programmes which will establish the order of priority for the Foundation's activities. It will meet at least twice a year. It will have to appoint from among its members its Chairman and the executive committee responsible for seeing that the programme is carried out. The Chairman will preside over the Board and the executive committee of the Foundation.

The Secretary-General will be responsible for directing the Foundation's day-to-day activities in accordance with the directives issued by the Board of the Foundation and the executive committee. He will be appointed by the Board.

10. The Foundation's constituent act will have to lay down the number of Board and executive committee members and their term of office.

The seat of the Foundation will be Paris.

IV. INITIAL ENDOWMENT AND ANNUAL RESOURCES

11. An adequate initial endowment will be provided to the Foundation from the Community budget so as to permit the Foundation to pursue its activities in conformity with the objectives set out in the constituent act over a reasonable period of years. Additional endowments may be envisaged at a later stage.

The Foundation could also receive voluntary contributions of public and private origin.

12. In order to encourage private contributions, a clause in the constituent act could provide that each Member State will grant private contributions to the Foundation treatment as regards national taxes which is at least as favourable as that afforded comparable organizations and foundations.

13. Whatever the nature of the constituent act, the Foundation's financial management must be subject to an audit.

DECLARATION

Without prejudice to its independence, the European Foundation will collaborate as is appropriate with the European Cultural Foundation in Amsterdam and other similar institutions whose activities are parallel or converging with its objectives. Appropriate collaboration will also be established between the European Foundation and the Council of Europe.

Marine Pollution

After hearing a statement by the President of the French Republic concerning the running aground of an oil tanker on the French coast, and bearing in mind the measures already taken and the proposals already put forward by the Commission and by some Member States concerning the fight against pollution and the imposition of minimum standards on ships,

1. Considers that the Community should make the prevention and combating of marine pollution, particularly from hydrocarbons, a major objective,
2. Consequently invites the Council, acting on proposals from the Commission, and the Member States forthwith to take appropriate measures within the Community and to adopt common attitudes in the competent international bodies concerning in particular:
 - (a) the swift implementation of existing international rules, in particular those regarding minimum standards for the operation of ships;
 - (b) the prevention of accidents through co-ordinated action by the Member States
 - with regard to a satisfactory functioning of the system of compulsory shipping lanes,
 - and with regard to more effective control over vessels which do not meet the standards;
 - (c) the search for and implementation of effective measures to combat pollution.

Namibia

The European Council has taken note of the proposal for a settlement in Namibia prepared by the Five Powers. The Council supports the action of the Five and considers the proposal to be a fair and reasonable settlement. It hopes that all the parties involved will feel able to accept this important opportunity for a negotiated peaceful solution in accordance with Security Council Resolution 385.

Terrorism

The European Council declared its deep distress at the kidnapping of Aldo Moro and the murder of his escort. The Council wished in this connection to express its complete solidarity with the Italian people and Government.

The Council expressed its great concern at the continually increasing number of acts of this kind and at the extension of terrorism in general which, if not effectively combatted, will strike at the functioning and the very principles of democracy. The Council stressed that the nine Member States were firmly resolved to do everything to protect the rights of individuals and the foundations of democratic institutions.

The European Council agreed that high priority must be given to efforts to intensify co-operation among the Nine to defend our societies against terrorist violence.

It was agreed that the relevant Ministers will increase their mutual co-operation and will as soon as possible submit their conclusions on the proposals before them for a European judicial area.



Brussels, 11.3.2014
COM(2014) 158 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

A new EU Framework to strengthen the Rule of Law

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law

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1. INTRODUCTION

The rule of law is the backbone of any modern constitutional democracy. It is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and, as such, one of the main values upon which the Union is based. This is recalled by Article 2 of the Treaty on European Union (TEU), as well as by the Preambles to the Treaty and to the Charter of Fundamental Rights of the EU. This is also why, under Article 49 TEU, respect for the rule of law is a precondition for EU membership. Along with democracy and human rights, the rule of law is also one of the three pillars of the Council of Europe and is endorsed in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹.

Mutual trust among EU Member States and their respective legal systems is the foundation of the Union. The way the rule of law is implemented at national level plays a key role in this respect. The confidence of all EU citizens and national authorities in the functioning of the rule of law is particularly vital for the further development of the EU into "an area of freedom, security and justice without internal frontiers"². This confidence will only be built and maintained if the rule of law is observed in all Member States.

The different constitutions and judicial systems of the EU Member States are, in principle, well designed and equipped to protect citizens against any threat to the rule of law. However, recent events in some Member States have demonstrated that a lack of respect for the rule of law and, as a consequence, also for the fundamental values which the rule of law aims to protect, can become a matter of serious concern. During these events, there has been a clear request from the public at large for the EU, and notably for the Commission, to take action. Results have been achieved. However, the Commission and the EU had to find ad hoc solutions since current EU mechanisms and procedures have not always been appropriate in ensuring an effective and timely response to threats to the rule of law.

The Commission is the guardian of the Treaties and has the responsibility of ensuring the respect of the values on which the EU is founded and of protecting the general interest of the Union. It must therefore play an active role in this respect³. In September 2012, in his annual State of the Union speech to the European Parliament, President Barroso said: "We need a better developed set of instruments, not just the alternative between the 'soft power' of political persuasion and the 'nuclear option' of Article 7 TEU. In the following year's speech, he said that "experience has confirmed the usefulness of the Commission role as an independent and objective referee. We should consolidate this experience through a more general framework [...]. The Commission will come forward with a communication on this. I believe it is a debate that is key to our idea of Europe."⁴

¹ See the Preamble of the ECHR and Article 3 of the Statute of the Council of Europe (<http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>).

² See Articles 3(2) TEU and 67 TFEU.

³ See the speech of Vice-President Reding, EU Justice Commissioner, "The EU and the Rule of Law – What next?" (http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm).

⁴ See http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm and http://europa.eu/rapid/press-release_SPEECH-13-684_en.htm

In June 2013, the Justice and Home Affairs Council underlined that "respecting the rule of law is a prerequisite for the protection of fundamental rights" and called on the Commission "to take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues". In April 2013, the General Affairs Council held a comprehensive discussion on the topic.⁵

In July 2013, the European Parliament requested that "Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirement of democracy and the rule of law"⁶.

This Communication responds to these requests. On the basis of the Commission's experience, the inter-institutional debate and broad consultations⁷, the Communication sets out a new framework to ensure an effective and coherent protection of the rule of law in all Member States. It is a framework to address and resolve a situation where there is a systemic threat to the rule of law.⁸

The framework seeks to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met. It is therefore meant to fill a gap. It is not an alternative to but rather precedes and complements Article 7 TEU mechanisms. It is also without prejudice to the Commission's powers to address specific situations falling within the scope of EU law by means of infringement procedures under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

From a broader European perspective, the framework is meant to contribute to reaching the objectives of the Council of Europe, including on the basis of the expertise of the European Commission for Democracy through Law (Venice Commission)⁹.

2. WHY THE RULE OF LAW IS OF FUNDAMENTAL IMPORTANCE FOR THE EU

The principle of the rule of law has progressively become a dominant organisational model of modern constitutional law and international organisations (including the United Nations and

⁵ In March 2013, the foreign ministers of Denmark, Finland, Germany and The Netherlands called for more European safeguards to ensure compliance with fundamental values of the Union in the Member States. On the discussion in the General Affairs Council see http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/136915.pdf. On the conclusions of the Justice and Home Affairs Council see http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf

⁶ See the EP resolutions setting out various recommendations to the EU institutions on how to strengthen the protection of Article 2 TEU (the Rui Tavares Report of 2013, the Louis Michel and the Kinga Göncz Reports of 2014 - <http://www.europarl.europa.eu/committees/en/libe/reports.html>).

⁷ At the Assises de la Justice, a high level conference on the future of justice in the EU in November 2013 which was attended by over 600 stakeholders and interested parties, one session was specifically dedicated to the topic "Towards a new rule of law mechanism". A call for input was organised before and after the conference that attracted numerous written contributions (see http://ec.europa.eu/justice/events/assises-justice-2013/contributions_en.htm).

⁸ As President Barroso highlighted in his State of the Union address of September 2013, the framework "should be based on the principle of equality between Member States and activated only in situations where there is a serious and systemic risk to the rule of law, and triggered by predefined benchmarks" (see http://europa.eu/rapid/press-release_SPEECH-13-684_en.htm).

⁹ The Venice Commission, officially named the European Commission for Democracy through Law, is the Council of Europe's advisory body on constitutional matters (see http://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

the Council of Europe) to regulate the exercise of public powers. It makes sure that all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

The precise content of the principles and standards stemming from the rule of law may vary at national level, depending on each Member State's constitutional system. Nevertheless, case law of the Court of Justice of the European Union ("the Court of Justice") and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the Venice Commission, provide a non-exhaustive list of these principles and hence define the core meaning of the rule of law as a common value of the EU in accordance with Article 2 TEU.

Those principles include **legality**, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; **legal certainty**; **prohibition of arbitrariness of the executive powers**; **independent and impartial courts**; **effective judicial review including respect for fundamental rights**; and **equality before the law**¹⁰.

Both the Court of Justice and the European Court of Human Rights confirmed that those principles are not purely formal and procedural requirements. They are the vehicle for ensuring compliance with and respect for democracy and human rights. The rule of law is therefore a constitutional principle with both formal and substantive components¹¹.

This means that respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa. Fundamental rights are effective only if they are justiciable. Democracy is protected if the fundamental role of the judiciary, including constitutional courts, can ensure freedom of expression, freedom of assembly and respect of the rules governing the political and electoral process.

Within the EU, the rule of law is of particular importance. Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law. The confidence of all EU citizens and national authorities in the legal systems of all other Member States is vital for the functioning of the whole EU as "an area of freedom, security and justice without internal frontiers". Today, a judgment in civil and commercial matters of a national court must be automatically recognised and enforced in another Member State and a European Arrest Warrant against an alleged criminal issued in one Member State must be executed as such in another Member State¹². Those are clear examples of why all Member States need to be concerned if the rule of law principle is not

¹⁰ For an overview of the relevant case law on the rule of law and the principles which the rule of law entails see Annex I.

¹¹ The Court of Justice does not refer to the rule of law as simply a formal and procedural requirement, but also highlights its substantive value by specifying that a "Union based on the rule of law" means that the EU institutions are subject to judicial review of the compatibility of their acts not only with the Treaty but "with the general principles of law which include fundamental rights" (see *ex pluribus*, Case C-50/00 P, *Unión de Pequeños Agricultores* [2002] ECR I-06677, para 38 and 39; Joined Cases C-402/05 P and C-415/05 P, *Kadi*, [2008], ECR I-06351, para 316). This has been also confirmed by the European Court of Human Rights which gives the rule of law a substantive nature by establishing that it is a concept inherent in all articles of the ECHR (see for example *ECtHR Stafford v United Kingdom*, 28 May 2001, para 63). It must be highlighted that in the French version the Court does not use only the terms "pre-eminence du droit" but also "Etat de droit".

¹² See Case C-168/13, *Jeremy F v Premier Ministre*, not yet published, para 35 and 36.

fully respected in one Member State. This is why the EU has a strong interest in safeguarding and strengthening the rule of law threats across the Union.

3. WHY A NEW EU FRAMEWORK TO STRENGTHEN THE RULE OF LAW

In cases where the mechanisms established at national level to secure the rule of law cease to operate effectively, there is a systemic threat to the rule of law and, hence, to the functioning of the EU as an area of freedom, security and justice without internal frontiers. In such situations, the EU needs to act to protect the rule of law as a common value of the Union.

However, experience has shown that a systemic threat to the rule of law in Member States cannot, in all circumstances, be effectively addressed by the instruments currently existing at the level of the Union.

Action taken by the Commission to launch **infringement procedures**, based on **Article 258 TFEU**, has proven to be an important instrument in addressing certain rule of law concerns¹³. But infringement procedures can be launched by the Commission only where these concerns constitute, at the same time, a breach of a specific provision of EU law.¹⁴

There are situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law. For these situations, the **preventive and sanctioning mechanisms provided for in Article 7 TEU** may apply. The Commission is among the actors which are empowered by the Treaty to issue a reasoned proposal in order to activate those mechanisms. Article 7 TEU aims at ensuring that all Member States respect the common values of the EU, including the rule of law. Its scope is not confined to areas covered by EU law, but empowers the EU to intervene with the purpose of protecting the rule of law also in areas where Member States act autonomously. As explained in the Commission's Communication on Article 7 TEU, this is justified by the fact that "if a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine the very foundation of the EU and the trust between its members, whatever the field in which the breach occurs"¹⁵.

Nevertheless, the preventive mechanism of Article 7(1) TEU can be activated only in case of a "clear risk of a serious breach" and the sanctioning mechanism of Article 7(2) TEU only in case of a "serious and persistent breach by a Member State" of the values set out in Article 2

¹³ See, for example, cases C-286/12 *Commission v Hungary*, not yet published (equal treatment as regards the compulsory retirement of judges and public prosecutors); C-518/07 *Commission v Germany* [2010] ECR I-01885 and C-614/10 *Commission v Austria*, not yet published (independence of data protection authorities).

¹⁴ The Commission's action to ensure compliance with the Charter of Fundamental Rights illustrates this legal limitation stemming from the Treaty itself. As explained in its Communication "Strategy for the effective implementation of the Charter of Fundamental rights" of 19 October 2010 (COM(2010) 573 final), the Commission is determined to use all the means at its disposal to ensure that the Charter is fully respected by the Member States. This concerns in particular Article 47 of the Charter which provides that everyone whose rights guaranteed by EU law are violated has the right to an effective remedy before an independent tribunal. However, this can be done by the Commission vis-à-vis Member States "only when they are implementing Union law", as set out explicitly in Article 51 of the Charter. See for example Case C-87/12, *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration*, not yet published, C-370/12 *Thomas Pringle v Government of Ireland, Ireland and The Attorney General*, not yet published and C-617/10, *Åklagaren v Hans Åkerberg Fransson*, not yet published.

¹⁵ Communication from the Commission of 15 October 2003: Respect for and promotion of the values on which the Union is based, COM(2003) 606 final.

TEU. The thresholds for activating both mechanisms of Article 7 TEU are very high and underline the nature of these mechanisms as a last resort.

Recent developments in some Member States have shown that these mechanisms are not always appropriate to quickly respond to threats to the rule of law in a Member State.

There are therefore situations where threats relating to the rule of law cannot be effectively addressed by existing instruments¹⁶. A **new EU Framework to strengthen the Rule of Law** as a key common value of the EU is needed in addition to infringement procedures and Article 7 TEU mechanisms. The Framework will be complementary to all the existing mechanisms already in place at the level of the Council of Europe to protect the rule of law¹⁷. It reflects both the objectives of the EU to protect its founding values and to reach a further degree of mutual trust and integration in the area of freedom, security and justice without internal frontiers.

By setting up a new Framework to strengthen the Rule of Law the Commission seeks to provide clarity and enhance predictability as to the actions it may be called upon to take in the future, whilst ensuring that all Member States are treated equally. On the basis of this Communication, the Commission is willing to engage in further discussions with the Member States, the Council and the European Parliament on these issues.

4. HOW THE NEW EU RULE OF LAW FRAMEWORK WILL WORK

The purpose of the Framework is to enable the Commission to find a solution with the Member State concerned in order to prevent the emerging of a systemic threat to the rule of law in that Member State that could develop into a "clear risk of a serious breach" within the meaning of Article 7 TEU, which would require the mechanisms provided for in that Article to be launched.

In order to ensure the equality of Member States, the Framework will apply in the same way to all Member States and will operate on the basis of the same benchmarks as to what is a systemic threat to the rule of law.

4.1. What will trigger the new Framework

The Framework will be activated in situations where the authorities of a Member State are taking measures or are tolerating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law.

The new EU Rule of Law Framework is not designed to be triggered by individual breaches of fundamental rights or by a miscarriage of justice. These cases can and should be dealt with by the national judicial systems, and in the context of the control mechanisms established under the European Convention on Human Rights to which all EU Member States are parties.

¹⁶ In some cases, systemic deficiencies related to the rule of law may be tackled using the Cooperation and Verification Mechanisms (CVM) based on the Acts of Accession for Romania and Bulgaria. However, these mechanisms, which have their basis directly in primary EU law, address pre-accession-related and therefore transitional situations. They are therefore not suitable for addressing a threat to the rule of law in *all* EU Member States.

¹⁷ Article 8 of the Statute of the Council of Europe provides that a Member State that has "seriously violated" the principles of the rule of law and human rights may be suspended from its rights of representation and even be expelled from the Council of Europe. Like the mechanisms set out in Article 7 TEU, this mechanism has never been activated.

The main purpose of the Framework is to address **threats to the rule of law** (as defined in Section 2) which are **of a systemic nature**¹⁸. The political, institutional and/or legal order of a Member State as such, its constitutional structure, separation of powers, the independence or impartiality of the judiciary, or its system of judicial review including constitutional justice where it exists, must be threatened – for example as a result of the adoption of new measures or of widespread practices of public authorities and the lack of domestic redress. The Framework will be activated when national "rule of law safeguards" do not seem capable of effectively addressing those threats.

The Framework would not prevent the Commission from using its powers under Article 258 TFEU in situations falling within the scope of EU law. Nor would it prevent the mechanisms set out in Article 7 TEU being activated directly, should a sudden deterioration in a Member State require a stronger reaction from the EU¹⁹.

4.2. The Framework as a three stage process

Where there are clear indications of a systemic threat to the rule of law in a Member State, the Commission will initiate a structured exchange with that Member State. The process is based on the following principles:

- focusing on finding a solution through a **dialogue** with the Member State concerned;
- ensuring an **objective and thorough assessment** of the situation at stake;
- respecting the principle of **equal treatment** of Member States;
- indicating **swift and concrete actions** which could be taken to address the systemic threat and to avoid the use of Article 7 TEU mechanisms.

The process is composed, as a rule, of three stages: a Commission assessment, a Commission recommendation and a follow-up to the recommendation.

The Commission's assessment

The Commission will collect and examine all the relevant information and assess whether there are clear indications of a systemic threat to the rule of law as described above. This assessment can be based on the indications received from available sources and recognized institutions, including notably the bodies of the Council of Europe and the European Union Agency for Fundamental Rights²⁰.

If, as a result of this preliminary assessment, the Commission is of the opinion that there is indeed a situation of systemic threat to the rule of law, it will initiate a dialogue with the Member State concerned, by sending a "rule of law opinion" and substantiating its concerns, giving the Member State concerned the possibility to respond. The opinion could be the result

¹⁸ With regard to the notion of "systemic deficiencies" in complying with fundamental rights when acting within the scope of EU law, see, for example, Joined Cases C-411/10 and 493/10, N.S., not yet published, para 94 and 106; and Case C-4/11, Germany v Kaveh Puid, not yet published, para 36. With regard to the notion of "systemic" or "structural" in the context of the European Convention of Human Rights, see also the role of the European Court of Human rights in identifying underlying systemic problems, as defined in the Resolution Res(2004)3 of the Committee of Ministers of 12 May 2004, on Judgments Revealing an Underlying Systemic Problem, (<https://wcd.coe.int/ViewDoc.jsp?id=743257&Lang=fr>).

¹⁹ See also the Commission Communication of 15 October 2003 (footnote 15).

²⁰ See in particular Article 4(1)(a) of Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, p.1).

of an exchange of correspondence and meetings with the relevant authorities and, where appropriate, be followed by further exchanges.

The Commission expects that the Member State concerned cooperates throughout the process and refrains from adopting any irreversible measure in relation to the issues of concern raised by the Commission, pending the assessment of the latter, in line with the **duty of sincere cooperation** set out in Article 4(3) TEU. Whether a Member State fails to cooperate in this process, or even obstructs it, will be an element to take into consideration when assessing the seriousness of the threat.

At this stage of the process, while the launching of the Commission assessment and the sending of its opinion will be made public by the Commission, the content of the exchanges with the Member State concerned will, as a rule, be kept confidential, in order to facilitate quickly reaching a solution.

The Commission's recommendation

In a second stage, unless the matter has already been satisfactorily resolved in the meantime, the Commission will issue a "rule of law recommendation" addressed to the Member State concerned, if it finds that there is objective evidence of a systemic threat and that the authorities of that Member State are not taking appropriate action to redress it.

In its recommendation the Commission will clearly indicate the reasons for its concerns and recommend that the Member State solves the problems identified within a fixed time limit and informs the Commission of the steps taken to that effect. Where appropriate, the recommendation may include specific indications on ways and measures to resolve the situation.

The Commission's assessment and conclusions will be based on the results of the dialogue with the Member State concerned as well as on any additional evidence on which the Member State would also need to be heard in advance.

The sending of its recommendation and its main content will be made public by the Commission.

Follow-up to the Commission's recommendation

In a third stage, the Commission will monitor the follow-up given by the Member State concerned to the recommendation addressed to it. This monitoring can be based on further exchanges with the Member State concerned and could, for example, focus on whether certain practices which raise concerns continue to occur, or on how the Member State implements the commitments it has made in the meantime to resolve the situation.

If there is no satisfactory follow-up to the recommendation by the Member State concerned within the time limit set, the Commission will assess the possibility of activating one of the mechanisms set out in Article 7 TEU²¹.

Institutional interaction

The European Parliament and the Council will be kept regularly and closely informed of progress made in each of the stages.

Benefitting from third party expertise

²¹ See also the Commission Communication of 15 October 2003 (footnote 15).

In order to obtain expert knowledge on particular issues relating to the rule of law in Member States, the Commission may, notably during the phase of assessment, seek external expertise, including from the EU Agency for Fundamental Rights²². Such external expertise could notably help to provide for a comparative analysis about existing rules and practices in other Member States in order to ensure equal treatment of the Member States, on the basis of a common understanding of the rule of law within the EU.

Depending on the situation, the Commission may decide to seek advice and assistance from members of the judicial networks in the EU, such as the networks of the Presidents of Supreme Courts of the EU²³, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU²⁴ or the Judicial Councils²⁵. The Commission will examine, together with these networks, how such assistance could be provided swiftly where appropriate, and whether particular arrangements are necessary to that end.

The Commission will, as a rule and in appropriate cases, seek the advice of the Council of Europe and/or its Venice Commission, and will coordinate its analysis with them in all cases where the matter is also under their consideration and analysis.

5. CONCLUSION

This Communication sets out a new EU Framework for the Rule of Law as the Commission's contribution to strengthening the capacity of the EU to ensure effective and equal protection of the rule of law in all Member States. It thereby responds to requests from the European Parliament and the Council. While not excluding future developments of the Treaties in this area – which will have to be discussed as part of the broader reflections on the future of Europe –, it is based on Commission competences as provided for by existing Treaties. In addition to the action of the Commission, the role of the European Parliament and the Council will be crucial in reinforcing the EU's determination to uphold the rule of law.

²² The FRA can give advice within the scope of its tasks as defined by Council Regulation (EC) No 168/2007 (see footnote 20).

²³ Network of the Presidents of the Supreme Judicial Courts of the European Union (see <http://www.networkpresidents.eu/>).

²⁴ Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (see <http://www.aca-europe.eu/index.php/en/>).

²⁵ European Network of Councils for the Judiciary (see <http://www.encj.eu>).

I

(Legislative acts)

REGULATIONS

REGULATION (EU, Euratom) 2020/2092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 December 2020****on a general regime of conditionality for the protection of the Union budget**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 322(1) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, enshrined in Article 2 of the Treaty on European Union (TEU). As recalled by Article 2 TEU, those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
- (2) In its conclusions of 21 July 2020, the European Council stated that the financial interests of the Union are to be protected in accordance with the general principles embedded in the Treaties, in particular the values set out in Article 2 TEU. It also underlined the importance of the protection of the financial interests of the Union and the importance of respect for the rule of law.
- (3) The rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union (the 'Charter') and other applicable instruments, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality ⁽³⁾ implying a transparent, accountable-

⁽¹⁾ OJ C 291, 17.8.2018, p. 1.

⁽²⁾ Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 14 December 2020. Position of the European Parliament of 16 December 2020 (not yet published in the Official Journal).

⁽³⁾ Judgment of the Court of Justice of 29 April 2004, CAS Succhi di Frutta, C-496/99 P, ECLI:EU:C:2004:236, paragraph 63.

mocratic and pluralistic law-making process; legal certainty ⁽⁴⁾; prohibition of arbitrariness of the executive powers ⁽⁵⁾; effective judicial protection, including access to justice, by independent and impartial courts ⁽⁶⁾; and separation of powers, ⁽⁷⁾ be respected ⁽⁸⁾.

- (4) The accession criteria established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995 are the essential conditions that a candidate country has to satisfy to become a Member State of the Union. Those criteria are now enshrined in Article 49 TEU.
- (5) Once a candidate country becomes a Member State, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the Union that implements them will be respected. ⁽⁹⁾ The laws and practices of Member States should continue to comply with the common values on which the Union is founded.
- (6) While there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded, such as freedom, democracy, equality and respect for human rights. Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.
- (7) Whenever Member States implement the Union budget, including resources allocated through the European Union Recovery Instrument established pursuant to Council Regulation (EU) 2020/2094 ⁽¹⁰⁾, and through loans and other instruments guaranteed by the Union budget, and whatever method of implementation they use, respect for the rule of law is an essential precondition for compliance with the principles of sound financial management enshrined in Article 317 of the Treaty on the Functioning of the European Union (TFEU).
- (8) Sound financial management can only be ensured by Member States if public authorities act in accordance with the law, if cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest or other breaches of the law are effectively pursued by investigative and prosecution services, and if arbitrary or unlawful decisions of public authorities, including law-enforcement authorities, can be subject to effective judicial review by independent courts and by the Court of Justice of the European Union.
- (9) The independence and impartiality of the judiciary should always be guaranteed, and investigation and prosecution services should be able to properly execute their functions. The judiciary, and investigation and prosecution services should be endowed with sufficient financial and human resources and procedures to act effectively and in a manner that fully respects the right to a fair trial, including respect for the rights of defence. Final judgments should be implemented effectively. Those conditions are required as a minimum guarantee against unlawful and arbitrary decisions of public authorities that could harm the financial interests of the Union.

⁽⁴⁾ Judgment of the Court of Justice of 12 November 1981, *Amministrazione delle finanze dello Stato v Srl Meridionale Industria Salumi and others Ditta Italo Orlandi & Figlio and Ditta Vincenzo Divella v Amministrazione delle finanze dello Stato*. Joined cases 212 to 217/80, ECLI:EU:C:1981:270, paragraph 10.

⁽⁵⁾ Judgment of the Court of Justice of 21 September 1989, *Hoechst*, Joined cases 46/87 and 227/88, ECLI:EU:C:1989:337, paragraph 19.

⁽⁶⁾ Judgment of the Court of Justice of 27 February 2018, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas* C-64/16, ECLI:EU:C:2018:117, paragraphs 31, 40-41; judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586, paragraphs 63-67.

⁽⁷⁾ Judgment of the Court of Justice of 10 November 2016, *Kovalkovas*, C-477/16, ECLI:EU:C:2016:861, paragraph 36; Judgment of the Court of Justice of 10 November 2016, *PPU Poltorak*, C-452/16, ECLI:EU:C:2016:858, paragraph 35; and Judgment of the Court of Justice of 22 December 2010, *DEB*, C-279/09, ECLI:EU:C:2010:811, paragraph 58.

⁽⁸⁾ Communication from the Commission 'A new EU Framework to strengthen the Rule of Law', COM(2014)0158 final, Annex I.

⁽⁹⁾ Opinion 2/13, EU:C:2014:2454, paragraph 168.

⁽¹⁰⁾ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (see page 23 of this Official Journal).

- (10) The independence of the judiciary presupposes, in particular, that the judicial body concerned is able to exercise, both under the relevant rules and in practice, its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.
- (11) Respect for the rule of law is essential not only for Union citizens, but also for business initiatives, innovation, investment, economic, social and territorial cohesion, and the proper functioning of the internal market, which will flourish most where a solid legal and institutional framework is in place.
- (12) Article 19 TEU, which gives concrete expression to the value of the rule of law set out in Article 2 TEU, requires Member States to provide effective judicial protection in the fields covered by Union law, including those relating to the implementation of the Union budget. The very existence of effective judicial review designed to ensure compliance with Union law is the essence of the rule of law and requires independent courts ⁽¹¹⁾. Maintaining the independence of the courts is essential, as confirmed by the second paragraph of Article 47 of the Charter ⁽¹²⁾. This is true, in particular, for the judicial review of the validity of measures, contracts or other instruments giving rise to public expenditure or debts, inter alia, in the context of public procurement procedures which may also be brought before the courts.
- (13) There is therefore a clear relationship between respect for the rule of law and the efficient implementation of the Union budget in accordance with the principles of sound financial management.
- (14) The Union has developed a variety of instruments and processes that promote the rule of law and its application, including financial support for civil society organisations, the European Rule of Law Mechanism and the EU Justice Scoreboard, and provide an effective response from Union institutions to breaches of the rule of law through infringement proceedings and the procedure provided for in Article 7 TEU. The mechanism provided for in this Regulation complements these instruments by protecting the Union budget against breaches of the principles of the rule of law affecting its sound financial management or the protection of the financial interests of the Union.
- (15) Breaches of the principles of the rule of law, in particular those that affect the proper functioning of public authorities and effective judicial review, can seriously harm the financial interests of the Union. This is the case for individual breaches of the principles of the rule of law and even more so for breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities.
- (16) The identification of breaches of the principles of the rule of law requires a thorough qualitative assessment by the Commission. That assessment should be objective, impartial and fair, and should take into account relevant information from available sources and recognised institutions, including judgments of the Court of Justice of the European Union, reports of the Court of Auditors, the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) as relevant, and conclusions and recommendations of relevant international organisations and networks, including Council of Europe bodies such as the Council of Europe Group of States against Corruption (GRECO) and the Venice Commission, in particular its rule-of-law checklist, and the European networks of supreme courts and councils for the judiciary. The Commission could consult the European Union Agency for Fundamental Rights and the Venice Commission if necessary for the purpose of preparing a thorough qualitative assessment.

⁽¹¹⁾ Case C-64/16, para 32-36.

⁽¹²⁾ Case C-64/16, para 40-41.

- (17) Measures under this Regulation are necessary in particular in cases where other procedures set out in Union legislation would not allow the Union budget to be protected more effectively. Union financial legislation and the applicable sector-specific and financial rules provide for various possibilities to protect the Union budget, including interruptions, suspensions or financial corrections linked to irregularities or serious deficiencies in management and control systems. The measures to be adopted in the event of breaches of the principles of the rule of law and the procedure to be followed to adopt such measures should be determined. Such measures should include the suspension of payments and of commitments, the suspension of the disbursement of instalments or the early repayment of loans, a reduction of funding under existing commitments, and a prohibition on entering into new commitments with recipients or to enter into new agreements on loans or other instruments guaranteed by the Union budget.
- (18) The principle of proportionality should apply when determining the measures to be adopted, in particular taking into account the seriousness of the situation, the time which has elapsed since the relevant conduct started, the duration and recurrence of the conduct, the intention, the degree of cooperation of the Member State concerned in putting an end to the breaches of the principles of the rule of law, and the effects on the sound financial management of the Union budget or the financial interests of the Union.
- (19) It is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of breaches of the principles of the rule of law. When considering the adoption of measures, the Commission should take into account their potential impact on final recipients and beneficiaries. Taking into consideration that in shared management payments from the Commission to Member States are legally independent from payments by national authorities to beneficiaries, appropriate measures under this Regulation should not be considered to affect the availability of funding for payments towards beneficiaries according to the payment deadlines set out under the applicable sector-specific and financial rules. Decisions adopted under this Regulation and obligations towards final recipients or beneficiaries set out in this Regulation are part of applicable Union law with respect to implementing funding in shared management. The Member States concerned by the measures should regularly report to the Commission on compliance with their obligations towards final recipients or beneficiaries. Reporting on compliance with payment obligations towards beneficiaries set out in the applicable sector-specific and financial rules should allow the Commission to verify that decisions under this Regulation do not impact in any way, directly or indirectly, payments to be made under the applicable sector-specific and financial rules.

To strengthen the protection of the final recipients or beneficiaries, the Commission should provide information and guidance via a website or internet portal, together with adequate tools to inform the Commission about any breach of the legal obligation of government entities and Member States to continue making payments after measures pursuant to this Regulation are adopted. The Commission should follow up on such information to verify whether the applicable rules have been respected, in particular Article 63, point (b) of Article 68(1) and Article 98 of Regulation (EU) .../... of the European Parliament and of the Council of ... laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument ⁽¹³⁾. Where necessary, in order to ensure that any amount due by government entities or Member States is effectively paid to final recipients or beneficiaries, the Commission should recover payments made, or, where appropriate, make a financial correction by reducing Union support to a programme in line with the applicable sector-specific and financial rules.

- (20) In order to ensure uniform conditions for the implementation of this Regulation and in view of the importance of the financial effects of measures adopted pursuant to this Regulation, implementing powers should be conferred on the Council, which should act on the basis of a Commission proposal.

⁽¹³⁾ Not yet published in the Official Journal.

- (21) Before proposing the adoption of any measure pursuant to this Regulation, the Commission should inform the Member State concerned why it considers that breaches of the principles of the rule of law might exist in that Member State. The Commission should inform the European Parliament and the Council without delay about any such notification and its contents. The Member State concerned should be allowed to submit its observations. The Commission should take those observations into account.
- (22) When setting time limits in accordance with this Regulation for the Member State concerned, the Commission should take into account, in particular, the amount of information provided and requested, the complexity of the relevant facts and of their assessment, as well as the administrative capacity of the Member State concerned.
- (23) Where the Commission, after analysing the observations of the Member State concerned, considers that the conditions for the adoption of measures are fulfilled, it should submit a proposal for the adoption of appropriate measures to the Council. The Council should act upon the proposal of the Commission to adopt appropriate measures by means of an implementing decision within a period of one month, which may exceptionally be extended by a maximum of two additional months. With a view to ensuring that the Council takes the decision within those time limits, the Commission should make the most appropriate use of its rights under Article 237 TFEU and the Council's Rules of Procedure ⁽¹⁴⁾.
- (24) After the adoption of any measures pursuant to this Regulation, the Commission should regularly monitor the situation in the Member State concerned. The Commission should reassess the situation when the Member State concerned adopts new remedial measures, or in any case at the latest one year after the adoption of the measures.
- (25) The Council should, acting on a proposal from the Commission, lift measures that have a suspensive effect if the situation leading to the imposition of those measures has been sufficiently remedied.
- (26) The procedure for adopting and lifting the measures should respect the principles of objectivity, non-discrimination and equal treatment of Member States and should be conducted according to a non-partisan and evidence-based approach. If, exceptionally, the Member State concerned considers that there are serious breaches of those principles, it may request the President of the European Council to refer the matter to the next European Council. In such exceptional circumstances, no decision concerning the measures should be taken until the European Council has discussed the matter. This process shall, as a rule, not take longer than three months after the Commission has submitted its proposal to the Council.
- (27) The Commission should keep the European Parliament informed of any measures proposed, adopted and lifted pursuant to this Regulation.
- (28) The Commission should report to the European Parliament and the Council on the application of this Regulation. When reporting to the European Parliament and the Council, the Commission should consider, in addition to the effectiveness of the measures adopted, the overall effectiveness of the procedure set out in this Regulation and the complementarity of this instrument with others.
- (29) This Regulation should not affect the competence of the EPPO or the obligations of the Member States which do not participate in the enhanced cooperation established by Council Regulation (EU) 2017/1939 ⁽¹⁵⁾,

⁽¹⁴⁾ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

⁽¹⁵⁾ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States.

Article 2

Definitions

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

- (a) 'the rule of law' refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU;
- (b) 'government entity' means a public authority at any level of government, including national, regional and local authorities, as well as Member State organisations within the meaning of point (42) of Article 2 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁶⁾ (the 'Financial Regulation').

Article 3

Breaches of the principles of the rule of law

For the purposes of this Regulation, the following may be indicative of breaches of the principles of the rule of law:

- (a) endangering the independence of the judiciary;
- (b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest;
- (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

Article 4

Conditions for the adoption of measures

1. Appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.

⁽¹⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. For the purposes of this Regulation, breaches of the principles of the rule of law shall concern one or more of the following:

- (a) the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures;
- (b) the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems;
- (c) the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union;
- (d) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points (a), (b) and (c);
- (e) the prevention and sanctioning of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities;
- (f) the recovery of funds unduly paid;
- (g) effective and timely cooperation with OLAF and, subject to the participation of the Member State concerned, with EPPO in their investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation;
- (h) other situations or conduct of authorities that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union.

Article 5

Measures for the protection of the Union budget

1. Provided that the conditions set out in Article 4 of this Regulation are fulfilled, one or more of the following appropriate measures may be adopted in accordance with the procedure set out in Article 6 of this Regulation:

- (a) where the Commission implements the Union budget in direct or indirect management pursuant to points (a) and (c) of Article 62(1) of the Financial Regulation, and where a government entity is the recipient:
 - (i) a suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment pursuant to Article 131(3) of the Financial Regulation;
 - (ii) a prohibition on entering into new legal commitments;
 - (iii) a suspension of the disbursement of instalments in full or in part or an early repayment of loans guaranteed by the Union budget;
 - (iv) a suspension or reduction of the economic advantage under an instrument guaranteed by the Union budget;
 - (v) a prohibition on entering into new agreements on loans or other instruments guaranteed by the Union budget;
- (b) where the Commission implements the Union budget under shared management with Member States pursuant to point (b) of Article 62(1) of the Financial Regulation:
 - (i) a suspension of the approval of one or more programmes or an amendment thereof;
 - (ii) a suspension of commitments;
 - (iii) a reduction of commitments, including through financial corrections or transfers to other spending programmes;
 - (iv) a reduction of pre-financing;
 - (v) an interruption of payment deadlines;
 - (vi) a suspension of payments.

2. Unless the decision adopting the measures provides otherwise, the imposition of appropriate measures shall not affect the obligations of government entities referred to in point (a) of paragraph 1 or of Member States referred to in point (b) of paragraph 1 to implement the programme or fund affected by the measure, and in particular the obligations they have towards final recipients or beneficiaries, including the obligation to make payments under this Regulation and the applicable sector-specific or financial rules. When implementing Union funds under shared management, Member States concerned by measures adopted pursuant to this Regulation shall report to the Commission on their compliance with those obligations every three months from the adoption of those measures.

The Commission shall verify whether applicable law has been complied with and, where necessary, take all appropriate measures to protect the Union budget, in line with sector-specific and financial rules.

3. The measures taken shall be proportionate. They shall be determined in light of the actual or potential impact of the breaches of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union. The nature, duration, gravity and scope of the breaches of the principles of the rule of law shall be duly taken into account. The measures shall, insofar as possible, target the Union actions affected by the breaches.

4. The Commission shall provide information and guidance for the benefit of final recipients or beneficiaries on the obligations by Member States referred to in paragraph 2 via a website or an internet portal. The Commission shall also provide, on the same website or internet portal, adequate tools for final recipients or beneficiaries to inform the Commission about any breach of these obligations that, in the view of these final recipients or beneficiaries, directly affects them. This paragraph shall be applied in a manner that ensures the protection of persons reporting on breaches of Union law, in line with the principles set out in Directive (EU) 2019/1937 of the European Parliament and of the Council⁽¹⁷⁾. Information provided by final recipients or beneficiaries in accordance with this paragraph shall be accompanied by proof that the concerned final recipient or beneficiary has lodged a formal complaint with the relevant authority of the Member State concerned.

5. On the basis of the information provided by the final recipients or beneficiaries in accordance with paragraph 4 of this Article, the Commission shall do its utmost to ensure that any amount due from government entities or Member States as referred to in paragraph 2 of this Article is effectively paid to final recipients or beneficiaries, in accordance with in particular Article 63, point (b) of Article 68(1) and Article 98 of Regulation (EU) .../... of the European Parliament and of the Council of ... laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument.

Article 6

Procedure

1. Where the Commission finds that it has reasonable grounds to consider that the conditions set out in Article 4 are fulfilled, it shall, unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively, send a written notification to the Member State concerned, setting out the factual elements and specific grounds on which it based its findings. The Commission shall inform the European Parliament and the Council without delay of such notification and its contents.

2. In light of the information received pursuant to paragraph 1, the European Parliament may invite the Commission for a structured dialogue on its findings.

3. When assessing whether the conditions set out in Article 4 are fulfilled, the Commission shall take into account relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions.

⁽¹⁷⁾ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

4. The Commission may request any additional information it requires to carry out the assessment referred to in paragraph 3, both before and after having sent the written notification pursuant to paragraph 1.
5. The Member State concerned shall provide the required information and may make observations on the findings set out in the notification referred to in paragraph 1 within a time limit to be specified by the Commission, which shall be at least one month and not more than three months from the date of notification of the findings. In its observations, the Member State may propose the adoption of remedial measures to address the findings set out in the Commission's notification.
6. The Commission shall take into account the information received and any observations made by the Member State concerned, as well as the adequacy of any proposed remedial measures, when deciding whether to submit a proposal for an implementing decision on the appropriate measures. The Commission shall carry out its assessment within an indicative time limit of one month from the receipt of any information from the Member State concerned or of its observations, or, when no information or observations are received, from the expiry of the time limit set in accordance with paragraph 5, and in any event within a reasonable time frame.
7. Where the Commission intends to make a proposal pursuant to paragraph 9, it shall, before doing so, give the Member State the opportunity to submit its observations, in particular on the proportionality of the envisaged measures, within one month.
8. When assessing the proportionality of the measures to be imposed, the Commission shall take into account the information and guidance referred to in paragraph 3.
9. Where the Commission considers that the conditions of Article 4 are fulfilled and that the remedial measures, if any, proposed by the Member State under paragraph 5 do not adequately address the findings in the Commission's notification, it shall submit a proposal for an implementing decision on the appropriate measures to the Council within one month of receiving the Member State's observations or, in the event that no observations are made, without undue delay and in any case within one month of the deadline set in paragraph 7. The proposal shall set out the specific grounds and evidence on which the Commission based its findings.
10. The Council shall adopt the implementing decision referred to in paragraph 9 of this Article within one month of receiving the Commission's proposal. If exceptional circumstances arise, the period for the adoption of that implementing decision may be extended by a maximum of two months. With a view to ensuring a timely decision, the Commission shall make use of its rights under Article 237 TFEU, where it deems it appropriate.
11. The Council, acting by a qualified majority, may amend the Commission's proposal and adopt the amended text by means of an implementing decision.

Article 7

Lifting of measures

1. The Member State concerned may, at any time, adopt new remedial measures and submit to the Commission a written notification including evidence to show that the conditions of Article 4 are no longer fulfilled.
2. At the request of the Member State concerned, or on its own initiative and at the latest one year after the adoption of measures by the Council, the Commission shall reassess the situation in the Member State concerned, taking into account any evidence submitted by the Member State concerned, as well as the adequacy of any new remedial measures adopted by the Member State concerned.

Where the Commission considers that the conditions of Article 4 are no longer fulfilled, it shall submit to the Council a proposal for an implementing decision lifting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has been remedied in part, it shall submit to the Council a proposal for an implementing decision adapting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.

When the Member State concerned submits a written notification pursuant to paragraph 1, the Commission shall submit its proposal or adopt its decision within one month of receiving that notification. This period may be extended in duly justified circumstances, in which case the Commission shall without delay inform the Member State concerned of the reasons for the extension.

The procedure set out in paragraphs 3, 4, 5, 6, 9, 10 and 11 of Article 6 shall apply by analogy as appropriate.

3. Where measures concerning the suspension of the approval of one or more programmes or amendments thereof referred to in point (i) of Article 5(1)(b) or the suspension of commitments referred to in point (ii) of Article 5(1)(b) are lifted, amounts corresponding to the suspended commitments shall be entered in the Union budget subject to Article 5 of Council Regulation (EU, Euratom) 2020/2093 ⁽¹⁸⁾. Suspended commitments of year *n* may not be entered in the budget beyond year *n*+2.

Article 8

Informing the European Parliament

The Commission shall immediately inform the European Parliament of any measures proposed, adopted or lifted pursuant to Articles 5, 6 and 7.

Article 9

Reporting

The Commission shall report by 12 January 2024 to the European Parliament and the Council on the application of this Regulation, in particular on the effectiveness of the measures adopted.

Article 10

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 December 2020.

For the European Parliament
The President
D. M. SASSOLI

For the Council
The President
M. ROTH

⁽¹⁸⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (see page 11 of this Official Journal).

I

(Legislative acts)

REGULATIONS

REGULATION (EU, EURATOM) No 1141/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 22 October 2014****on the statute and funding of European political parties and European political foundations**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 224 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Acting in accordance with the ordinary legislative procedure ⁽⁴⁾,

Whereas:

- (1) Article 10(4) of the Treaty on European Union (TEU) and Article 12(2) of the Charter of Fundamental Rights of the European Union (the Charter) state that political parties at European level contribute to forming European political awareness and to expressing the political will of citizens of the Union.
- (2) Articles 11 and 12 of the Charter state that the right to freedom of association at all levels, for example in political and civic matters, and the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers, are fundamental rights of every citizen of the Union.
- (3) European citizens should be enabled to use those rights in order to participate fully in the democratic life of the Union.
- (4) Truly transnational European political parties and their affiliated European political foundations have a key role to play in articulating the voices of citizens at European level by bridging the gap between politics at national level and at Union level.
- (5) European political parties and their affiliated European political foundations should be encouraged and assisted in their endeavour to provide a strong link between European civil society and the Union institutions, in particular the European Parliament.

⁽¹⁾ OJ C 133, 9.5.2013, p. 90.

⁽²⁾ OJ C 62, 2.3.2013, p. 77.

⁽³⁾ OJ C 67, 7.3.2013, p. 1.

⁽⁴⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 29 September 2014.

- (6) Experience acquired by the European political parties and their affiliated European political foundations in applying Regulation (EC) No 2004/2003 of the European Parliament and of the Council ⁽¹⁾, together with the European Parliament's resolution of 6 April 2011 on the application of Regulation (EC) No 2004/2003 ⁽²⁾, show the need to improve the legal and financial framework for European political parties and their affiliated European political foundations so as to enable them to become more visible and effective actors in the multi-level political system of the Union.
- (7) As a recognition of the mission attributed to European political parties in the TEU and in order to facilitate their work, a specific European legal status should be established for European political parties and their affiliated European political foundations.
- (8) An Authority for European political parties and foundations ('the Authority') should be established for the purpose of registering, controlling and imposing sanctions on European political parties and European political foundations. Registration should be necessary in order to obtain European legal status, which entails a series of rights and obligations. To avoid any possible conflict of interests, the Authority should be independent.
- (9) The procedures to be followed by European political parties and their affiliated European political foundations in order to obtain European legal status pursuant to this Regulation should be laid down, as should the procedures and criteria to be respected in arriving at a decision on whether to grant such European legal status. It is also necessary to lay down the procedures for cases in which a European political party or a European political foundation forfeits, loses or gives up its European legal status.
- (10) In order to facilitate the oversight of legal entities that will be subject to both Union and national law, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the functioning of a register of European political parties and foundations to be managed by the Authority ('the Register'), in particular as regards the information and supporting documents held in the Register. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards provisions on the registration number system and on standard extracts to be made available from the Register by the Authority to third parties upon request. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽³⁾.
- (12) European political parties and their affiliated European political foundations wishing to obtain recognition as such at Union level by virtue of European legal status and to receive public funding from the general budget of the European Union should respect certain principles and fulfil certain conditions. In particular, it is necessary for European political parties and their affiliated European political foundations to respect the values on which the Union is founded, as expressed in Article 2 TEU.
- (13) Decisions to de-register a European political party or a European political foundation on the ground of non-compliance with the values on which the Union is founded, as expressed in Article 2 TEU, should be taken only in the event of a manifest and serious breach of those values. When taking a decision to de-register, the Authority should fully respect the Charter.
- (14) The statutes of a European political party or a European political foundation should contain a series of basic provisions. Member States should be allowed to impose additional requirements for the statutes of European political parties and European political foundations which have established their seat on their respective territories, provided those additional requirements are not inconsistent with this Regulation.
- (15) The Authority should regularly verify that the conditions and requirements relating to the registration of European political parties and European political foundations continue to be met. Decisions relating to the respect for the values on which the Union is founded, as expressed in Article 2 TEU, should only be taken in accordance with a procedure specifically designed to that effect, following consultation of a committee of independent eminent persons.

⁽¹⁾ Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ L 297, 15.11.2003, p. 1).

⁽²⁾ OJ C 296 E, 2.10.2012, p. 46.

⁽³⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (16) The Authority is a body of the Union within the meaning of Article 263 TFEU.
- (17) The independence and transparency of the committee of independent eminent persons should be guaranteed.
- (18) The European legal status granted to European political parties and their affiliated foundations should provide them with legal capacity and recognition in all the Member States. Such legal capacity and recognition do not entitle them to nominate candidates in national elections or elections to the European Parliament or to participate in referendum campaigns. Any such or similar entitlement remains under the competence of Member States.
- (19) The activities of European political parties and European political foundations should be governed by this Regulation, and, for matters not governed by this Regulation, by the relevant provisions of national law in the Member States. The legal status of a European political party or of a European political foundation should be governed by this Regulation and by the applicable provisions of national law in the Member State where it has its seat ('Member State of the seat'). The Member State of the seat should be able to define ex ante the applicable law or to leave optionality for European political parties and European political foundations. The Member State of the seat should also be able to impose requirements other than, or additional to, those laid down in this Regulation, including provisions on the registration and integration of European political parties and foundations as such into national administrative and control systems and on their organisation and statutes, including on liability, provided that such provisions are not inconsistent with this Regulation.
- (20) As a key element of possessing European legal status, European political parties and European political foundations should have European legal personality. The acquisition of European legal personality should be subject to requirements and procedures to protect the interests of the Member State of the seat, of the applicant for European legal status ('the applicant') and of any third parties concerned. In particular, any pre-existing national legal personality should be converted into a European legal personality and any individual rights and obligations that have accrued to the former national legal entity should be transferred to the new European legal entity. Moreover, in order to facilitate continuity of activity, safeguards should be put in place to prevent the Member State concerned from applying prohibitive conditions to such conversion. The Member State of the seat should be able to specify which types of national legal persons may be converted into European legal persons, and to withhold its agreement to the acquisition of European legal personality under this Regulation until adequate guarantees are provided, in particular, for the legality of the applicant's statutes under the laws of that Member State or for the protection of creditors or holders of other rights in respect of any pre-existing national legal personality.
- (21) The termination of European legal personality should be subject to requirements and procedures to protect the interests of the Union, of the Member State of the seat, of the European political party or European political foundation and of any third parties concerned. In particular, if the European political party or European political foundation acquires legal personality under the law of the Member State of its seat, this should be considered as a conversion of the European legal personality and any individual rights and obligations that the former European legal entity has respectively acquired or incurred should be transferred to the national legal entity. Moreover, in order to facilitate continuity of activity, safeguards should be put in place to prevent the Member State concerned from applying prohibitive conditions to such conversion. If the European political party or European political foundation does not acquire legal personality in the Member State of its seat, it should be wound up in accordance with the law of that Member State and in accordance with the condition requiring it not to pursue profit goals. The Authority and the Authorising Officer of the European Parliament should be able to agree modalities with the Member State concerned regarding the termination of the European legal personality, in particular in order to ensure the recovery of funds received from the general budget of the European Union and any financial sanctions.
- (22) If a European political party or a European political foundation seriously fails to comply with relevant national law and if the matter relates to elements affecting respect of the values on which the Union is founded, as expressed in Article 2 TEU, the Authority should decide, upon request by the Member State concerned, to apply the procedures laid down by this Regulation. Moreover, the Authority should decide, upon request from the Member State of the seat, to remove from the Register a European political party or European political foundation which has seriously failed to comply with relevant national law on any other matter.
- (23) Eligibility for funding from the general budget of the European Union should be limited to European political parties and their affiliated European political foundations that have been recognised as such and have obtained European legal status. While it is crucial to ensure that the conditions applicable to becoming a European political party are not excessive but can readily be met by organised and serious transnational alliances of political parties or natural persons or both, it is also necessary to establish proportionate criteria in order to allocate limited

resources from the general budget of the European Union which criteria objectively reflect the European ambition and genuine electoral support of a European political party. Such criteria are best based on the outcome of elections to the European Parliament, in which the European political parties or their members are required to participate under this Regulation, providing a precise indication of the electoral recognition of a European political party. These should reflect the European Parliament's role of directly representing the Union's citizens, assigned to it by Article 10(2) TEU, as well as the objective for European political parties to participate fully in the democratic life of the Union and to become actors in Europe's representative democracy, in order effectively to express the views, opinions and political will of the citizens of the Union. Eligibility for funding from the general budget of the European Union should therefore be limited to European political parties which are represented in the European Parliament by at least one of their members and to European political foundations which apply through a European political party that is represented in the European Parliament by at least one of its members.

- (24) In order to increase the transparency of European political party funding, and to avoid potential abuse of the funding rules, a member of the European Parliament should, for the purposes of funding only, be regarded as a member of only one European political party, which should, where relevant, be the one to which his or her national or regional political party is affiliated on the final date for the submission of applications for funding.
- (25) The procedures to be followed by European political parties and their affiliated European political foundations when they apply for funding from the general budget of the European Union should be laid down, as well as the procedures, criteria and rules to be respected in arriving at a decision on the grant of such funding.
- (26) In order to enhance the independence, accountability and responsibility of European political parties and European political foundations, certain types of donations and contributions from sources other than the general budget of the European Union should be prohibited or subject to limitations. Any restriction on free movement of capital which such limitations might entail is justified on grounds of public policy and is strictly necessary for the attainment of those objectives.
- (27) European political parties should be able to finance campaigns conducted in the context of elections to the European Parliament, while the funding and limitation of election expenses for parties and candidates at such elections should be governed by the rules applicable in each Member State.
- (28) European political parties should not fund, directly or indirectly, other political parties and, in particular, national parties or candidates. European political foundations should not fund, directly or indirectly, European or national political parties or candidates. Moreover, European political parties and their affiliated European political foundations should not finance referendum campaigns. These principles reflect Declaration No 11 on Article 191 of the Treaty establishing the European Community annexed to the Final Act of the Treaty of Nice.
- (29) Specific rules and procedures should be laid down for distributing the appropriations available each year from the general budget of the European Union, taking into account, on the one hand, the number of beneficiaries and, on the other, the share of elected members in the European Parliament of each beneficiary European political party and, by extension, its respective affiliated European political foundation. Those rules should provide for strict transparency, accounting, auditing and financial control of European political parties and their affiliated European political foundations, as well as for the imposition of proportionate sanctions, including in the event of a breach by a European political party or a European political foundation of the values on which the Union is founded, as expressed in Article 2 TEU.
- (30) In order to ensure compliance with the obligations laid down by this Regulation regarding the funding and expenditure of European political parties and European political foundations and regarding other matters, it is necessary to establish effective control mechanisms. To that end, the Authority, the Authorising Officer of the European Parliament and the Member States should cooperate and exchange all necessary information. Mutual cooperation amongst Member States' authorities should be also encouraged in order to ensure the effective and efficient control of obligations stemming from applicable national law.
- (31) It is necessary to provide for a clear, strong and dissuasive system of sanctions in order to ensure effective, proportionate and uniform compliance with the obligations regarding the activities of European political parties and European political foundations. Such a system should also respect the *ne bis in idem* principle whereby sanctions cannot be imposed twice for the same offence. It is also necessary to define the respective roles of the Authority and of the Authorising Officer of the European Parliament in controlling and verifying compliance with this Regulation as well as the mechanisms for cooperation between them and the Member States' authorities.

- (32) In order to help raise the European political awareness of citizens and to promote the transparency of the European electoral process, European political parties may inform citizens during elections to the European Parliament of the ties between them and their affiliated national political parties and candidates.
- (33) For reasons of transparency, and in order to strengthen the scrutiny and the democratic accountability of European political parties and European political foundations, information considered to be of substantial public interest, relating in particular to their statutes, membership, financial statements, donors and donations, contributions and grants received from the general budget of the European Union, as well as information relating to decisions taken by the Authority and the Authorising Officer of the European Parliament on registration, funding and sanctions, should be published. Establishing a regulatory framework to ensure that this information is publicly available is the most effective means of promoting a level playing field and fair competition between political forces, and of upholding open, transparent and democratic legislative and electoral processes, thereby strengthening the trust of citizens and voters in European representative democracy and, more broadly, preventing corruption and abuses of power.
- (34) In compliance with the principle of proportionality, the obligation to publish the identity of donors who are natural persons should not apply to donations equal to or below EUR 1 500 per year and per donor. Furthermore, such obligation should not apply to donations the annual value of which exceeds EUR 1 500 and is below or equal to EUR 3 000 unless the donor has given prior written consent to the publication. These thresholds strike an appropriate balance between, on the one hand, the fundamental right to the protection of personal data and, on the other hand, the legitimate public interest in transparency regarding the funding of European political parties and foundations, as reflected in international recommendations to avoid corruption in relation to the funding of political parties and foundations. The disclosure of donations exceeding EUR 3 000 per year and per donor should allow effective public scrutiny and control over the relations between donors and European political parties. Also in compliance with the principle of proportionality, information on donations should be published annually, except during election campaigns to the European Parliament or for donations exceeding EUR 12 000, in respect of which publication should take place expeditiously.
- (35) This Regulation respects the fundamental rights and observes the principles enshrined in the Charter, in particular Articles 7 and 8 thereof, which state that everyone has the right to respect for his or her private life and to the protection of personal data concerning him or her, and it must be implemented in full respect of those rights and principles.
- (36) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾ applies to the processing of personal data carried out by the Authority, the European Parliament and the committee of independent eminent persons in application of this Regulation.
- (37) Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾ applies to the processing of personal data carried out in application of this Regulation.
- (38) For the sake of legal certainty, it is appropriate to clarify that the Authority, the European Parliament, the European political parties and European political foundations, the national authorities competent to exercise control over aspects related to the financing of European political parties and European political foundations, and other relevant third parties referred to or provided for in this Regulation are data controllers within the meaning of Regulation (EC) No 45/2001 or Directive 95/46/EC. It is also necessary to specify the maximum period for which they may retain personal data collected for the purposes of ensuring the legality, regularity and transparency of the funding of European political parties and European political foundations and the membership of European political parties. In their capacity as data controllers, the Authority, the European Parliament, the European political parties and European political foundations, the competent national authorities and the relevant third parties must take all the appropriate measures to comply with the obligations imposed by Regulation (EC) No 45/2001 and Directive 95/46/EC, in particular those relating to the lawfulness of the processing, the security of the processing activities, the provision of information, and the rights of data subjects to have access to their personal data and to procure the correction and erasure of their personal data.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (39) Chapter III of Directive 95/46/EC on judicial remedies, liability and sanctions applies as regards the data processing carried out in application of this Regulation. The competent national authorities or relevant third parties should be liable in accordance with applicable national law for any damage that they cause. In addition, Member States should ensure that the competent national authorities or relevant third parties are liable to appropriate sanctions for infringements of this Regulation.
- (40) Technical support afforded by the European Parliament to European political parties should be guided by the principle of equal treatment, should be supplied against invoice and payment and should be subject to a regular public report.
- (41) Key information on the application of this Regulation should be available to the public on a dedicated website.
- (42) Judicial control by the Court of Justice of the European Union will help to ensure the correct application of this Regulation. Provisions should also be made to allow European political parties or European political foundations to be heard and to take corrective measures before a sanction is imposed on them.
- (43) Member States should ensure that national provisions that are conducive to the effective application of this Regulation are in place.
- (44) Member States should be given sufficient time to adopt provisions to ensure the smooth and effective application of this Regulation. Provision should therefore be made for a transitional period between the entry into force of this Regulation and its application.
- (45) The European Data Protection Supervisor was consulted and adopted an opinion ⁽¹⁾.
- (46) Given the need for significant changes and additions to the rules and procedures currently applicable to political parties and political foundations at Union level, Regulation (EC) No 2004/2003 should be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the conditions governing the statute and funding of political parties at European level ('European political parties') and political foundations at European level ('European political foundations').

Article 2

Definitions

For the purposes of this Regulation:

- (1) 'political party' means an association of citizens:
- which pursues political objectives, and
 - which is either recognised by, or established in accordance with, the legal order of at least one Member State;
- (2) 'political alliance' means structured cooperation between political parties and/or citizens;
- (3) 'European political party' means a political alliance which pursues political objectives and is registered with the Authority for European political parties and foundations established in Article 6, in accordance with the conditions and procedures laid down in this Regulation;
- (4) 'European political foundation' means an entity which is formally affiliated with a European political party, which is registered with the Authority in accordance with the conditions and procedures laid down in this Regulation, and which through its activities, within the aims and fundamental values pursued by the Union, underpins and complements the objectives of the European political party by performing one or more of the following tasks:
- (a) observing, analysing and contributing to the debate on European public policy issues and on the process of European integration;

⁽¹⁾ OJ C 253, 3.9.2013, p. 12.

- (b) developing activities linked to European public policy issues, such as organising and supporting seminars, training, conferences and studies on such issues between relevant stakeholders, including youth organisations and other representatives of civil society;
- (c) developing cooperation in order to promote democracy, including in third countries;
- (d) serving as a framework for national political foundations, academics, and other relevant actors to work together at European level;
- (5) 'regional parliament' or 'regional assembly' means a body whose members either hold a regional electoral mandate or are politically accountable to an elected assembly;
- (6) 'funding from the general budget of the European Union' means a grant awarded in accordance with Title VI of Part One or a contribution awarded in accordance with Title VIII of Part Two of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾ ('the Financial Regulation');
- (7) 'donation' means any cash offering, any offering in kind, the provision below market value of any goods, services (including loans) or works, and/or any other transaction which constitutes an economic advantage for the European political party or the European political foundation concerned, with the exception of contributions from members and of usual political activities carried out on a voluntary basis by individuals;
- (8) 'contribution from members' means any payment in cash, including membership fees, or any contribution in kind, or the provision below market value of any goods, services (including loans) or works, and/or any other transaction which constitutes an economic advantage for the European political party or the European political foundation concerned, when provided to that European political party or to that European political foundation by one of its members, with the exception of usual political activities carried out on a voluntary basis by individual members;
- (9) 'annual budget' for the purposes of Articles 20 and 27 means the total amount of expenditure in a given year as reported in the annual financial statements of the European political party or of the European political foundation concerned;
- (10) 'National Contact Point' means one of the liaison points designated for issues related to the central exclusion database referred to in Article 108 of the Financial Regulation and in Article 144 of Commission Delegated Regulation (EU) No 1268/2012 ⁽²⁾, or any other person or persons specifically designated by the relevant authorities in the Member States for the purpose of exchanging information in the application of this Regulation;
- (11) 'seat' means the location where the European political party or the European political foundation has its central administration;
- (12) 'concurrent infringements' means two or more infringements committed as part of the same unlawful act;
- (13) 'repeated infringement' means an infringement committed within five years of a sanction having been imposed on its perpetrator for the same type of infringement.

CHAPTER II

STATUTE FOR EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS

Article 3

Conditions for registration

1. A political alliance shall be entitled to apply to register as a European political party subject to the following conditions:

- (a) it must have its seat in a Member State as indicated in its statutes;
- (b) it or its members must be, or be represented by, in at least one quarter of the Member States, members of the European Parliament, of national parliaments, of regional parliaments or of regional assemblies, or

it or its member parties must have received, in at least one quarter of the Member States, at least three per cent of the votes cast in each of those Member States at the most recent elections to the European Parliament;

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- (c) it must observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;
- (d) it or its members must have participated in elections to the European Parliament, or have expressed publicly the intention to participate in the next elections to the European Parliament; and
- (e) it must not pursue profit goals.

2. An applicant shall be entitled to apply to register as a European political foundation subject to the following conditions:

- (a) it must be affiliated with a European political party registered in accordance with the conditions and procedures laid down in this Regulation;
- (b) it must have its seat in a Member State as indicated in its statutes;
- (c) it must observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;
- (d) its objectives must complement the objectives of the European political party with which it is formally affiliated;
- (e) its governing body must be composed of members from at least one quarter of the Member States; and
- (f) it must not pursue profit goals.

3. A European political party can have only one formally affiliated European political foundation. Each European political party and the affiliated European political foundation shall ensure a separation between their respective day-to-day management, governing structures and financial accounts.

Article 4

Governance of European political parties

1. The statutes of a European political party shall comply with the applicable law of the Member State in which it has its seat and shall include provisions covering at least the following:

- (a) its name and logo, which must be clearly distinguishable from those of any existing European political party or European political foundation;
- (b) the address of its seat;
- (c) a political programme setting out its purpose and objectives;
- (d) a statement, in conformity with point (e) of Article 3(1), that it does not pursue profit goals;
- (e) where relevant, the name of its affiliated political foundation and a description of the formal relationship between them;
- (f) its administrative and financial organisation and procedures, specifying in particular the bodies and offices holding the powers of administrative, financial and legal representation and the rules on the establishment, approval and verification of annual accounts; and
- (g) the internal procedure to be followed in the event of its voluntary dissolution as a European political party.

2. The statutes of a European political party shall include provisions on internal party organisation covering at least the following:

- (a) the modalities for the admission, resignation and exclusion of its members, the list of its member parties being annexed to the statutes;
- (b) the rights and duties associated with all types of membership and the relevant voting rights;
- (c) the powers, responsibilities and composition of its governing bodies, specifying for each the criteria for the selection of candidates and the modalities for their appointment and dismissal;
- (d) its internal decision-making processes, in particular the voting procedures and quorum requirements;
- (e) its approach to transparency, in particular in relation to bookkeeping, accounts and donations, privacy and the protection of personal data; and
- (f) the internal procedure for amending its statutes.

3. The Member State of the seat may impose additional requirements for the statutes, provided those additional requirements are not inconsistent with this Regulation.

Article 5

Governance of European political foundations

1. The statutes of a European political foundation shall comply with the applicable law of the Member State in which it has its seat and shall include provisions covering at least the following:

- (a) its name and logo, which must be clearly distinguishable from those of any existing European political party or European political foundation;
- (b) the address of its seat;
- (c) a description of its purpose and objectives, which must be compatible with the tasks listed in point (4) of Article 2;
- (d) a statement, in conformity with point (f) of Article 3(2), that it does not pursue profit goals;
- (e) the name of the European political party with which it is directly affiliated, and a description of the formal relationship between them;
- (f) a list of its bodies, specifying for each its powers, responsibilities and composition, and including the modalities for the appointment and dismissal of the members and managers of such bodies;
- (g) its administrative and financial organisation and procedures, specifying in particular the bodies and offices holding the powers of administrative, financial and legal representation and the rules on the establishment, approval and verification of annual accounts;
- (h) the internal procedure for amending its statutes; and
- (i) the internal procedure to be followed in the event of its voluntary dissolution as a European political foundation.

2. The Member State of the seat may impose additional requirements for the statutes, provided those additional requirements are not inconsistent with this Regulation.

Article 6

Authority for European political parties and European political foundations

1. An Authority for European political parties and European political foundations (the 'Authority') is hereby established for the purpose of registering, controlling and imposing sanctions on European political parties and European political foundations in accordance with this Regulation.

2. The Authority shall have legal personality. It shall be independent and shall exercise its functions in full compliance with this Regulation.

The Authority shall decide on the registration and de-registration of European political parties and European political foundations in accordance with the procedures and conditions laid down in this Regulation. In addition, the Authority shall regularly verify that the registration conditions laid down in Article 3 and the governance provisions set out in accordance with points (a), (b) and (d) to (f) of Article 4(1) and in points (a) to (e) and (g) of Article 5(1) continue to be complied with by the registered European political parties and European political foundations.

In its decisions, the Authority shall give full consideration to the fundamental right of freedom of association and to the need to ensure pluralism of political parties in Europe.

The Authority shall be represented by its Director who shall take all decisions of the Authority on its behalf.

3. The Director of the Authority shall be appointed for a five-year non-renewable term by the European Parliament, the Council and the Commission (jointly referred to as the 'appointing authority') by common accord, on the basis of proposals made by a selection committee composed of the Secretaries-General of those institutions following an open call for candidates.

The Director of the Authority shall be selected on the basis of his or her personal and professional qualities. He or she shall not be a member of the European Parliament, hold any electoral mandate or be a current or former employee of a European political party or a European political foundation. The Director selected shall not have a conflict of interests between his or her duty as Director of the Authority and any other official duties, in particular in relation to the application of the provisions of this Regulation.

A vacancy caused by resignation, retirement, dismissal or death shall be filled in accordance with the same procedure.

In the event of a normal replacement or voluntary resignation the Director shall continue his or her functions until a replacement has taken up his or her duties.

If the Director of the Authority no longer fulfils the conditions required for the performance of his or her duties, he or she may be dismissed by common accord by at least two of the three institutions referred to in the first subparagraph and on the basis of a report drawn up by the selection committee referred to in the first subparagraph on its own initiative or following a request from any of the three institutions.

The Director of the Authority shall be independent in the performance of his or her duties. When acting on behalf of the Authority, the Director shall neither seek nor take instructions from any institution or government or from any other body, office or agency. The Director of the Authority shall refrain from any act which is incompatible with the nature of his or her duties.

The European Parliament, the Council and the Commission shall exercise jointly, with regard to the Director, the powers conferred on the appointing authority by the Staff Regulations of Officials (and the Conditions of Employment of Other Servants of the Union) laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾. Without prejudice to decisions on appointment and dismissal, the three institutions may agree to entrust the exercise of some or all of the remaining powers conferred on the appointing authority to any one of them.

The appointing authority may assign the Director to other tasks provided that such tasks are not incompatible with the workload resulting from his or her duties as Director of the Authority and are not liable to create any conflict of interests or to jeopardise the full independence of the Director.

4. The Authority shall be physically located in the European Parliament, which shall provide the Authority with the necessary offices and administrative support facilities.

5. The Director of the Authority shall be assisted by staff from one or more institutions of the Union. When working for the Authority, such staff shall act under the sole authority of the Director of the Authority.

The selection of the staff shall not be liable to result in a conflict of interests between their duties at the Authority and any other official duties, and they shall refrain from any act which is incompatible with the nature of their duties.

6. The Authority shall conclude agreements with the European Parliament and, if appropriate, with other institutions on any administrative arrangements necessary to enable it to carry out its tasks, in particular agreements regarding the staff, services and support provided pursuant to paragraphs 4, 5 and 8.

7. The appropriations for the expenditure of the Authority shall be provided under a separate Title in the Section for the European Parliament in the general budget of the European Union. The appropriations shall be sufficient to ensure the full and independent operation of the Authority. A draft budgetary plan for the Authority shall be submitted to the European Parliament by the Director, and shall be made public. The European Parliament shall delegate the duties of Authorising Officer with respect to those appropriations to the Director of the Authority.

8. Council Regulation No 1 ⁽²⁾ shall apply to the Authority.

The translation services required for the functioning of the Authority and the Register shall be provided by the Translation Centre for the Bodies of the European Union.

9. The Authority and the Authorising Officer of the European Parliament shall share all information necessary for the execution of their respective responsibilities under this Regulation.

10. The Director shall submit annually a report to the European Parliament, the Council and the Commission on the activities of the Authority.

11. The Court of Justice of the European Union shall review the legality of the decisions of the Authority in accordance with Article 263 TFEU and shall have jurisdiction in disputes relating to compensation for damage caused by the Authority in accordance with Articles 268 and 340 TFEU. Should the Authority fail to take a decision where it is required to do so by this Regulation, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.

⁽¹⁾ Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

⁽²⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

*Article 7***Register of European political parties and foundations**

1. The Authority shall establish and manage a Register of European political parties and European political foundations. Information from the Register shall be available online in accordance with Article 32.
2. In order to ensure the proper functioning of the Register, the Commission shall be empowered to adopt delegated acts in accordance with Article 36 and within the scope of the relevant provisions of this Regulation concerning:
 - (a) the information and supporting documents held by the Authority for which the Register is to be the competent repository, which shall include the statutes of a European political party or European political foundation, any other documents submitted as part of an application for registration in accordance with Article 8(2), any documents received from the Member State of the seat as referred to in Article 15(2), and information on the identity of the persons who are members of bodies or hold offices that are vested with powers of administrative, financial and legal representation, as referred to in point (f) of Article 4(1) and point (g) of Article 5(1);
 - (b) materials from the Register as referred to in point (a) of this paragraph for which the Register is to be competent to certify legality as established by the Authority pursuant to its competences under this Regulation. The Authority shall not be competent to verify compliance by a European political party or European political foundation with any obligation or requirement imposed on the party or foundation in question by the Member State of the seat pursuant to Articles 4, 5 and Article 14(2) which is additional to the obligations and requirements laid down by this Regulation.
3. The Commission shall by implementing acts specify the details of the registration number system to be applied for the Register and standard extracts from the Register to be made available to third parties upon request, including the content of letters and documents. Such extracts shall not include personal data other than the identity of the persons who are members of bodies or hold offices that are vested with powers of administrative, financial and legal representation, as referred to in point (f) of Article 4(1) and point (g) of Article 5(1). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37.

*Article 8***Application for registration**

1. An application for registration shall be filed with the Authority. An application for registration as a European political foundation shall be filed only through the European political party with which the applicant is formally affiliated.
2. The application shall be accompanied by:
 - (a) documents proving that the applicant satisfies the conditions laid down in Article 3, including a standard formal declaration in the form set out in the Annex;
 - (b) the statutes of the party or foundation, containing the provisions required by Articles 4 and 5, including the relevant annexes and, where applicable, the statement of the Member State of the seat referred to in Article 15(2).
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 and within the scope of the relevant provisions of this Regulation:
 - (a) to identify any supplementary information or supporting document in relation to paragraph 2 necessary to allow the Authority to fully discharge its responsibilities under this Regulation in relation to the operation of the Register;
 - (b) to amend the standard formal declaration in the Annex in respect of the particulars to be filled in by the applicant where necessary, in order to ensure that sufficient information is being held in relation to the signatory, his or her mandate and the European political party or European political foundation which he or she is mandated to represent for the purposes of the declaration.
4. Documentation submitted to the Authority as part of the application shall be published immediately on the website referred to in Article 32.

*Article 9***Examination of the application and decision of the Authority**

1. The application shall be examined by the Authority in order to determine whether the applicant satisfies the conditions for registration laid down in Article 3 and whether the statutes contain the provisions required by Articles 4 and 5.
2. The Authority shall adopt a decision to register the applicant, unless it establishes that the applicant does not satisfy the conditions for registration laid down in Article 3 or that the statutes do not contain the provisions required by Articles 4 and 5.

The Authority shall publish its decision to register the applicant within one month following receipt of the application for registration or, where the procedures set out in Article 15(4) are applicable, within four months following receipt of the application for registration.

Where an application is incomplete, the Authority shall ask the applicant without delay to submit any additional information required. For the purposes of the deadline laid down in the second subparagraph, time shall only start to run from the date of receipt by the Authority of a complete application.

3. The standard formal declaration referred to in point (a) of Article 8(2) shall be considered sufficient for the Authority to ascertain that the applicant complies with the conditions specified in point (c) of Article 3(1) or point (c) of Article 3(2), whichever is applicable.

4. A decision of the Authority to register an applicant shall be published in the *Official Journal of the European Union*, together with the statutes of the party or foundation concerned. A decision not to register an applicant shall be published in the *Official Journal of the European Union*, together with the detailed grounds for rejection.

5. Any amendments to the documents or statutes submitted as part of the application for registration in accordance with Article 8(2) shall be notified to the Authority, which shall update the registration in accordance with the procedures set out in Article 15(2) and (4), *mutatis mutandis*.

6. The updated list of member parties of a European political party, annexed to the party statutes in accordance with Article 4(2), shall be sent to the Authority each year. Any changes following which the European political party might no longer satisfy the condition laid down in point (b) of Article 3(1) shall be communicated to the Authority within four weeks of any such change.

Article 10

Verification of compliance with registration conditions and requirements

1. Without prejudice to the procedure laid down in paragraph 3, the Authority shall regularly verify that the conditions for registration laid down in Article 3, and the governance provisions set out in points (a), (b) and (d) to (f) of Article 4(1) and points (a) to (e) and (g) of Article 5(1), continue to be complied with by registered European political parties and European political foundations.

2. If the Authority finds that any of the conditions for registration or governance provisions referred to in paragraph 1, with the exception of the conditions in point (c) of Article 3(1) and point (c) of Article 3(2), are no longer complied with, it shall notify the European political party or foundation concerned.

3. The European Parliament, the Council or the Commission may lodge with the Authority a request for verification of compliance by a specific European political party or European political foundation with the conditions laid down in point (c) of Article 3(1) and point (c) of Article 3(2). In such cases, and in the cases referred to in point (a) of Article 16(3), the Authority shall ask the committee of independent eminent persons established by Article 11 for an opinion on the subject. The committee shall give its opinion within two months.

Where the Authority becomes aware of facts which may give rise to doubts concerning compliance by a specific European political party or European political foundation with the conditions laid down in point (c) of Article 3(1) and point (c) of Article 3(2), it shall inform the European Parliament, the Council and the Commission with a view to allowing any of them to lodge a request for verification as referred to in the first subparagraph. Without prejudice to the first subparagraph, the European Parliament, the Council and the Commission shall indicate their intention within two months of receiving that information.

The procedures laid down in the first and second subparagraphs shall not be initiated within a period of two months prior to elections to the European Parliament.

Having regard to the committee's opinion, the Authority shall decide whether to de-register the European political party or European political foundation concerned. The decision of the Authority shall be duly reasoned.

A decision of the Authority to de-register on grounds of non-compliance with the conditions set out in point (c) of Article 3(1) or point (c) of Article 3(2) may only be adopted in the event of manifest and serious breach of those conditions. It shall be subject to the procedure set out in paragraph 4.

4. A decision of the Authority to de-register a European political party or foundation on the ground of a manifest and serious breach as regards compliance with the conditions set out in point (c) of Article 3(1) or point (c) of Article 3(2) shall be communicated to the European Parliament and the Council. The decision shall enter into force only if no

objection is expressed by the European Parliament and the Council within a period of three months of the communication of the decision to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Authority that they will not object. In the event of an objection by the European Parliament and by the Council, the European political party or foundation shall remain registered.

The European Parliament and the Council may object to the decision only on grounds related to the assessment of compliance with the conditions for registration set out in point (c) of Article 3(1) and point (c) of Article 3(2).

The European political party or European political foundation concerned shall be informed that objections have been raised to the decision of the Authority to de-register it.

The European Parliament and the Council shall adopt a position in accordance with their respective decision-making rules as established in conformity with the Treaties. Any objection shall be duly reasoned and shall be made public.

5. A decision of the Authority to de-register a European political party or a European political foundation, to which no objections have been raised under the procedure laid down in paragraph 4, shall be published in the *Official Journal of the European Union*, together with the detailed grounds for de-registration, and shall enter into force three months following the date of such publication.

6. A European political foundation shall automatically forfeit its status as such if the European political party with which it is affiliated is removed from the Register.

Article 11

Committee of independent eminent persons

1. A committee of independent eminent persons is hereby established. It shall consist of six members, with the European Parliament, the Council and the Commission each appointing two members. The members of the committee shall be selected on the basis of their personal and professional qualities. They shall neither be members of the European Parliament, the Council or the Commission, nor hold any electoral mandate, be officials or other servants of the European Union or be current or former employees of a European political party or a European political foundation.

Members of the committee shall be independent in the performance of their duties. They shall neither seek nor take instructions from any institution or government or from any other body, office or agency, and shall refrain from any act which is incompatible with the nature of their duties.

The committee shall be renewed within six months after the end of the first session of the European Parliament following each election to the European Parliament. The mandate of the members shall not be renewable.

2. The committee shall adopt its own rules of procedure. The chair of the committee shall be elected by its members from amongst their number in accordance with those rules. The secretariat and funding of the committee shall be provided by the European Parliament. The secretariat of the committee shall act under the sole authority of the committee.

3. When requested by the Authority, the committee shall give an opinion on any possible manifest and serious breach of the values on which the Union is founded, as referred to in point (c) of Article 3(1) and point (c) of Article 3(2), by a European political party or a European political foundation. To that end, the committee may request any relevant document and evidence from the Authority, the European Parliament, the European political party or European political foundation concerned, other political parties, political foundations or other stakeholders, and it may request to hear their representatives.

In its opinions, the committee shall give full consideration to the fundamental right of freedom of association and to the need to ensure pluralism of political parties in Europe.

The opinions of the committee shall be made public without delay.

CHAPTER III

LEGAL STATUS OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS

Article 12

Legal personality

European political parties and European political foundations shall have European legal personality.

*Article 13***Legal recognition and capacity**

European political parties and European political foundations shall enjoy legal recognition and capacity in all Member States.

*Article 14***Applicable law**

1. European political parties and European political foundations shall be governed by this Regulation.
2. For matters not regulated by this Regulation or, where matters are only partly regulated by it, for those aspects which are not covered by it, European political parties and European political foundations shall be governed by the applicable provisions of national law in the Member State in which they have their respective seats.

Activities carried out by European political parties and European political foundations in other Member States shall be governed by the relevant national laws of those Member States.

3. For matters not regulated by this Regulation or by the applicable provisions pursuant to paragraph 2 or, where matters are only partly regulated by them, for those aspects which are not covered by them, European political parties and European political foundations shall be governed by the provisions of their respective statutes.

*Article 15***Acquisition of European legal personality**

1. A European political party or a European political foundation shall acquire European legal personality on the date of publication in the *Official Journal of the European Union* of the decision of the Authority to register it, pursuant to Article 9.
2. If the Member State in which an applicant for registration as a European political party or a European political foundation has its seat so requires, the application submitted pursuant to Article 8 shall be accompanied by a statement issued by that Member State, certifying that the applicant has complied with all relevant national requirements for application, and that its statutes are in conformity with the applicable law referred to in the first subparagraph of Article 14(2).
3. Where the applicant enjoys legal personality under the law of a Member State, the acquisition of European legal personality shall be regarded by that Member State as a conversion of the national legal personality into a successor European legal personality. The latter shall fully maintain any pre-existing rights and obligations of the former national legal entity, which shall cease to exist as such. The Member States concerned shall not apply prohibitive conditions in the context of such conversion. The applicant shall maintain its seat in the Member State concerned until a decision in accordance with Article 9 has been published.
4. If the Member State in which the applicant has its seat so requires, the Authority shall fix the date of the publication referred to in paragraph 1 only after consultation with that Member State.

*Article 16***Termination of European legal personality**

1. A European political party or a European political foundation shall lose its European legal personality upon the entry into force of a decision of the Authority to remove it from the Register as published in the *Official Journal of the European Union*. The decision shall enter into force three months after such publication unless the European political party or the European political foundation concerned requests a shorter period.
2. A European political party or a European political foundation shall be removed from the Register by a decision of the Authority:
 - (a) as a consequence of a decision adopted pursuant to Article 10(2) to (5);
 - (b) in the circumstances provided for in Article 10(6);
 - (c) at the request of the European political party or European political foundation concerned; or
 - (d) in the cases referred to in point (b) of the first subparagraph of paragraph 3 of this Article.
3. If a European political party or a European political foundation has seriously failed to fulfil relevant obligations under national law applicable by virtue of the first subparagraph of Article 14(2), the Member State of the seat may address to the Authority a duly reasoned request for de-registration which must identify precisely and exhaustively the illegal actions and the specific national requirements that have not been complied with. In such cases, the Authority shall:

- (a) for matters relating exclusively or predominantly to elements affecting respect for the values on which the Union is founded, as expressed in Article 2 TEU, initiate a verification procedure in accordance with Article 10(3). Article 10(4), (5) and (6) shall also apply;
- (b) for any other matter, and when the reasoned request of the Member State concerned confirms that all national remedies have been exhausted, decide to remove the European political party or European political foundation concerned from the Register.

If a European political party or a European political foundation has seriously failed to fulfil relevant obligations under national law applicable by virtue of the second subparagraph of Article 14(2), and if the matter relates exclusively or predominantly to elements affecting respect of the values on which the Union is founded, as expressed in Article 2 TEU, the Member State concerned may address a request to the Authority in accordance with the provisions of the first subparagraph of this paragraph. The Authority shall proceed in accordance with point (a) of the first subparagraph of this paragraph.

In all cases, the Authority shall act without undue delay. The Authority shall inform the Member State concerned and the European political party or European political foundation concerned of the follow-up given to the reasoned request for de-registration.

4. The Authority shall fix the date of the publication referred to in paragraph 1 after consultation with the Member State in which the European political party or European political foundation has its seat.

5. If the European political party or European political foundation concerned acquires legal personality under the law of the Member State of its seat, such acquisition shall be regarded by that Member State as a conversion of the European legal personality into a national legal personality that fully maintains the pre-existing rights and obligations of the former European legal entity. The Member State in question shall not apply prohibitive conditions in the context of such conversion.

6. If the European political party or European political foundation does not acquire legal personality under the law of the Member State of its seat, it shall be wound up in accordance with the applicable law of that Member State. The Member State concerned may require that such winding-up be preceded by the acquisition by the party or foundation concerned of national legal personality in accordance with paragraph 5.

7. In all situations referred to in paragraphs 5 and 6, the Member State concerned shall ensure that the not-for-profit condition laid down in Article 3 is fully respected. The Authority and the Authorising Officer of the European Parliament may agree with the Member State concerned the modalities for termination of the European legal personality, in particular in order to ensure the recovery of any funds received from the general budget of the European Union and the payment of any financial sanctions imposed in accordance with Article 27.

CHAPTER IV

FUNDING PROVISIONS

Article 17

Funding conditions

1. A European political party which is registered in accordance with the conditions and procedures laid down in this Regulation, which is represented in the European Parliament by at least one of its members, and which is not in one of the situations of exclusion referred to in Article 106(1) of the Financial Regulation may apply for funding from the general budget of the European Union, in accordance with the terms and conditions published by the Authorising Officer of the European Parliament in a call for contributions.

2. A European political foundation which is affiliated with a European political party eligible to apply for funding under paragraph 1, which is registered in accordance with the conditions and procedures laid down in this Regulation, and which is not in one of the situations of exclusion referred to in Article 106(1) of the Financial Regulation may apply for funding from the general budget of the European Union, in accordance with the terms and conditions published by the Authorising Officer of the European Parliament in a call for proposals.

3. For the purposes of determining eligibility for funding from the general budget of the European Union in accordance with paragraph 1 of this Article and point (b) of Article 3(1), and for the application of Article 19(1), a member of the European Parliament shall be considered as a member of only one European political party, which shall, where relevant, be the one to which his or her national or regional political party is affiliated on the final date for the submission of applications for funding.

4. Financial contributions or grants from the general budget of the European Union shall not exceed 85 % of the annual reimbursable expenditure indicated in the budget of a European political party and 85 % of the eligible costs incurred by a European political foundation. European political parties may use any unused part of the Union contribution awarded to cover reimbursable expenditure within the financial year following its award. Amounts still unused after that financial year shall be recovered in accordance with the Financial Regulation.

5. Within the limits set out in Articles 21 and 22, the expenditure reimbursable through a financial contribution shall include administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications, as well as expenditure linked to campaigns.

Article 18

Application for funding

1. In order to receive funding from the general budget of the European Union, a European political party or European political foundation which satisfies the conditions of Article 17(1) or (2) shall file an application with the European Parliament following a call for contributions or proposals.

2. The European political party and the European political foundation must, at the time of its application, comply with the obligations listed in Article 23, and, from the date of its application until the end of the financial year or of the action covered by the contribution or grant, remain registered in the Register and may not be the subject of any of the sanctions provided for in Article 27(1) and in points (a)(v) and (vi) of Article 27(2).

3. A European political foundation shall include in its application its annual work programme or action plan.

4. The Authorising Officer of the European Parliament shall adopt a decision within three months after closure of the call for contributions or call for proposals, and shall authorise and manage the corresponding appropriations in accordance with the Financial Regulation.

5. A European political foundation may apply for funding from the general budget of the European Union only through the European political party with which it is affiliated.

Article 19

Award criteria and distribution of funding

1. The respective appropriations available to those European political parties and European political foundations which have been awarded contributions or grants in accordance with Article 18 shall be distributed annually on the basis of the following distribution key:

— 15 % shall be distributed in equal shares among the beneficiary European political parties,

— 85 % shall be distributed in proportion to their share of elected members of the European Parliament among the beneficiary European political parties.

The same distribution key shall be used to award funding to European political foundations, on the basis of their affiliation with a European political party.

2. The distribution referred to in paragraph 1 shall be based on the number of elected members of the European Parliament who are members of the applicant European political party on the final date for the submission of applications for funding, taking into account Article 17(3).

After that date, any changes to the number shall not affect the respective share of funding between European political parties or European political foundations. This is without prejudice to the requirement in Article 17(1) for a European political party to be represented in the European Parliament by at least one of its members.

Article 20

Donations and contributions

1. European political parties and European political foundations may accept donations from natural or legal persons of up to a value of EUR 18 000 per year and per donor.

2. European political parties and European political foundations shall, at the time of the submission of their annual financial statements in accordance with Article 23, also transmit a list of all donors with their corresponding donations, indicating both the nature and the value of the individual donations. This paragraph shall also apply to contributions made by member parties of European political parties and member organisations of European political foundations.

For donations from natural persons the value of which exceeds EUR 1 500 and is below or equal to EUR 3 000, the European political party or European political foundation concerned shall indicate whether the corresponding donors have given their prior written consent to publication in accordance with point (e) of Article 32(1).

3. Donations received by European political parties and European political foundations within six months prior to elections to the European Parliament shall be reported on a weekly basis to the Authority in writing and in accordance with paragraph 2.

4. Single donations the value of which exceeds EUR 12 000 that have been accepted by European political parties and European political foundations shall be immediately reported to the Authority in writing and in accordance with paragraph 2.

5. European political parties and European political foundations shall not accept any of the following:

- (a) anonymous donations or contributions;
- (b) donations from the budgets of political groups in the European Parliament;
- (c) donations from any public authority from a Member State or a third country, or from any undertaking over which such a public authority may exercise, directly or indirectly, a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it; or
- (d) donations from any private entities based in a third country or from individuals from a third country who are not entitled to vote in elections to the European Parliament.

6. Any donation that is not permitted under this Regulation shall within 30 days following the date of its receipt by a European political party or a European political foundation:

- (a) be returned to the donor or to any person acting on the donor's behalf; or
- (b) where it is not possible to return it, be reported to the Authority and the European Parliament. The Authorising Officer of the European Parliament shall establish the amount receivable and authorise the recovery in accordance with the provisions laid down in Articles 78 and 79 of the Financial Regulation. The funds shall be entered as general revenue in the European Parliament section of the general budget of the European Union.

7. Contributions to a European political party from its members shall be permitted. The value of such contributions shall not exceed 40 % of the annual budget of that European political party.

8. Contributions to a European political foundation from its members, and from the European political party with which it is affiliated, shall be permitted. The value of such contributions shall not exceed 40 % of the annual budget of that European political foundation and may not derive from funds received by a European political party pursuant to this Regulation from the general budget of the European Union.

The burden of proof shall rest with the European political party concerned, which shall clearly indicate in its accounts the origin of funds used to finance its affiliated European political foundation.

9. Without prejudice to paragraphs 7 and 8, European political parties and European political foundations may accept from citizens who are their members contributions up to a value of EUR 18 000 per year and per member, where such contributions are made by the member concerned on his or her own behalf.

The ceiling laid down in the first subparagraph shall not apply where the member concerned is also an elected member of the European Parliament, of a national parliament or of a regional parliament or regional assembly.

10. Any contribution that is not permitted under this Regulation shall be returned in accordance with paragraph 6.

Article 21

Financing of campaigns in the context of elections to the European Parliament

1. Subject to the second subparagraph, the funding of European political parties from the general budget of the European Union or from any other source may be used to finance campaigns conducted by the European political parties in the context of elections to the European Parliament in which they or their members participate as required by point (d) of Article 3(1).

In accordance with Article 8 of the Act concerning the election of the members of the European Parliament by direct universal suffrage ⁽¹⁾, the funding and possible limitation of election expenses for all political parties, candidates and third parties in, in addition to their participation in, elections to the European Parliament is governed in each Member State by national provisions.

2. Expenditure linked to the campaigns referred to in paragraph 1 shall be clearly identified as such by the European political parties in their annual financial statements.

Article 22

Prohibition of funding

1. Notwithstanding Article 21(1), the funding of European political parties from the general budget of the European Union or from any other source shall not be used for the direct or indirect funding of other political parties, and in particular national parties or candidates. Those national political parties and candidates shall continue to be governed by national rules.

⁽¹⁾ OJ L 278, 8.10.1976, p. 5.

2. The funding of European political foundations from the general budget of the European Union or from any other source shall not be used for any other purpose than for financing their tasks as listed in point (4) of Article 2 and to meet expenditure directly linked to the objectives set out in their statutes in accordance with Article 5. It shall in particular not be used for the direct or indirect funding of elections, political parties, or candidates or other foundations.

3. The funding of European political parties and European political foundations from the general budget of the European Union or from any other source shall not be used to finance referendum campaigns.

CHAPTER V

CONTROL AND SANCTIONS

Article 23

Accounts, reporting and audit obligations

1. At the latest within six months following the end of the financial year, European political parties and European political foundations shall submit to the Authority, with a copy to the Authorising Officer of the European Parliament and to the competent National Contact Point of the Member State of their seat:

- (a) their annual financial statements and accompanying notes, covering their revenue and expenditure, assets and liabilities at the beginning and at the end of the financial year, in accordance with the law applicable in the Member State in which they have their seat and their annual financial statements on the basis of the international accounting standards defined in Article 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽¹⁾;
- (b) an external audit report on the annual financial statements, covering both the reliability of those financial statements and the legality and regularity of their revenue and expenditure, carried out by an independent body or expert; and
- (c) the list of donors and contributors and their corresponding donations or contributions reported in accordance with Article 20(2), (3) and (4).

2. Where expenditure is implemented by European political parties jointly with national political parties or by European political foundations jointly with national political foundations, or with other organisations, evidence of the expenditure incurred by the European political parties or by the European political foundations directly or through those third parties shall be included in the annual financial statements referred to in paragraph 1.

3. The independent external bodies or experts referred to in point (b) of paragraph 1 shall be selected, mandated and paid by the European Parliament. They shall be duly authorised to audit accounts under the law applicable in the Member State in which they have their seat or establishment.

4. European political parties and European political foundations shall provide any information requested by the independent bodies or experts for the purpose of their audit.

5. The independent bodies or experts shall inform the Authority and the Authorising Officer of the European Parliament of any suspected illegal activity, fraud or corruption which may harm the financial interests of the Union. The Authority and the Authorising Officer of the European Parliament shall inform the National Contact Points concerned thereof.

Article 24

General rules on control

1. Control of compliance by European political parties and European political foundations with their obligations under this Regulation shall be exercised, in cooperation, by the Authority, by the Authorising Officer of the European Parliament and by the competent Member States.

2. The Authority shall control compliance by European political parties and European political foundations with their obligations under this Regulation, in particular in relation to Article 3, points (a), (b), and (d) to (f) of Article 4(1), points (a) to (e) and (g) of Article 5(1), Article 9(5) and (6), and Articles 20, 21 and 22.

The Authorising Officer of the European Parliament shall control compliance by European political parties and European political foundations with the obligations relating to Union funding under this Regulation in accordance with the Financial Regulation. In carrying out such controls, the European Parliament shall take the necessary measures in the fields of the prevention of and the fight against fraud affecting the financial interests of the Union.

⁽¹⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

3. The control by the Authority and by the Authorising Officer of the European Parliament referred to in paragraph 2 shall not extend to compliance by European political parties and European political foundations with their obligations under applicable national law as referred to in Article 14.

4. European political parties and European political foundations shall provide any information requested by the Authority, the Authorising Officer of the European Parliament, the Court of Auditors, the European Anti-Fraud Office (OLAF) or Member States which is necessary for the purpose of carrying out the controls for which they are responsible under this Regulation.

Upon request and for the purpose of controlling compliance with Article 20, European political parties and European political foundations shall provide the Authority with information concerning contributions made by individual members and the identity of such members. Moreover, where appropriate, the Authority may require European political parties to provide signed confirmatory statements from members holding elected mandates for the purpose of controlling compliance with the condition laid down in the first subparagraph of point (b) of Article 3(1).

Article 25

Implementation and control in respect of Union funding

1. Appropriations for the funding of European political parties and European political foundations shall be determined under the annual budgetary procedure and shall be implemented in accordance with this Regulation and the Financial Regulation.

The terms and conditions for contributions and grants shall be laid down by the Authorising Officer of the European Parliament in the call for contributions and the call for proposals.

2. Control of funding received from the general budget of the European Union and its use shall be exercised in accordance with the Financial Regulation.

Control shall also be exercised on the basis of annual certification by an external and independent audit, as provided for in Article 23(1).

3. The Court of Auditors shall exercise its audit powers in accordance with Article 287 TFEU.

4. Any document or information required by the Court of Auditors in order to enable it to carry out its task shall be supplied to it at its request by the European political parties and the European political foundations that receive funding in accordance with this Regulation.

5. The contribution and grant decision or agreement shall expressly provide for auditing by the European Parliament and the Court of Auditors, on the basis of records and on the spot, of the European political party which has received a contribution or the European political foundation which has received a grant from the general budget of the European Union.

6. The Court of Auditors and the Authorising Officer of the European Parliament, or any other external body authorised by the Authorising Officer of the European Parliament, may carry out the necessary checks and verifications on the spot in order to verify the legality of expenditure and the proper implementation of the provisions of the contribution and grant decision or agreement, and, in the case of European political foundations, the proper implementation of the work programme or action. The European political party or European political foundation in question shall supply any document or information needed to carry out this task.

7. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾ and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁾, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with contributions or grants under this Regulation. If appropriate, its findings may give rise to recovery decisions by the Authorising Officer of the European Parliament.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽²⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

*Article 26***Technical support**

All technical support provided by the European Parliament to European political parties shall be based on the principle of equal treatment. It shall be granted on conditions no less favourable than those granted to other external organisations and associations that may be accorded similar facilities and shall be supplied against invoice and payment.

*Article 27***Sanctions**

1. In accordance with Article 16, the Authority shall decide to remove a European political party or a European political foundation from the Register by way of sanction in any of the following situations:

- (a) where the party or foundation in question has been found by a judgment having the force of *res judicata* to have engaged in illegal activities detrimental to the financial interests of the Union as defined in Article 106(1) of the Financial Regulation;
- (b) where it is established, in accordance with the procedures set out in Article 10(2) to (5), that it no longer fulfils one or more of the conditions set out in points (a), (c) and (e) of Article 3(1) or in Article 3(2); or
- (c) where a request by a Member State for de-registration on grounds of serious failure to fulfil obligations under national law meets the requirements set out in point (b) of Article 16(3).

2. The Authority shall impose financial sanctions in the following situations:

(a) non-quantifiable infringements:

- (i) in the event of non-compliance with the requirements of Article 9(5) or (6);
- (ii) in the event of non-compliance with the commitments entered into and the information provided by a European political party or European political foundation in accordance with points (a), (b) and (d) to (f) of Article 4(1) and with points (a), (b), (d) and (e) of Article 5(1);
- (iii) in the event of failure to transmit the list of donors and their corresponding donations in accordance with Article 20(2) or to report donations in accordance with Article 20(3) and (4);
- (iv) where a European political party or a European political foundation has infringed the obligations laid down in Article 23(1) or Article 24(4);
- (v) where a European political party or a European political foundation has been found by a judgment having the force of *res judicata* to have engaged in illegal activities detrimental to the financial interests of the Union as defined in Article 106(1) of the Financial Regulation;
- (vi) where the European political party or the European political foundation concerned has at any time intentionally omitted to provide information or has intentionally provided incorrect or misleading information, or where the bodies authorised by this Regulation to audit or conduct checks on the beneficiaries of funding from the general budget of the European Union detect inaccuracies in the annual financial statements which are regarded as constituting material omissions or misstatements of items in accordance with the international accounting standards defined in Article 2 of Regulation (EC) No 1606/2002;

(b) quantifiable infringements:

- (i) where a European political party or a European political foundation has accepted donations and contributions that are not permitted under Article 20(1) or (5), unless the conditions laid down in Article 20(6) are met;
- (ii) in the event of non-compliance with the requirements laid down in Articles 21 and 22.

3. The Authorising Officer of the European Parliament may exclude a European political party or a European political foundation from future Union funding for up to five years, or up to 10 years in cases of an infringement repeated within a five-year period, when it has been found guilty of any of the infringements listed in points (v) and (vi) of point (a) of paragraph 2. This is without prejudice to the powers of the Authorising Officer of the European Parliament as set out in Article 204n of the Financial Regulation.

4. For the purposes of paragraphs 2 and 3, the following financial sanctions shall be imposed on a European political party or a European political foundation:

- (a) in cases of non-quantifiable infringements, a fixed percentage of the annual budget of the European political party or European political foundation concerned;

- 5 %, or
 - 7,5 % if there are concurrent infringements, or
 - 20 % if the infringement in question is a repeated infringement, or
 - a third of the percentages set out above if the European political party or European political foundation concerned has voluntarily declared the infringement before the Authority has officially opened an investigation, even in the case of a concurrent infringement or a repeated infringement, and the party or foundation concerned has taken the appropriate corrective measures,
 - 50 % of the annual budget of the European political party or European political foundation concerned for the preceding year, when it has been found by a judgment having the force of *res judicata* to have engaged in illegal activities detrimental to the financial interests of the Union as defined in Article 106(1) of the Financial Regulation;
- (b) in cases of quantifiable infringements, a fixed percentage of the amount of the irregular sums received or not reported in accordance with the following scale, up to a maximum of 10 % of the annual budget of the European political party or European political foundation concerned:
- 100 % of the irregular sums received or not reported where those sums do not exceed EUR 50 000, or
 - 150 % of the irregular sums received or not reported where those sums exceed EUR 50 000 but do not exceed EUR 100 000, or
 - 200 % of the irregular sums received or not reported where those sums exceed EUR 100 000 but do not exceed EUR 150 000, or
 - 250 % of the irregular sums received or not reported where those sums exceed EUR 150 000 but do not exceed EUR 200 000, or
 - 300 % of the irregular sums received or not reported where those sums exceed EUR 200 000, or
 - one third of the percentages indicated above if the European political party or European political foundation concerned has voluntarily declared the infringement before the Authority and/or the Authorising Officer of the European Parliament has officially opened an investigation and the party or foundation concerned has taken the appropriate corrective measures.

For the application of the percentages indicated above, each donation or contribution shall be considered separately.

5. Whenever a European political party or a European political foundation has committed concurrent infringements of this Regulation, only the sanction laid down for the most serious infringement shall be imposed, unless otherwise provided in point (a) of paragraph 4.

6. The sanctions laid down in this Regulation shall be subject to a limitation period of five years from the date of commission of the infringement concerned or, in the case of continuing or repeated infringements, from the date on which those infringements ceased.

Article 28

Cooperation between the Authority, the Authorising Officer of the European Parliament and the Member States

1. The Authority, the Authorising Officer of the European Parliament and the Member States via the National Contact Points shall share information and keep each other regularly informed of matters related to funding provisions, controls and sanctions.

2. They shall also agree on practical arrangements for such exchange of information, including the rules regarding the disclosure of confidential information or evidence and the cooperation among Member States.

3. The Authorising Officer of the European Parliament shall inform the Authority of any findings which might give rise to the imposition of sanctions under Article 27(2) to (4), with a view to allowing the Authority to take appropriate measures.

4. The Authority shall inform the Authorising Officer of the European Parliament of any decision it has taken in relation to sanctions, in order to enable him or her to draw the appropriate consequences under the Financial Regulation.

*Article 29***Corrective measures and principles of good administration**

1. Before taking a final decision relating to any of the sanctions referred to in Article 27, the Authority or the Authorising Officer of the European Parliament shall give the European political party or the European political foundation concerned an opportunity to introduce the measures required to remedy the situation within a reasonable period of time, which shall not normally exceed one month. In particular, the Authority or the Authorising Officer of the European Parliament shall allow the possibility of correcting clerical and arithmetical errors, providing additional documents or information where necessary or correcting minor mistakes.
2. Where a European political party or a European political foundation has failed to take corrective measures within the period of time referred to in paragraph 1, the appropriate sanctions referred to in Article 27 shall be decided.
3. Paragraphs 1 and 2 shall not apply in relation to the conditions set out in points (b) to (d) of Article 3(1) and in point (c) of Article 3(2).

*Article 30***Recovery**

1. On the basis of a decision of the Authority removing a European political party or a European political foundation from the Register, the Authorising Officer of the European Parliament shall withdraw or terminate any ongoing decision or agreement on Union funding, except in the cases provided for in point (c) of Article 16(2) and in points (b) and (d) of Article 3(1). He or she shall also recover any Union funding, including any unspent Union funds from previous years.
2. A European political party or European political foundation on which a sanction has been imposed for any of the infringements listed in Article 27(1) and in points (v) and (vi) of Article 27(2)(a) shall for that reason no longer be in compliance with Article 18(2). As a result, the Authorising Officer of the European Parliament shall terminate the contribution or grant agreement or decision on Union funding received under this Regulation and shall recover amounts unduly paid under the contribution or grant agreement or decision, including any unspent Union funds from previous years.

In the event of such termination, payments by the Authorising Officer of the European Parliament shall be limited to the eligible expenditure actually incurred by the European political party or European political foundation up to the date when the termination decision takes effect.

This paragraph shall also be applicable to the cases referred to in point (c) of Article 16(2) and in points (b) and (d) of Article 3(1).

CHAPTER VI

FINAL PROVISIONS*Article 31***Provision of information to citizens**

Subject to Articles 21 and 22 and to their own statutes and internal processes, European political parties may, in the context of elections to the European Parliament, take all appropriate measures to inform citizens of the Union of the affiliations between national political parties and candidates and the European political parties concerned.

*Article 32***Transparency**

1. The European Parliament shall make public, under the authority of its Authorising Officer or under that of the Authority, on a website created for that purpose, the following:
 - (a) the names and statutes of all registered European political parties and European political foundations, together with the documents submitted as part of their applications for registration in accordance with Article 8, at the latest four weeks after the Authority has adopted its decision and, thereafter, any amendments notified to the Authority pursuant to Article 9(5) and (6);
 - (b) a list of applications that have not been approved, together with the documents submitted as part thereof, together with the application for registration in accordance with Article 8 and the grounds for rejection, at the latest four weeks after the Authority adopted its decision;

- (c) an annual report with a table of the amounts paid to each European political party and European political foundation, for each financial year for which contributions have been received or grants have been paid from the general budget of the European Union;
- (d) the annual financial statements and external audit reports referred to in Article 23(1), and, for European political foundations, the final reports on the implementation of the work programmes or actions;
- (e) the names of donors and their corresponding donations reported by European political parties and European political foundations in accordance with Article 20(2), (3) and (4), with the exception of donations from natural persons the value of which does not exceed EUR 1 500 per year and per donor, which shall be reported as 'minor donations'. Donations from natural persons the annual value of which exceeds EUR 1 500 and is below or equal to EUR 3 000 shall not be published without the corresponding donor's prior written consent to their publication. If no such prior consent has been given, such donations shall be reported as 'minor donations'. The total amount of minor donations and the number of donors per calendar year shall also be published;
- (f) the contributions referred to in Article 20(7) and (8) and reported by European political parties and European political foundations in accordance with Article 20(2), including the identity of the member parties or organisations which made those contributions;
- (g) the details of and reasons for any final decisions taken by the Authority pursuant to Article 27, including, where relevant, any opinions adopted by the committee of independent eminent persons in accordance with Articles 10 and 11, having due regard to Regulation (EC) No 45/2001;
- (h) the details of and reasons for any final decision taken by the Authorising Officer of the European Parliament pursuant to Article 27;
- (i) a description of the technical support provided to European political parties; and
- (j) the evaluation report of the European Parliament on the application of this Regulation and on the funded activities referred to in Article 38.

2. The European Parliament shall make public the list of legal persons who are members of a European political party, as annexed to the party statutes in accordance with Article 4(2) and updated in accordance with Article 9(6), as well as the total number of individual members.

3. Personal data shall be excluded from publication on the website referred to in paragraph 1 unless those personal data are published pursuant to points (a), (e), or (g) of paragraph 1.

4. European political parties and European political foundations shall, in a publicly available privacy statement, provide potential members and donors with the information required by Article 10 of Directive 95/46/EC, and shall inform them that their personal data will be processed for auditing and control purposes by the European Parliament, the Authority, OLAF, the Court of Auditors, Member States, or external bodies or experts authorised thereby, and that their personal data will be made public on the website referred to in paragraph 1 under the conditions set out in this Article. The Authorising Officer of the European Parliament, in application of Article 11 of Regulation (EC) No 45/2001, shall include the same information in calls for contributions or proposals as referred to in Article 18(1) of this Regulation.

Article 33

Protection of personal data

1. In processing personal data pursuant to this Regulation, the Authority, the European Parliament and the committee of independent eminent persons established by Article 11 shall comply with Regulation (EC) No 45/2001. For the purposes of the processing of personal data, they shall be considered data controllers in accordance with point (d) of Article 2 of that Regulation.

2. In processing personal data pursuant to this Regulation, European political parties and European political foundations, Member States when exercising control over aspects relating to the financing of European political parties and European political foundations in accordance with Article 24, and the independent bodies or experts authorised to audit accounts in accordance with Article 23(1) shall comply with Directive 95/46/EC and with the national provisions adopted pursuant thereto. For the purposes of the processing of personal data, they shall be considered data controllers in accordance with point (d) of Article 2 of that Directive.

3. The Authority, the European Parliament and the committee of independent eminent persons established by Article 11 shall ensure that personal data collected by them pursuant to this Regulation are not used for any purpose other than to ensure the legality, regularity and transparency of the funding of European political parties and European political foundations and the membership of European political parties. They shall erase all personal data collected for that purpose at the latest 24 months after the publication of the relevant parts in accordance with Article 32.

4. The Member States and independent bodies or experts authorised to audit accounts shall use the personal data they receive only in order to exercise control over the financing of European political parties and European political foundations. They shall erase those personal data in accordance with applicable national law after transmission pursuant to Article 28.

5. Personal data may be retained beyond the time limits laid down in paragraph 3 or provided for by the applicable national law as referred to in paragraph 4 where such retention is necessary for the purposes of legal or administrative proceedings relating to the funding of a European political party or a European political foundation or the membership of a European political party. All such personal data shall be erased at the latest one week after the date of conclusion of the said proceedings by a final decision, or after any audits, appeals, litigation or claims have been disposed of.

6. The data controllers referred to in paragraphs 1 and 2 shall implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss, alteration or unauthorised disclosure or access, in particular where the processing of such data involves their transmission over a network, and against all other unlawful forms of processing.

7. The European Data Protection Supervisor shall be responsible for monitoring and ensuring that the Authority, the European Parliament and the committee of independent eminent persons established by Article 11 respect and protect the fundamental rights and freedoms of natural persons in the processing of personal data pursuant to this Regulation. Without prejudice to any judicial remedy, any data subject may lodge a complaint with the European Data Protection Supervisor if he or she considers that his or her right to the protection of his or her personal data has been infringed as a result of the processing thereof by the Authority, the European Parliament or the committee.

8. European political parties and European political foundations, the Member States and the independent bodies or experts authorised to audit accounts under this Regulation shall be liable in accordance with applicable national law for any damage they cause in the processing of personal data pursuant to this Regulation. The Member States shall ensure that effective, proportionate and dissuasive sanctions are applied for infringements of this Regulation, of Directive 95/46/EC and of the national provisions adopted pursuant thereto, and in particular for the fraudulent use of personal data.

Article 34

Right to be heard

Before the Authority or the Authorising Officer of the European Parliament takes a decision which may adversely affect the rights of a European political party, a European political foundation or an applicant as referred to in Article 8, it shall hear the representatives of the European political party, European political foundation or applicant concerned. The Authority or the European Parliament shall duly state the reasons for its decision.

Article 35

Right of appeal

Decisions taken pursuant to this Regulation may be the subject of court proceedings before the Court of Justice of the European Union, in accordance with the relevant provisions of the TFEU.

Article 36

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 7(2) and Article 8(3) shall be conferred on the Commission for a period of five years from 24 November 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 7(2) and Article 8(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 7(2) and Article 8(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 37

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 38

Evaluation

The European Parliament shall, after consultation of the Authority, publish by mid-2018 a report on the application of this Regulation and on the activities funded. The report shall indicate, where appropriate, possible amendments to be made to the statute and funding systems.

Before the end of 2018, the Commission shall present a report on the application of this Regulation accompanied, if appropriate, by a legislative proposal to amend this Regulation.

Article 39

Effective application

Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

Article 40

Repeal

Regulation (EC) No 2004/2003 is repealed with effect from the date of entry into force of this Regulation. It shall however continue to apply as regards acts and commitments relating to the funding of political parties and political foundations at European level for the 2014, 2015, 2016 and 2017 budget years.

Article 41

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

The Commission shall adopt delegated acts as referred to in Article 7(2) and in point (a) of Article 8(3) by no later than 1 July 2015.

This Regulation shall apply from 1 January 2017. The Authority referred to in Article 6 shall however be set up by 1 September 2016. European political parties and European political foundations registered after 1 January 2017 may only apply for funding under this Regulation for activities starting in the 2018 budget year or thereafter.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 22 October 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

B. DELLA VEDOVA

ANNEX

Standard declaration to be filled in by each applicant

The undersigned, who is fully mandated by [name of the European political party or European political foundation], hereby certifies that:

[name of the European political party or European political foundation] is committed to comply with the conditions for registration laid down in point (c) of Article 3(1) or point (c) of Article 3(2) of Regulation (EU, Euratom) No 1141/2014, i.e. to observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 of the Treaty on European Union, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Authorised signatory:

| | |
|---|--|
| Title (Ms, Mr, ...), surname and forename: | |
| Function in the organisation applying for registration as a European political party/European political foundation: | |
| Place/date: | |
| Signature: | |

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ⁽³⁾, addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ⁽⁴⁾ (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽⁵⁾ and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ⁽⁶⁾.

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 305.

⁽²⁾ Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 12 E, 15.1.2001, p. 10.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁵⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁶⁾ OJ C 313, 13.10.1996, p. 12.

can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.
- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union⁽¹⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to

due process, freedom of association, freedom of the press and freedom of expression in other media.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

⁽¹⁾ OJ C 364, 18.12.2000, p. 1.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- 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,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for 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, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

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

- (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, coming within the scope of Articles 1 and 2;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (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;
- (g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network⁽¹⁾, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

⁽¹⁾ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European 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.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European 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. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express

renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to 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 legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

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

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust ⁽¹⁾ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in

paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

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

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

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

(a) either agree that the requested person should be heard according to Article 19;

(b) or 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 to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

⁽¹⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

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 European arrest warrant.

Article 23

Time limits for surrender of the person

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

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested

person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the European arrest warrant;
- (b) the existence of a European arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

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

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

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

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;

- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant

may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
- (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

*Article 29***Handing over of property**

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

*Article 30***Expenses**

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 31***Relation to other legal instruments**

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its

second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

- (b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- (c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements 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 Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

ANNEX

EUROPEAN ARREST WARRANT ⁽¹⁾

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⁾ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(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)

(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) Decision rendered in absentia and:

— the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

— the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

.....
.....
.....

(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. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including the euro;
- ☐ 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;
- ☐ sabotage.

II. Full descriptions of offence(s) not covered by section I above:

.....
.....

(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 legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

AGREEMENT

on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

PREAMBLE

THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

AND

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

CONSIDERING that on 29 March 2017 the United Kingdom of Great Britain and Northern Ireland ("United Kingdom"), following the outcome of a referendum held in the United Kingdom and its sovereign decision to leave the European Union, notified its intention to withdraw from the European Union ("Union") and the European Atomic Energy Community ("Euratom") in accordance with Article 50 of the Treaty on European Union ("TEU"), which applies to Euratom by virtue of Article 106a of the Treaty establishing the European Atomic Energy Community ("Euratom Treaty"),

WISHING to set out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom, taking account of the framework for their future relationship,

NOTING the guidelines of 29 April and 15 December 2017 and of 23 March 2018 provided by the European Council in the light of which the Union is to conclude the Agreement setting out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom,

RECALLING that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in this Agreement, the law of the Union and of Euratom in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement,

STRESSING that the objective of this Agreement is to ensure an orderly withdrawal of the United Kingdom from the Union and Euratom,

RECOGNISING that it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals, as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable and based on the principle of non-discrimination; recognising also that rights deriving from periods of social security insurance should be protected,

RESOLVED to ensure an orderly withdrawal through various separation provisions aiming to prevent disruption and to provide legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the Union and in the United Kingdom, while not excluding the possibility of relevant separation provisions being superseded by the agreement(s) on the future relationship,

CONSIDERING that it is in the interest of both the Union and the United Kingdom to determine a transition or implementation period during which – notwithstanding all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union, in particular the end, on the date of entry into force of this Agreement, of the mandates of all members of institutions, bodies and agencies of the Union nominated, appointed or elected in relation to the United Kingdom's membership of the Union – Union law, including international agreements, should be applicable to and in the United Kingdom, and, as a general rule, with the same effect as regards the Member States, in order to avoid disruption in the period during which the agreement (s) on the future relationship will be negotiated,

RECOGNISING that, even if Union law will be applicable to and in the United Kingdom during the transition period, the specificities of the United Kingdom as a State having withdrawn from the Union mean that it will be important for the United Kingdom to be able to take steps to prepare and establish new international arrangements of its own, including in areas of Union exclusive competence, provided such agreements do not enter into force or apply during that period, unless so authorised by the Union,

RECALLING that the Union and the United Kingdom have agreed to honour the mutual commitments undertaken while the United Kingdom was a member of the Union through a single financial settlement,

CONSIDERING that in order to guarantee the correct interpretation and application of this Agreement and compliance with the obligations under this Agreement, it is essential to establish provisions ensuring overall governance, in particular binding dispute-settlement and enforcement rules that fully respect the autonomy of the respective legal orders of the Union and of the United Kingdom as well as the United Kingdom's status as a third country,

ACKNOWLEDGING that, for an orderly withdrawal of the United Kingdom from the Union, it is also necessary to establish, in separate protocols to this Agreement, durable arrangements addressing the very specific situations relating to Ireland/Northern Ireland and to the Sovereign Base Areas in Cyprus,

ACKNOWLEDGING further that, for an orderly withdrawal of the United Kingdom from the Union, it is also necessary to establish, in a separate protocol to this Agreement, the specific arrangements in respect of Gibraltar applicable in particular during the transition period,

UNDERLINING that this Agreement is founded on an overall balance of benefits, rights and obligations for the Union and the United Kingdom,

NOTING that in parallel with this Agreement, the Parties have made a Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland,

CONSIDERING that there is a need for both the United Kingdom and the Union to take all necessary steps to begin as soon as possible from the date of entry into force of this Agreement, the formal negotiations of one or several agreements governing their future relationship with a view to ensuring that, to the extent possible, those agreements apply from the end of the transition period,

HAVE AGREED AS FOLLOWS:

PART ONE

COMMON PROVISIONS

Article 1

Objective

This Agreement sets out the arrangements for the withdrawal of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") from the European Union ("Union") and from the European Atomic Energy Community ("Euratom").

Article 2

Definitions

For the purposes of this Agreement, the following definitions shall apply:

(a) "Union law" means:

- (i) the Treaty on European Union ("TEU"), the Treaty on the Functioning of the European Union ("TFEU") and the Treaty establishing the European Atomic Energy Community ("Euratom Treaty"), as amended or supplemented, as well as the Treaties of Accession and the Charter of Fundamental Rights of the European Union, together referred to as "the Treaties";
- (ii) the general principles of the Union's law;
- (iii) the acts adopted by the institutions, bodies, offices or agencies of the Union;
- (iv) the international agreements to which the Union is party and the international agreements concluded by the Member States acting on behalf of the Union;
- (v) the agreements between Member States entered into in their capacity as Member States of the Union;
- (vi) acts of the Representatives of the Governments of the Member States meeting within the European Council or the Council of the European Union ("Council");
- (vii) the declarations made in the context of intergovernmental conferences which adopted the Treaties;

(b) "Member States" means the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden;

(c) "Union citizen" means any person holding the nationality of a Member State;

(d) "United Kingdom national" means a national of the United Kingdom, as defined in the New Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland of 31 December 1982 on the definition of the term "nationals" ⁽¹⁾ together with Declaration No 63 annexed to the Final Act of the intergovernmental conference which adopted the Treaty of Lisbon ⁽²⁾;

⁽¹⁾ OJ C 23, 28.1.1983, p. 1.

⁽²⁾ OJ C 306, 17.12.2007, p. 270.

- (e) "transition period" means the period provided in Article 126;
- (f) "day" means a calendar day, unless otherwise provided in this Agreement or in provisions of Union law made applicable by this Agreement.

Article 3

Territorial scope

1. Unless otherwise provided in this Agreement or in Union law made applicable by this Agreement, any reference in this Agreement to the United Kingdom or its territory shall be understood as referring to:

- (a) the United Kingdom;
- (b) Gibraltar, to the extent that Union law was applicable to it before the date of entry into force of this Agreement;
- (c) the Channel Islands and the Isle of Man, to the extent that Union law was applicable to them before the date of entry into force of this Agreement;
- (d) the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union;
- (e) the overseas countries and territories listed in Annex II to the TFEU having special relations with the United Kingdom ⁽³⁾, where the provisions of this Agreement relate to the special arrangements for the association of the overseas countries and territories with the Union.

2. Unless otherwise provided in this Agreement or in Union law made applicable by this Agreement, any reference in this Agreement to Member States, or their territory, shall be understood as covering the territories of the Member States to which the Treaties apply as provided in Article 355 TFEU.

Article 4

Methods and principles relating to the effect, the implementation and the application of this Agreement

1. The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.

Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.

2. The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.

3. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law.

4. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union handed down before the end of the transition period.

⁽³⁾ Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, and Turks and Caicos Islands.

5. In the interpretation and application of this Agreement, the United Kingdom's judicial and administrative authorities shall have due regard to relevant case law of the Court of Justice of the European Union handed down after the end of the transition period.

Article 5

Good faith

The Union and the United Kingdom shall, in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement.

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

This Article is without prejudice to the application of Union law pursuant to this Agreement, in particular the principle of sincere cooperation.

Article 6

References to Union law

1. With the exception of Parts Four and Five, unless otherwise provided in this Agreement all references in this Agreement to Union law shall be understood as references to Union law, including as amended or replaced, as applicable on the last day of the transition period.

2. Where in this Agreement reference is made to Union acts or provisions thereof, such reference shall, where relevant, be understood to include a reference to Union law or provisions thereof that, although replaced or superseded by the act referred to, continue to apply in accordance with that act.

3. For the purposes of this Agreement, references to provisions of Union law made applicable by this Agreement shall be understood to include references to the relevant Union acts supplementing or implementing those provisions.

Article 7

References to the Union and to Member States

1. For the purposes of this Agreement, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall be understood as including the United Kingdom and its competent authorities, except as regards:

- (a) the nomination, appointment or election of members of the institutions, bodies, offices and agencies of the Union, as well as the participation in the decision-making and the attendance in the meetings of the institutions;
- (b) the participation in the decision-making and governance of the bodies, offices and agencies of the Union;
- (c) the attendance in the meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council ^(*), of Commission expert groups or of other similar entities, or in the meetings of expert groups or similar entities of bodies, offices and agencies of the Union, unless otherwise provided in this Agreement.

^(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

2. Unless otherwise provided in this Agreement, any reference to the Union shall be understood as including Euratom.

Article 8

Access to networks, information systems and databases

Unless otherwise provided in this Agreement, at the end of the transition period the United Kingdom shall cease to be entitled to access any network, any information system and any database established on the basis of Union law. The United Kingdom shall take appropriate measures to ensure that it does not access a network, information system or database which it is no longer entitled to access.

PART TWO

CITIZENS' RIGHTS

TITLE I

GENERAL PROVISIONS

Article 9

Definitions

For the purposes of this Part, and without prejudice to Title III, the following definitions shall apply:

- (a) "family members" means the following persons, irrespective of their nationality, who fall within the personal scope provided for in Article 10 of this Agreement:
 - (i) family members of Union citizens or family members of United Kingdom nationals as defined in point (2) of Article 2 of Directive 2004/38/EC of the European Parliament and of the Council ⁽⁹⁾;
 - (ii) persons other than those defined in Article 3(2) of Directive 2004/38/EC whose presence is required by Union citizens or United Kingdom nationals in order not to deprive those Union citizens or United Kingdom nationals of a right of residence granted by this Part;
- (b) "frontier workers" means Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 or 49 TFEU in one or more States in which they do not reside;
- (c) "host State" means:
 - (i) in respect of Union citizens and their family members, the United Kingdom, if they exercised their right of residence there in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (ii) in respect of United Kingdom nationals and their family members, the Member State in which they exercised their right of residence in accordance with Union law before the end of the transition period and in which they continue to reside thereafter;
- (d) "State of work" means:
 - (i) in respect of Union citizens, the United Kingdom, if they pursued an economic activity as frontier workers there before the end of the transition period and continue to do so thereafter;

⁽⁹⁾ 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 L 158, 30.4.2004, p. 77).

- (ii) in respect of United Kingdom nationals, a Member State in which they pursued an economic activity as frontier workers before the end of the transition period and in which they continue to do so thereafter;
- (e) "rights of custody" means rights of custody within the meaning of point (9) of Article 2 of Council Regulation (EC) No 2201/2003 ⁽⁶⁾, including rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

Article 10

Personal scope

1. Without prejudice to Title III, this Part shall apply to the following persons:
 - (a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (b) United Kingdom nationals who exercised their right to reside in a Member State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (c) Union citizens who exercised their right as frontier workers in the United Kingdom in accordance with Union law before the end of the transition period and continue to do so thereafter;
 - (d) United Kingdom nationals who exercised their right as frontier workers in one or more Member States in accordance with Union law before the end of the transition period and continue to do so thereafter;
 - (e) family members of the persons referred to in points (a) to (d), provided that they fulfil one of the following conditions:
 - (i) they resided in the host State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (ii) they were directly related to a person referred to in points (a) to (d) and resided outside the host State before the end of the transition period, provided that they fulfil the conditions set out in point (2) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph;
 - (iii) they were born to, or legally adopted by, persons referred to in points (a) to (d) after the end of the transition period, whether inside or outside the host State, and fulfil the conditions set out in point (2)(c) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph and fulfil one of the following conditions:
 - both parents are persons referred to in points (a) to (d);
 - one parent is a person referred to in points (a) to (d) and the other is a national of the host State; or
 - one parent is a person referred to in points (a) to (d) and has sole or joint rights of custody of the child, in accordance with the applicable rules of family law of a Member State or of the United Kingdom, including applicable rules of private international law under which rights of custody established under the law of a third State are recognised in the Member State or in the United Kingdom, in particular as regards the best interests of the child, and without prejudice to the normal operation of such applicable rules of private international law ⁽⁷⁾;
 - (f) family members who resided in the host State in accordance with Articles 12 and 13, Article 16(2) and Articles 17 and 18 of Directive 2004/38/EC before the end of the transition period and continue to reside there thereafter.
2. Persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC whose residence was facilitated by the host State in accordance with its national legislation before the end of the transition period in accordance with Article 3(2) of that Directive shall retain their right of residence in the host State in accordance with this Part, provided that they continue to reside in the host State thereafter.

⁽⁶⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003 p. 1).

⁽⁷⁾ The notion of rights of custody is to be interpreted in accordance with point (9) of Article 2 of Regulation (EC) No 2201/2003. Therefore, it covers rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

3. Paragraph 2 shall also apply to persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC who have applied for facilitation of entry and residence before the end of the transition period, and whose residence is being facilitated by the host State in accordance with its national legislation thereafter.

4. Without prejudice to any right to residence which the persons concerned may have in their own right, the host State shall, in accordance with its national legislation and in accordance with point (b) of Article 3(2) of Directive 2004/38/EC, facilitate entry and residence for the partner with whom the person referred to in points (a) to (d) of paragraph 1 of this Article has a durable relationship, duly attested, where that partner resided outside the host State before the end of the transition period, provided that the relationship was durable before the end of the transition period and continues at the time the partner seeks residence under this Part.

5. In the cases referred to in paragraphs 3 and 4, the host State shall undertake an extensive examination of the personal circumstances of the persons concerned and shall justify any denial of entry or residence to such persons.

Article 11

Continuity of residence

Continuity of residence for the purposes of Articles 9 and 10 shall not be affected by absences as referred to in Article 15(2).

The right of permanent residence acquired under Directive 2004/38/EC before the end of the transition period shall not be treated as lost through absence from the host State for a period specified in Article 15(3).

Article 12

Non-discrimination

Within the scope of this Part, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality within the meaning of the first subparagraph of Article 18 TFEU shall be prohibited in the host State and the State of work in respect of the persons referred to in Article 10 of this Agreement.

TITLE II

RIGHTS AND OBLIGATIONS

Chapter 1

RIGHTS RELATED TO RESIDENCE, RESIDENCE DOCUMENTS

Article 13

Residence rights

1. Union citizens and United Kingdom nationals shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in Article 6(1), points (a), (b) or (c) of Article 7(1), Article 7(3), Article 14, Article 16(1) or Article 17(1) of Directive 2004/38/EC.

2. Family members who are either Union citizens or United Kingdom nationals shall have the right to reside in the host State as set out in Article 21 TFEU and in Article 6(1), point (d) of Article 7(1), Article 12(1) or (3), Article 13(1), Article 14, Article 16(1) or Article 17(3) and (4) of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

3. Family members who are neither Union citizens nor United Kingdom nationals shall have the right to reside in the host State under Article 21 TFEU and as set out in Article 6(2), Article 7(2), Article 12(2) or (3), Article 13(2), Article 14, Article 16(2), Article 17(3) or (4) or Article 18 of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

4. The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned.

Article 14

Right of exit and of entry

1. Union citizens and United Kingdom nationals, their respective family members, and other persons, who reside in the territory of the host State in accordance with the conditions set out in this Title shall have the right to leave the host State and the right to enter it, as set out in Article 4(1) and the first subparagraph of Article 5(1) of Directive 2004/38/EC, with a valid passport or national identity card in the case of Union citizens and United Kingdom nationals, and with a valid passport in the case of their respective family members and other persons who are not Union citizens or United Kingdom nationals.

Five years after the end of the transition period, the host State may decide no longer to accept national identity cards for the purposes of entry to or exit from its territory if such cards do not include a chip that complies with the applicable International Civil Aviation Organisation standards related to biometric identification.

2. No exit visa, entry visa or equivalent formality shall be required of holders of a valid document issued in accordance with Article 18 or 26.

3. Where the host State requires family members who join the Union citizen or United Kingdom national after the end of the transition period to have an entry visa, the host State shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible, and on the basis of an accelerated procedure.

Article 15

Right of permanent residence

1. Union citizens and United Kingdom nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years or for the period specified in Article 17 of Directive 2004/38/EC, shall have the right to reside permanently in the host State under the conditions set out in Articles 16, 17 and 18 of Directive 2004/38/EC. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

2. Continuity of residence for the purposes of acquisition of the right of permanent residence shall be determined in accordance with Article 16(3) and Article 21 of Directive 2004/38/EC.

3. Once acquired, the right of permanent residence shall be lost only through absence from the host State for a period exceeding 5 consecutive years.

*Article 16***Accumulation of periods**

Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

*Article 17***Status and changes**

1. The right of Union citizens and United Kingdom nationals, and their respective family members, to rely directly on this Part shall not be affected when they change status, for example between student, worker, self-employed person and economically inactive person. Persons who, at the end of the transition period, enjoy a right of residence in their capacity as family members of Union citizens or United Kingdom nationals, cannot become persons referred to in points (a) to (d) of Article 10(1).
2. The rights provided for in this Title for the family members who are dependants of Union citizens or United Kingdom nationals before the end of the transition period, shall be maintained even after they cease to be dependants.

*Article 18***Issuance of residence documents**

1. The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form.

Applying for such a residence status shall be subject to the following conditions:

- (a) the purpose of the application procedure shall be to verify whether the applicant is entitled to the residence rights set out in this Title. Where that is the case, the applicant shall have a right to be granted the residence status and the document evidencing that status;
- (b) the deadline for submitting the application shall not be less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period.

For persons who have the right to commence residence after the end of the transition period in the host State in accordance with this Title, the deadline for submitting the application shall be 3 months after their arrival or the expiry of the deadline referred to in the first subparagraph, whichever is later.

A certificate of application for the residence status shall be issued immediately;

- (c) the deadline for submitting the application referred to in point (b) shall be extended automatically by 1 year where the Union has notified the United Kingdom, or the United Kingdom has notified the Union, that technical problems prevent the host State either from registering the application or from issuing the certificate of application referred to in point (b). The host State shall publish that notification and shall provide appropriate public information for the persons concerned in good time;
- (d) where the deadline for submitting the application referred to in point (b) is not respected by the persons concerned, the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline;

- (e) the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided;
- (f) application forms shall be short, simple, user friendly and adapted to the context of this Agreement; applications made by families at the same time shall be considered together;
- (g) the document evidencing the status shall be issued free of charge or for a charge not exceeding that imposed on citizens or nationals of the host State for the issuing of similar documents;
- (h) persons who, before the end of the transition period, hold a valid permanent residence document issued under Article 19 or 20 of Directive 2004/38/EC or hold a valid domestic immigration document conferring a permanent right to reside in the host State, shall have the right to exchange that document within the period referred to in point (b) of this paragraph for a new residence document upon application after a verification of their identity, a criminality and security check in accordance with point (p) of this paragraph and confirmation of their ongoing residence; such new residence documents shall be issued free of charge;
- (i) the identity of the applicants shall be verified through the presentation of a valid passport or national identity card for Union citizens and United Kingdom nationals, and through the presentation of a valid passport for their respective family members and other persons who are not Union citizens or United Kingdom nationals; the acceptance of such identity documents shall not be made conditional upon any criteria other than that of the validity of the document. Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State shall return that document upon application without delay, before the decision on the application has been taken;
- (j) supporting documents other than identity documents, such as civil status documents, may be submitted in copy. Originals of supporting documents may be required only in specific cases where there is a reasonable doubt as to the authenticity of the supporting documents submitted;
- (k) the host State may only require Union citizens and United Kingdom nationals to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(3) of Directive 2004/38/EC:
 - (i) where they reside in the host State in accordance with point (a) of Article 7(1) of Directive 2004/38/EC as workers or self-employed, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed;
 - (ii) where they reside in the host State in accordance with point (b) of Article 7(1) of Directive 2004/38/EC as economically inactive persons, evidence that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence and that they have comprehensive sickness insurance cover in the host State; or
 - (iii) where they reside in the host State in accordance with point (c) of Article 7(1) of Directive 2004/38/EC as students, proof of enrolment at an establishment accredited or financed by the host State on the basis of its legislation or administrative practice, proof of comprehensive sickness insurance cover, and a declaration or equivalent means of proof, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence. The host State may not require such declarations to refer to any specific amount of resources.

With regard to the condition of sufficient resources, Article 8(4) of Directive 2004/38/EC shall apply;

- (l) the host State may only require family members who fall under point (e)(i) of Article 10(1) or Article 10(2) or (3) of this Agreement and who reside in the host State in accordance with point (d) of Article 7(1) or Article 7(2) of Directive 2004/38/EC to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(5) or 10(2) of Directive 2004/38/EC:
 - (i) a document attesting to the existence of a family relationship or registered partnership;
 - (ii) the registration certificate or, in the absence of a registration system, any other proof that the Union citizen or the United Kingdom national with whom they reside actually resides in the host State;

- (iii) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line, and for those of the spouse or registered partner, documentary evidence that the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC are fulfilled;
- (iv) for the persons referred to in Article 10(2) or (3) of this Agreement, a document issued by the relevant authority in the host State in accordance with Article 3(2) of Directive 2004/38/EC.

With regard to the condition of sufficient resources as concerns family members who are themselves Union citizens or United Kingdom nationals, Article 8(4) of Directive 2004/38/EC shall apply;

- (m) the host State may only require family members who fall under point (e)(ii) of Article 10(1) or Article 10(4) of this Agreement to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Articles 8(5) and 10(2) of Directive 2004/38/EC:
 - (i) a document attesting to the existence of a family relationship or of a registered partnership;
 - (ii) the registration certificate or, in the absence of a registration system, any other proof of residence in the host State of the Union citizen or of the United Kingdom nationals whom they are joining in the host State;
 - (iii) for spouses or registered partners, a document attesting to the existence of a family relationship or a registered partnership before the end of the transition period;
 - (iv) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line and those of the spouse or registered partner, documentary evidence that they were related to Union citizens or United Kingdom nationals before the end of the transition period and fulfil the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC relating to age or dependence;
 - (v) for the persons referred to in Article 10(4) of this Agreement, proof that a durable relationship with Union citizens or United Kingdom nationals existed before the end of the transition period and continues to exist thereafter;
- (n) for cases other than those set out in points (k), (l) and (m), the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled;
- (o) the competent authorities of the host State shall help the applicants to prove their eligibility and to avoid any errors or omissions in their applications; they shall give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions;
- (p) criminality and security checks may be carried out systematically on applicants, with the exclusive aim of verifying whether the restrictions set out in Article 20 of this Agreement may be applicable. For that purpose, applicants may be required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of the application. The host State may, if it considers this essential, apply the procedure set out in Article 27(3) of Directive 2004/38/EC with respect to enquiries to other States regarding previous criminal records;
- (q) the new residence document shall include a statement that it has been issued in accordance with this Agreement;
- (r) the applicant shall have access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status. 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 decision is based. Such redress procedures shall ensure that the decision is not disproportionate.

2. During the period referred to in point (b) of paragraph 1 of this Article and its possible one-year extension under point (c) of that paragraph, all rights provided for in this Part shall be deemed to apply to Union citizens or United Kingdom nationals, their respective family members, and other persons residing in the host State, in accordance with the conditions and subject to the restrictions set out in Article 20.

3. Pending a final decision by the competent authorities on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).

4. Where a host State has chosen not to require Union citizens or United Kingdom nationals, their family members, and other persons, residing in its territory in accordance with the conditions set out in this Title, to apply for the new residence status referred to in paragraph 1 as a condition for legal residence, those eligible for residence rights under this Title shall have the right to receive, in accordance with the conditions set out in Directive 2004/38/EC, a residence document, which may be in a digital form, that includes a statement that it has been issued in accordance with this Agreement.

Article 19

Issuance of residence documents during the transition period

1. During the transition period, a host State may allow applications for a residence status or residence document as referred to in Article 18(1) and (4) to be made voluntarily from the date of entry into force of this Agreement.

2. Decisions to accept or refuse such applications shall be taken in accordance with Article 18(1) and (4). Decisions under Article 18(1) shall have no effect until after the end of the transition period.

3. If an application under Article 18(1) is accepted before the end of the transition period, the host State may not withdraw the decision granting the residence status before the end of the transition period on any grounds other than those set out in Chapter VI and Article 35 of Directive 2004/38/EC.

4. If an application is refused before the end of the transition period, the applicant may apply again at any time before the expiry of the period set out in point (b) of Article 18(1).

5. Without prejudice to paragraph 4, the redress procedures under point (r) of Article 18(1) shall be available from the date of any decision to refuse an application referred to in paragraph 2 of this Article.

Article 20

Restrictions of the rights of residence and entry

1. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred before the end of the transition period, shall be considered in accordance with Chapter VI of Directive 2004/38/EC.

2. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.

3. The host State or the State of work may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Title in the case of the abuse of those rights or fraud, as set out in Article 35 of Directive 2004/38/EC. Such measures shall be subject to the procedural safeguards provided for in Article 21 of this Agreement.

4. The host State or the State of work may remove applicants who submitted fraudulent or abusive applications from its territory under the conditions set out in Directive 2004/38/EC, in particular Articles 31 and 35 thereof, even before a final judgment has been handed down in the case of judicial redress sought against any rejection of such an application.

*Article 21***Safeguards and right of appeal**

The safeguards set out in Article 15 and Chapter VI of Directive 2004/38/EC shall apply in respect of any decision by the host State that restricts residence rights of the persons referred to in Article 10 of this Agreement.

*Article 22***Related rights**

In accordance with Article 23 of Directive 2004/38/EC, irrespective of nationality, the family members of a Union citizen or United Kingdom national who have the right of residence or the right of permanent residence in the host State or the State of work shall be entitled to take up employment or self-employment there.

*Article 23***Equal treatment**

1. In accordance with Article 24 of Directive 2004/38/EC, subject to the specific provisions provided for in this Title and Titles I and IV of this Part, all Union citizens or United Kingdom nationals residing on the basis of this Agreement in the territory of the host State shall enjoy equal treatment with the nationals of that State within the scope of this Part. The benefit of this right shall be extended to those family members of Union citizens or United Kingdom nationals who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host State shall not be obliged to confer entitlement to social assistance during periods of residence on the basis of Article 6 or point (b) of Article 14(4) of Directive 2004/38/EC, nor shall it be obliged, prior to a person's acquisition of the right of permanent residence in accordance with Article 15 of this Agreement, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status or to members of their families.

*Chapter 2***RIGHTS OF WORKERS AND SELF-EMPLOYED PERSONS***Article 24***Rights of workers**

1. Subject to the limitations set out in Article 45(3) and (4) TFEU, workers in the host State and frontier workers in the State or States of work shall enjoy the rights guaranteed by Article 45 TFEU and the rights granted by Regulation (EU) No 492/2011 of the European Parliament and of the Council ⁽⁸⁾. These rights include:

- (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 take up and pursue an activity in accordance with the rules applicable to the nationals of the host State or the State of work;
- (c) the right to assistance afforded by the employment offices of the host State or the State of work as offered to own nationals;
- (d) 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;

⁽⁸⁾ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

- (e) the right to social and tax advantages;
- (f) collective rights;
- (g) the rights and benefits accorded to national workers in matters of housing;
- (h) the right for their children to be admitted to the general educational, apprenticeship and vocational training courses under the same conditions as the nationals of the host State or the State of work, if such children are residing in the territory where the worker works.

2. Where a direct descendant of a worker who has ceased to reside in the host State is in education in that State, the primary carer for that descendant shall have the right to reside in that State until the descendant reaches the age of majority, and after the age of majority if that descendant continues to need the presence and care of the primary carer in order to pursue and complete his or her education.

3. Employed frontier workers shall enjoy the right to enter and exit the State of work in accordance with Article 14 of this Agreement and shall retain the rights they enjoyed as workers there, provided they are in one of the circumstances set out in points (a), (b), (c) and (d) of Article 7(3) of Directive 2004/38/EC, even where they do not move their residence to the State of work.

Article 25

Rights of self-employed persons

1. Subject to the limitations set out in Articles 51 and 52 TFEU, self-employed persons in the host State and self-employed frontier workers in the State or States of work shall enjoy the rights guaranteed by Articles 49 and 55 TFEU. These rights include:

- (a) the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down by the host State for its own nationals, as set out in Article 49 TFEU;
- (b) the rights as set out in points (c) to (h) of Article 24(1) of this Agreement.

2. Article 24(2) shall apply to direct descendants of self-employed workers.

3. Article 24(3) shall apply to self-employed frontier workers.

Article 26

Issuance of a document identifying frontier workers' rights

The State of work may require Union citizens and United Kingdom nationals who have rights as frontier workers under this Title to apply for a document certifying that they have such rights under this Title. Such Union citizens and United Kingdom nationals shall have the right to be issued with such a document.

Chapter 3

PROFESSIONAL QUALIFICATIONS

Article 27

Recognised professional qualifications

1. The recognition, before the end of the transition period, of professional qualifications, as defined in point (b) of Article 3(1) of Directive 2005/36/EC of the European Parliament and of the Council ^(*), of Union citizens or United Kingdom nationals, and their family members, by their host State or their State of work shall maintain its effects in the respective State, including the right to pursue their profession under the same conditions as its nationals, where such recognition was made in accordance with any of the following provisions:

^(*) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

- (a) Title III of Directive 2005/36/EC in respect of the recognition of professional qualifications in the context of the exercise of the freedom of establishment, whether such recognition fell under the general system for the recognition of evidence of training, the system for the recognition of professional experience or the system for the recognition on the basis of coordination of minimum training conditions;
 - (b) Article 10(1) and (3) of Directive 98/5/EC of the European Parliament and of the Council ⁽¹⁰⁾ in respect of gaining admission to the profession of lawyer in the host State or State of work;
 - (c) Article 14 of Directive 2006/43/EC of the European Parliament and of the Council ⁽¹¹⁾ in respect of the approval of statutory auditors from another Member State;
 - (d) Council Directive 74/556/EEC ⁽¹²⁾ in respect of the acceptance of evidence of the knowledge and ability necessary to take up or pursue the activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products or activities involving the professional use of toxic products.
2. Recognitions of professional qualifications for the purposes of point (a) of paragraph 1 of this Article shall include:
- (a) recognitions of professional qualifications which have benefited from Article 3(3) of Directive 2005/36/EC;
 - (b) decisions granting partial access to a professional activity in accordance with Article 4f of Directive 2005/36/EC;
 - (c) recognitions of professional qualifications for establishment purposes made under Article 4d of Directive 2005/36/EC.

Article 28

Ongoing procedures on the recognition of professional qualifications

Article 4, Article 4d in respect of recognitions of professional qualifications for establishment purposes, Article 4f and Title III of Directive 2005/36/EC, Article 10(1), (3) and (4) of Directive 98/5/EC, Article 14 of Directive 2006/43/EC and Directive 74/556/EEC shall apply in respect of the examination by a competent authority of the host State or State of work of any application for the recognition of professional qualifications introduced before the end of the transition period by Union citizens or United Kingdom nationals and in respect of the decision on any such application.

Articles 4a, 4b and 4e of Directive 2005/36/EC shall also apply to the extent relevant for the completion of the procedures for the recognitions of professional qualifications for establishment purposes under Article 4d of that Directive.

Article 29

Administrative cooperation on recognition of professional qualifications

1. With regard to the pending applications referred to in Article 28, the United Kingdom and the Member States shall cooperate in order to facilitate the application of Article 28. Cooperation may include the exchange of information, including information on disciplinary action or criminal sanctions taken or any other serious and specific circumstances which are likely to have consequences for the pursuit of the activities falling under the Directives referred to in Article 28.

⁽¹⁰⁾ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).

⁽¹¹⁾ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

⁽¹²⁾ Council Directive 74/556/EEC of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries (OJ L 307, 18.11.1974, p. 1).

2. By way of derogation from Article 8, for a period not exceeding 9 months from the end of the transition period, the United Kingdom shall be entitled to use the internal market information system in respect of applications referred to in Article 28 insofar as they concern procedures for the recognition of professional qualifications for establishment purposes under Article 4d of Directive 2005/36/EC.

TITLE III

COORDINATION OF SOCIAL SECURITY SYSTEMS

Article 30

Persons covered

1. This Title shall apply to the following persons:

- (a) Union citizens who are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;
- (b) United Kingdom nationals who are subject to the legislation of a Member State at the end of the transition period, as well as their family members and survivors;
- (c) Union citizens who reside in the United Kingdom and are subject to the legislation of a Member State at the end of the transition period, as well as their family members and survivors;
- (d) United Kingdom nationals who reside in a Member State, and are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;
- (e) persons who do not fall within points (a) to (d) but are:
 - (i) Union citizens who pursue an activity as an employed or self-employed person in the United Kingdom at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004 of the European Parliament and of the Council ⁽¹³⁾, are subject to the legislation of a Member State, as well as their family members and survivors; or
 - (ii) United Kingdom nationals who pursue an activity as an employed or self-employed person in one or more Member States at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004, are subject to the legislation of the United Kingdom, as well as their family members and survivors;
- (f) stateless persons and refugees, residing in a Member State or in the United Kingdom, who are in one of the situations described in points (a) to (e), as well as their family members and survivors;
- (g) nationals of third countries, as well as members of their families and survivors, who are in one of the situations described in points (a) to (e), provided that they fulfil the conditions of Council Regulation (EC) No 859/2003 ⁽¹⁴⁾.

2. The persons referred to in paragraph 1 shall be covered for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time.

3. This Title shall also apply to persons who do not, or who no longer, fall within points (a) to (e) of paragraph 1 of this Article but who fall within Article 10 of this Agreement, as well as their family members and survivors.

4. The persons referred to in paragraph 3 shall be covered for as long as they continue to have a right to reside in the host State under Article 13 of this Agreement, or a right to work in their State of work under Article 24 or 25 of this Agreement.

⁽¹³⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁽¹⁴⁾ Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

5. Where this Article refers to family members and survivors, those persons shall be covered by this Title only to the extent that they derive rights and obligations in that capacity under Regulation (EC) No 883/2004.

Article 31

Social security coordination rules

1. The rules and objectives set out in Article 48 TFEU, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council ⁽¹⁵⁾ shall apply to the persons covered by this Title.

The Union and the United Kingdom shall take due account of the Decisions and Recommendations of the Administrative Commission for the Coordination of Social Security Systems attached to the European Commission, set up under Regulation (EC) No 883/2004 ("Administrative Commission") listed in Part I of Annex I to this Agreement.

2. By way of derogation from Article 9 of this Agreement, for the purposes of this Title, the definitions in Article 1 of Regulation (EC) No 883/2004 shall apply.

3. With regard to nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, as well as their family members or survivors within the scope of this Title, the references to Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 in this Title shall be understood as references to Council Regulation (EEC) No 1408/71 ⁽¹⁶⁾ and Council Regulation (EEC) No 574/72 ⁽¹⁷⁾ respectively. References to specific provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall be understood as references to the corresponding provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72.

Article 32

Special situations covered

1. The following rules shall apply in the following situations to the extent set out in this Article, insofar as they relate to persons not or no longer covered by Article 30:

- (a) the following persons shall be covered by this Title for the purposes of reliance on and aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004:
 - (i) Union citizens, as well as stateless persons and refugees residing in a Member State and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, who have been subject to the legislation of the United Kingdom before the end of the transition period, as well as their family members and survivors;
 - (ii) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, who have been subject to the legislation of a Member State before the end of the transition period, as well as their family members and survivors;

for the purposes of the aggregation of periods, periods completed both before and after the end of the transition period shall be taken into account in accordance with Regulation (EC) No 883/2004;

⁽¹⁵⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

⁽¹⁶⁾ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

⁽¹⁷⁾ Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 74, 27.3.1972, p. 1).

- (b) the rules set out in Articles 20 and 27 of Regulation (EC) No 883/2004 shall continue to apply to persons who, before the end of the transition period, had requested authorisation to receive a course of planned health care treatment pursuant to Regulation (EC) No 883/2004, until the end of the treatment. The corresponding reimbursement procedures shall also apply even after the treatment ends. Such persons and the accompanying persons shall enjoy the right to enter and exit the State of treatment in accordance with Article 14, *mutatis mutandis*;
 - (c) the rules set out in Articles 19 and 27 of Regulation (EC) No 883/2004 shall continue to apply to persons who are covered by Regulation (EC) No 883/2004 and who are on a stay at the end of the transition period in a Member State or the United Kingdom, until the end of their stay. The corresponding reimbursement procedures shall also apply even after the stay or treatment ends;
 - (d) the rules set out in Articles 67, 68 and 69 of Regulation (EC) No 883/2004 shall continue to apply, for as long as the conditions are fulfilled, to awards of family benefits to which there is entitlement at the end of the transition period for the following persons:
 - (i) Union citizens, stateless persons and refugees residing in a Member State as well as nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003 and reside in a Member State, who are subject to the legislation of a Member State and have family members residing in the United Kingdom at the end of the transition period;
 - (ii) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003 and reside in the United Kingdom, who are subject to the legislation of the United Kingdom and have family members residing in a Member State at the end of the transition period;
 - (e) in the situations set out in point (d)(i) and (ii) of this paragraph, for any persons who have rights as family members at the end of the transition period under Regulation (EC) No 883/2004, such as derived rights for sickness benefits in kind, that Regulation and the corresponding provisions of Regulation (EC) No 987/2009 shall continue to apply for as long as the conditions provided therein are fulfilled.
2. The provisions of Chapter 1 of Title III of Regulation (EC) No 883/2004 as regards sickness benefits shall apply to persons receiving benefits under point (a) of paragraph 1 of this Article.

This paragraph shall apply *mutatis mutandis* as regards family benefits based on Articles 67, 68 and 69 of Regulation (EC) No 883/2004.

Article 33

Nationals of Iceland, Liechtenstein, Norway and Switzerland

1. The provisions of this Title applicable to Union citizens shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation provided that:
- (a) Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable, have concluded and apply corresponding agreements with the United Kingdom which apply to Union citizens; and
 - (b) Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable, have concluded and apply corresponding agreements with the Union which apply to United Kingdom nationals.
2. Upon notification from the United Kingdom and from the Union of the date of entry into force of the agreements referred to in paragraph 1 of this Article, the Joint Committee established by Article 164 ("Joint Committee") shall set the date from which the provisions of this Title shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable.

*Article 34***Administrative cooperation**

1. By way of derogation from Articles 7 and 128(1), as of the date of entry into force of this Agreement, the United Kingdom shall have the status of observer in the Administrative Commission. It may, where the items on the agenda relating to this Title concern the United Kingdom, send a representative, to be present in an advisory capacity, to the meetings of the Administrative Commission and to the meetings of the bodies referred to in Articles 73 and 74 of Regulation (EC) No 883/2004 where such items are discussed.
2. By way of derogation from Article 8, the United Kingdom shall take part in the Electronic Exchange of Social Security Information (EESSI) and bear the related costs.

*Article 35***Reimbursement, recovery and offsetting**

The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 on reimbursement, recovery and offsetting shall continue to apply in relation to events, insofar as they relate to persons not covered by Article 30, that:

- (a) occurred before the end of the transition period; or
- (b) occur after the end of the transition period and relate to persons who were covered by Articles 30 or 32 when the event occurred.

*Article 36***Development of law and adaptations of Union acts**

1. Where Regulations (EC) No 883/2004 and (EC) No 987/2009 are amended or replaced after the end of the transition period, references to those Regulations in this Agreement shall be understood as referring to those Regulations as amended or replaced, in accordance with the acts listed in Part II of Annex I to this Agreement.

The Joint Committee shall revise Part II of Annex I to this Agreement and align it to any act amending or replacing Regulations (EC) No 883/2004 and (EC) No 987/2009 as soon as such act is adopted by the Union. To that end, the Union shall, as soon as possible after adoption, inform the United Kingdom within the Joint Committee of any act amending or replacing those Regulations.

2. By way of derogation from the second subparagraph of paragraph 1, the Joint Committee shall assess the effects of an act amending or replacing Regulations (EC) No 883/2004 and (EC) No 987/2009 where that act:
 - (a) amends or replaces the matters covered by Article 3 of Regulation (EC) No 883/2004; or
 - (b) makes a cash benefit exportable where that cash benefit was non-exportable under Regulation (EC) No 883/2004 at the end of the transition period, or makes a cash benefit non-exportable, where that cash benefit was exportable at the end of the transition period; or
 - (c) makes a cash benefit exportable for an unlimited period of time, where that cash benefit was exportable only for a limited period of time under Regulation (EC) No 883/2004 at the end of the transition period, or makes a cash benefit exportable only for a limited period of time, where that cash benefit was exportable for an unlimited period of time under that Regulation at the end of the transition period.

In making its assessment, the Joint Committee shall consider in good faith the scale of the changes referred to in the first subparagraph of this paragraph, as well as the importance of the continued good functioning of Regulations (EC) No 883/2004 and (EC) No 987/2009 between the Union and the United Kingdom and the importance of there being a competent State in relation to individuals within the scope of Regulation (EC) No 883/2004.

If the Joint Committee so decides within 6 months from receiving the information given by the Union pursuant to paragraph 1, Part II of Annex I to this Agreement shall not be aligned to the act referred to in the first subparagraph of this paragraph.

For the purposes of this paragraph:

- (a) "exportable" means payable under Regulation (EC) No 883/2004 to or in relation to a person residing in a Member State or in the United Kingdom if the institution responsible for providing the benefit is not situated there; "non-exportable" shall be interpreted accordingly; and
- (b) "exportable for an unlimited period of time" means exportable for as long as the conditions giving rise to the entitlements are met.

3. Regulations (EC) No 883/2004 and (EC) No 987/2009 shall, for the purposes of this Agreement, be understood as comprising the adaptations listed in Part III of Annex I to this Agreement. As soon as possible after the adoption of any changes in domestic provisions of relevance to Part III of Annex I to this Agreement, the United Kingdom shall inform the Union thereof within the Joint Committee.

4. The Decisions and Recommendations of the Administrative Commission shall, for the purposes of this Agreement, be understood as comprising the decisions and recommendations listed in Part I of Annex I. The Joint Committee shall amend Part I of Annex I to reflect any new Decision or Recommendation adopted by the Administrative Commission. To that end, as soon as possible after adoption of decisions and recommendations of the Administrative Commission, the Union shall inform the United Kingdom thereof within the Joint Committee. Such amendments shall be made by the Joint Committee on a proposal of the Union or the United Kingdom.

TITLE IV

OTHER PROVISIONS

Article 37

Publicity

The Member States and the United Kingdom shall disseminate information concerning the rights and obligations of persons covered by this Part, in particular by means of awareness-raising campaigns conducted, as appropriate, through national and local media and other means of communication.

Article 38

More favourable provisions

1. This Part shall not affect any laws, regulations or administrative provisions applicable in a host State or a State of work which would be more favourable to the persons concerned. This paragraph shall not apply to Title III.
2. Article 12 and Article 23(1) shall be without prejudice to the Common Travel Area arrangements between the United Kingdom and Ireland as regards more favourable treatment which may result from these arrangements for the persons concerned.

Article 39

Life-long protection

The persons covered by this Part shall enjoy the rights provided for in the relevant Titles of this Part for their lifetime, unless they cease to meet the conditions set out in those Titles.

PART THREE

SEPARATION PROVISIONS

TITLE I

GOODS PLACED ON THE MARKET

Article 40

Definitions

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

- (a) "making available on the market" means any supply of a good for distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge;
- (b) "placing on the market" means the first making available of a good on the market in the Union or the United Kingdom;
- (c) "supply of a good for distribution, consumption or use" means that an existing and individually identifiable good, after the stage of manufacturing has taken place, is the subject matter of a written or verbal agreement between two or more legal or natural persons for the transfer of ownership, any other property right, or possession concerning the good in question, or is the subject matter of an offer to a legal or natural person or persons to conclude such an agreement;
- (d) "putting into service" means the first use of a good within the Union or the United Kingdom by the end user for the purposes for which it was intended or, in the case of marine equipment, placing on board;
- (e) "market surveillance" means the activities carried out and measures taken by market surveillance authorities to ensure that goods comply with the applicable requirements and do not endanger health, safety or any other aspect of public interest protection;
- (f) "market surveillance authority" means an authority of a Member State or of the United Kingdom responsible for carrying out market surveillance on its territory;
- (g) "conditions for the marketing of goods" means requirements concerning the characteristics of goods such as levels of quality, performance, safety or dimensions, including on the composition of such goods or on the terminology, symbols, testing and testing methods, packaging, marking, labelling, and conformity assessment procedures used in relation to such goods; the term also covers requirements concerning production methods and processes, where these have an effect on product characteristics;
- (h) "conformity assessment body" means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (i) "notified body" means a conformity assessment body authorised to carry out third-party conformity assessment tasks under Union law harmonising the conditions for the marketing of goods;
- (j) "animal products" means products of animal origin, animal by-products and derived products, as referred to in points (29), (30) and (31) of Article 4 of Regulation (EU) 2016/429 of the European Parliament and of the Council ⁽¹⁸⁾, respectively, feed of animal origin, and food and feed containing products of animal origin.

Article 41

Continued circulation of goods placed on the market

1. Any good that was lawfully placed on the market in the Union or the United Kingdom before the end of the transition period may:
 - (a) be further made available on the market of the Union or of the United Kingdom and circulate between these two markets until it reaches its end-user;

⁽¹⁸⁾ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ("Animal Health Law") (OJ L 84, 31.3.2016, p. 1).

(b) where provided in the applicable provisions of Union law, be put into service in the Union or in the United Kingdom.

2. The requirements set out in Articles 34 and 35 TFEU and the relevant Union law governing the marketing of goods, including the conditions for the marketing of goods, applicable to the goods concerned shall apply in respect of the goods referred to in paragraph 1.

3. Paragraph 1 shall apply to all existing and individually identifiable goods within the meaning of Title II of Part Three of the TFEU, with the exception of the circulation between the Union market and the United Kingdom's market or vice-versa of:

(a) live animals and germinal products;

(b) animal products.

4. In respect of a movement of live animals or of germinal products between a Member State and the United Kingdom, or vice-versa, the provisions of Union law listed in Annex II shall apply, provided that the date of departure was before the end of the transition period.

5. This Article shall be without prejudice to the possibility for the United Kingdom, a Member State or the Union to take measures to prohibit or restrict the making available on its market of a good referred to in paragraph 1, or a category of such goods, where and to the extent permitted by Union law.

6. The provisions of this Title shall be without prejudice to any applicable rules on modalities of sale, intellectual property, customs procedures, tariffs and taxes.

Article 42

Proof of placing on the market

Where an economic operator relies on Article 41(1) with respect to a specific good, that operator shall bear the burden of proof of demonstrating, on the basis of any relevant document, that the good was placed on the market in the Union or the United Kingdom before the end of the transition period.

Article 43

Market surveillance

1. The market surveillance authorities of the Member States and the market surveillance authorities of the United Kingdom shall exchange without delay any relevant information collected with regard to the goods referred to in Article 41(1) in the context of their respective market surveillance activities. They shall, in particular, communicate to each other and to the European Commission any information relating to those goods presenting a serious risk, as well as any measures taken in relation to non-compliant goods, including relevant information drawn from networks, information systems and databases established under Union or United Kingdom law in relation to those goods.

2. The Member States and the United Kingdom shall transmit without delay any request from the market surveillance authorities of the United Kingdom or of a Member State, respectively, to a conformity assessment body established in their territory, where that request concerns a conformity assessment carried out by that body in its capacity as notified body before the end of the transition period. Member States and the United Kingdom shall ensure that any such request is promptly addressed by the conformity assessment body.

Article 44

Transfer of files and documents relating to ongoing procedures

The United Kingdom shall transfer without delay to the competent authority of a Member State designated in accordance with the procedures provided for in the applicable Union law all relevant files or documents in relation to assessments,

approvals and authorisations ongoing on the day before the date of entry into force of this Agreement and led by a United Kingdom competent authority in accordance with Regulation (EU) No 528/2012 ⁽¹⁹⁾, Regulation (EC) No 1107/2009 ⁽²⁰⁾, Directive 2001/83/EC ⁽²¹⁾ and Directive 2001/82/EC ⁽²²⁾ of the European Parliament and of the Council.

Article 45

Making available of information in relation to past authorisation procedures for medicinal products

1. The United Kingdom shall, upon a reasoned request from a Member State or the European Medicines Agency, make available without delay the marketing authorisation dossier of a medicinal product authorised by a competent authority of the United Kingdom before the end of the transition period, where that dossier is necessary for the assessment of a marketing authorisation application in accordance with Articles 10 and 10a of Directive 2001/83/EC or Articles 13 and 13a of Directive 2001/82/EC.
2. A Member State shall, upon a reasoned request from the United Kingdom, make available without delay the marketing authorisation dossier of a medicinal product authorised by a competent authority of that Member State before the end of the transition period, where that dossier is necessary for the assessment of a marketing authorisation application in the United Kingdom in accordance with the United Kingdom's legislative requirements, to the extent that those legislative requirements replicate the circumstances of Articles 10 and 10a of Directive 2001/83/EC or Articles 13 and 13a of Directive 2001/82/EC.

Article 46

Making available of information held by notified bodies established in the United Kingdom or in a Member State

1. The United Kingdom shall ensure that information held by a conformity assessment body established in the United Kingdom in relation to its activities as a notified body under Union law before the end of the transition period is made available at the request of the certificate holder, without delay, to a notified body established in a Member State as indicated by the certificate holder.
2. Member States shall ensure that information held by a notified body established in the Member State concerned in relation to its activities before the end of the transition period is made available at the request of the certificate holder, without delay, to a conformity assessment body established in the United Kingdom as indicated by the certificate holder.

TITLE II

ONGOING CUSTOMS PROCEDURES

Article 47

Union status of goods

1. Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽²³⁾ shall apply in respect of Union goods referred to in point (23) of Article 5 of that Regulation, where such goods move from the customs territory of the United Kingdom to the customs territory of the Union, or vice versa, provided that the movement started before the end of the transition period and ended thereafter. A movement of goods which has started before the end of the transition period and ends thereafter shall be treated as an intra-Union movement regarding importation and exportation licencing requirements in Union law.

⁽¹⁹⁾ Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

⁽²⁰⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (OJ L 309, 24.11.2009, p. 1).

⁽²¹⁾ 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 L 311, 28.11.2001, p. 67).

⁽²²⁾ Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

⁽²³⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

2. For the purposes of paragraph 1, the presumption of the customs status of Union goods as referred to in Article 153 (1) of Regulation (EU) No 952/2013 shall not apply. The customs status of those goods as Union goods, as well as the fact that the movement referred to in paragraph 1 started before the end of the transition period, shall need to be proven for every movement by the person concerned by any of the means referred to in Article 199 of Commission Implementing Regulation (EU) 2015/2447 ⁽²⁴⁾. The proof of the start of the movement shall be provided by means of a transport document relating to the goods.

3. Paragraph 2 shall not apply in respect of Union goods that are carried by air and have been loaded or transhipped at an airport in the customs territory of the United Kingdom for consignment to the customs territory of the Union or have been loaded or transhipped at an airport in the customs territory of the Union for consignment to the customs territory of the United Kingdom, where such goods are carried under cover of a single transport document issued in either of the customs territories concerned, provided that the movement by air started before the end of the transition period and the movement ended thereafter.

4. Paragraph 2 shall not apply in respect of Union goods that are carried by sea and have been shipped between ports in the customs territory of the United Kingdom and ports in the customs territory of the Union by a regular shipping service, as referred to in Article 120 of Commission Delegated Regulation (EU) 2015/2446 ⁽²⁵⁾, provided that:

- (a) the voyage comprising the ports in the customs territory of the United Kingdom and ports in the customs territory of the Union started before the end of the transition period and ended thereafter; and
- (b) the regular shipping service vessel called at one or several ports in the customs territory of the United Kingdom or in the customs territory of the Union before the end of the transition period.

5. When during the voyage referred to in point (a) of paragraph 4 the regular shipping service vessel calls at one or several ports in the customs territory of the United Kingdom after the end of the transition period:

- (a) for goods loaded before the end of the transition period and unloaded in those ports, the customs status of Union goods shall not be altered;
- (b) for goods loaded in ports called after the end of the transition period, the customs status of Union goods shall not be altered provided that it is proven in accordance with paragraph 2.

Article 48

Entry summary declaration and pre-departure declaration

1. Regulation (EU) No 952/2013 shall apply in respect of entry summary declarations that were lodged at a customs office of first entry in accordance with Chapter I of Title IV of that Regulation before the end of the transition period, and those declarations shall produce the same legal effects in the customs territory of the Union and the customs territory of the United Kingdom after the end of the transition period.

2. Regulation (EU) No 952/2013 shall apply in respect of pre-departure declarations that were lodged in accordance with Chapter I of Title VIII of that Regulation before the end of the transition period and, where applicable, where the goods were released in accordance with Article 194 of that Regulation before the end of the transition period. Those declarations shall produce the same legal effects in the customs territory of the Union and the customs territory of the United Kingdom after the end of the transition period.

Article 49

Ending of temporary storage or customs procedures

1. Regulation (EU) No 952/2013 shall apply in respect of non-Union goods that were in temporary storage referred to in point (17) of Article 5 of that Regulation at the end of the transition period and in respect of goods that were under any of the customs procedures referred to in point (16) of Article 5 of that Regulation in the customs territory of the United Kingdom at the end of the transition period, until such temporary storage is ended, until one of the special customs procedures is discharged, until the goods are released for free circulation, or until the goods are taken out of the territory, provided that such event occurs after the end of the transition period but not later than within the corresponding time limit referred to in Annex III.

⁽²⁴⁾ 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 (OJ L 343, 29.12.2015, p. 558).

⁽²⁵⁾ 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 (OJ L 343, 29.12.2015, p. 1).

However, points (b) and (c) of Article 148(5) and Article 219 of Regulation (EU) No 952/2013 shall not apply in respect of movements of goods between the customs territory of the United Kingdom and the customs territory of the Union which end after the end of the transition period.

2. Regulation (EU) No 952/2013, Council Decision 2014/335/EU, Euratom ⁽²⁶⁾, Council Regulation (EU, Euratom) No 608/2014 ⁽²⁷⁾ and Council Regulation (EU, Euratom) No 609/2014 ⁽²⁸⁾ shall apply in respect of any customs debt arising after the end of the transition period from the end of temporary storage or discharge referred to in paragraph 1.

3. Section 1 of Chapter 1 of Title II of Implementing Regulation (EU) 2015/2447 shall apply in respect of requests to benefit from tariff quotas which have been accepted by the customs authorities in the customs territory of the United Kingdom and where the required supporting documents have been provided in accordance with Article 50 of that Regulation by the customs authorities in the customs territory of the United Kingdom before the end of the transition period, and shall apply in respect of the cancellation of requests and returns of unused allocated quantities of such requests.

Article 50

Access to relevant networks, information systems and databases

By way of derogation from Article 8, the United Kingdom shall have access, to the extent strictly necessary to comply with its obligations under this Title, to the networks, information systems and databases listed in Annex IV. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating that access. The Union shall communicate to the United Kingdom the amount of those costs by 31 March of each year until the end of the period referred to in Annex IV. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

TITLE III

ONGOING VALUE ADDED TAX AND EXCISE DUTY MATTERS

Article 51

Value added tax (VAT)

1. Council Directive 2006/112/EC ⁽²⁹⁾ shall apply in respect of goods dispatched or transported from the territory of the United Kingdom to the territory of a Member State, and vice versa, provided that the dispatch or transport started before the end of the transition period and ended thereafter.

2. Directive 2006/112/EC shall continue to apply until 5 years after the end of the transition period with regard to the taxable person's rights and obligations in relation to transactions with a cross-border element between the United Kingdom and a Member State that took place before the end of the transition period and with regard to transactions covered by paragraph 1.

⁽²⁶⁾ Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 105).

⁽²⁷⁾ Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 29).

⁽²⁸⁾ 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 L 168, 7.6.2014, p. 39).

⁽²⁹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

3. By way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC ⁽³⁰⁾, refund applications that relate to VAT which was paid in a Member State by a taxable person established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State, shall be submitted under the conditions of that Directive at the latest on 31 March 2021.

4. By way of derogation from paragraph 2 and from Article 61(2) of Council Implementing Regulation (EU) No 282/2011 ⁽³¹⁾, amendments to VAT returns that were submitted in accordance with Article 364 or Article 369f of Directive 2006/112/EC either in the United Kingdom with regard to services supplied in Member States of consumption before the end of the transition period, or in a Member State with regard to services supplied in the United Kingdom before the end of the transition period, shall be submitted at the latest on 31 December 2021.

Article 52

Excise goods

Council Directive 2008/118/EC ⁽³²⁾ shall apply in respect of movements of excise goods under a duty suspension arrangement and in respect of movements of excise goods after release for consumption from the territory of the United Kingdom to the territory of a Member State, or vice versa, provided that the movement started before the end of the transition period and ended thereafter.

Article 53

Access to relevant networks, information systems and databases

By way of derogation from Article 8, the United Kingdom shall have access, to the extent strictly necessary to comply with its obligations under this Title, to the networks, information systems and databases listed in Annex IV. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating that access. The Union shall communicate to the United Kingdom the amount of those costs by 31 March of each year until the end of the period referred to in Annex IV. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

TITLE IV

INTELLECTUAL PROPERTY

Article 54

Continued protection in the United Kingdom of registered or granted rights

1. The holder of any of the following intellectual property rights which have been registered or granted before the end of the transition period shall, without any re-examination, become the holder of a comparable registered and enforceable intellectual property right in the United Kingdom under the law of the United Kingdom:

⁽³⁰⁾ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

⁽³¹⁾ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

⁽³²⁾ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

- (a) the holder of a European Union trade mark registered in accordance with Regulation (EU) 2017/1001 of the European Parliament and of the Council ⁽³³⁾ shall become the holder of a trade mark in the United Kingdom, consisting of the same sign, for the same goods or services;
- (b) the holder of a Community design registered and, where applicable, published following a deferral of publication in accordance with Council Regulation (EC) No 6/2002 ⁽³⁴⁾ shall become the holder of a registered design right in the United Kingdom for the same design;
- (c) the holder of a Community plant variety right granted pursuant to Council Regulation (EC) No 2100/94 ⁽³⁵⁾ shall become the holder of a plant variety right in the United Kingdom for the same plant variety.

2. Where a geographical indication, designation of origin or traditional speciality guaranteed within the meaning of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽³⁶⁾, a geographical indication, designation of origin or traditional term for wine within the meaning of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽³⁷⁾, a geographical indication within the meaning of Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽³⁸⁾ or a geographical indication within the meaning of Regulation (EU) No 251/2014 of the European Parliament and of the Council ⁽³⁹⁾, is protected in the Union on the last day of the transition period by virtue of those Regulations, those persons who are entitled to use the geographical indication, the designation of origin, the traditional speciality guaranteed or the traditional term for wine concerned shall be entitled, as from the end of the transition period, without any re-examination, to use the geographical indication, the designation of origin, the traditional speciality guaranteed or the traditional term for wine concerned in the United Kingdom, which shall be granted at least the same level of protection under the law of the United Kingdom as under the following provisions of Union law:

- (a) points (i), (j) and (k) of Article 4(1) of Directive (EU) 2015/2436 of the European Parliament and of the Council ⁽⁴⁰⁾; and
- (b) in view of the geographical indication, designation of origin, traditional speciality guaranteed or traditional term for wine concerned, Article 13, Article 14(1), Article 24, Article 36(3), Articles 38 and 44 and point (b) of Article 45(1) of Regulation (EU) No 1151/2012; Article 90(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽⁴¹⁾; Article 100(3), Article 102(1), Articles 103 and 113, and point (c)(x) of Article 157(1) of Regulation (EU) No 1308/2013; Article 62(3) and (4) of Commission Regulation (EC) No 607/2009 ⁽⁴²⁾; the first subparagraph of Article 15(3), Article 16 and Article 23(1) of Regulation (EC) No 110/2008 and, insofar as to the extent related to compliance with those provisions of that Regulation, Article 24(1) of that Regulation; or Article 19(1) and Article 20 of Regulation (EU) No 251/2014.

Where a geographical indication, designation of origin, traditional speciality guaranteed or traditional term for wine referred to in the first subparagraph ceases to be protected in the Union after the end of the transition period, the first subparagraph shall cease to apply in respect of that geographical indication, designation of origin, traditional speciality guaranteed or traditional term for wine.

⁽³³⁾ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1).

⁽³⁴⁾ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).

⁽³⁵⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1).

⁽³⁶⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

⁽³⁷⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁽³⁸⁾ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

⁽³⁹⁾ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

⁽⁴⁰⁾ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1).

⁽⁴¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (OJ L 347, 20.12.2013, p. 549).

⁽⁴²⁾ Commission Regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ L 193 24.7.2009, p. 60).

The first subparagraph shall not apply where protection in the Union is derived from international agreements to which the Union is a party.

This paragraph shall apply unless and until an agreement as referred to in Article 184 that supersedes this paragraph enters into force or becomes applicable.

3. Notwithstanding paragraph 1, if an intellectual property right referred to in that paragraph is declared invalid or revoked, or, in the case of a Community plant variety right, is declared null and void or is cancelled, in the Union as the result of an administrative or judicial procedure which was ongoing on the last day of the transition period, the corresponding right in the United Kingdom shall also be declared invalid or revoked, or declared null and void, or be cancelled. The date of effect of the declaration or revocation or cancellation in the United Kingdom shall be the same as in the Union.

By way of derogation from the first subparagraph, the United Kingdom shall not be obliged to declare invalid or to revoke the corresponding right in the United Kingdom where the grounds for the invalidity or revocation of the European Union trade mark or registered Community design do not apply in the United Kingdom.

4. A trade mark or registered design right which arises in the United Kingdom in accordance with point (a) or (b) of paragraph 1 shall have as its first renewal date the renewal date of the corresponding intellectual property right registered in accordance with Union law.

5. In respect of trade marks in the United Kingdom referred to in point (a) of paragraph 1 of this Article, the following shall apply:

- (a) the trade mark shall enjoy the date of filing or the date of priority of the European Union trade mark and, where appropriate, the seniority of a trade mark of the United Kingdom claimed under Article 39 or 40 of Regulation (EU) 2017/1001;
- (b) the trade mark shall not be liable to revocation on the ground that the corresponding European Union trade mark had not been put into genuine use in the territory of the United Kingdom before the end of the transition period;
- (c) the owner of a European Union trade mark that has acquired a reputation in the Union shall be entitled to exercise in the United Kingdom rights equivalent to those provided for in point (c) of Article 9(2) of Regulation (EU) 2017/1001 and point (a) of Article 5(3) of Directive (EU) 2015/2436 in respect of the corresponding trade mark on the basis of the reputation acquired in the Union by the end of the transition period and thereafter the continuing reputation of that trade mark shall be based on the use of the mark in the United Kingdom.

6. In respect of registered design rights and plant variety rights in the United Kingdom referred to in points (b) and (c) of paragraph 1, the following shall apply:

- (a) the term of protection under the law of the United Kingdom shall be at least equal to the remaining period of protection under Union law of the corresponding registered Community design or Community plant variety right;
- (b) the date of filing or date of priority shall be that of the corresponding registered Community design or Community plant variety right.

Article 55

Registration procedure

1. The registration, grant or protection pursuant to Article 54(1) and (2) of this Agreement shall be carried out free of charge by the relevant entities in the United Kingdom, using the data available in the registries of the European Union Intellectual Property Office, the Community Plant Variety Office and the European Commission. Annex III to Regulation (EC) No 110/2008 shall be considered a registry for the purpose of this Article.

2. For the purposes of paragraph 1, holders of the intellectual property rights referred to in Article 54(1) and those persons who are entitled to use a geographical indication, designation of origin, traditional speciality guaranteed or traditional term for wine referred to in Article 54(2) shall not be required to introduce an application or to undertake any particular administrative procedure. Holders of intellectual property rights referred to in Article 54(1) shall not be required to have a correspondence address in the United Kingdom in the 3 years following the end of the transition period.

3. The European Union Intellectual Property Office, the Community Plant Variety Office and the European Commission shall provide to the relevant entities in the United Kingdom the information necessary for the registration, grant or protection in the United Kingdom pursuant to Article 54(1) or (2).

4. This Article shall be without prejudice to renewal fees that may apply at the time of renewal of the rights, or the possibility for the holders concerned to surrender their intellectual property rights in the United Kingdom in accordance with the relevant procedure under the law of the United Kingdom.

Article 56

Continued protection in the United Kingdom of international registrations designating the Union

The United Kingdom shall take measures to ensure that natural or legal persons who have obtained protection before the end of the transition period for internationally registered trade marks or designs designating the Union pursuant to the Madrid system for the international registration of marks, or pursuant to the Hague system for the international deposit of industrial designs, enjoy protection in the United Kingdom for their trade marks or industrial designs in respect of those international registrations.

Article 57

Continued protection in the United Kingdom of unregistered Community designs

The holder of a right in relation to an unregistered Community design which arose before the end of the transition period in accordance with Regulation (EC) No 6/2002 shall in relation to that unregistered Community design *ipso iure* become the holder of an enforceable intellectual property right in the United Kingdom, under the law of the United Kingdom, that affords the same level of protection as that provided for in Regulation (EC) No 6/2002. The term of protection of that right under the law of the United Kingdom shall be at least equal to the remaining period of protection of the corresponding unregistered Community design under Article 11(1) of that Regulation.

Article 58

Continued protection of databases

1. The holder of a right in relation to a database in respect of the United Kingdom in accordance with Article 7 of Directive 96/9/EC of the European Parliament and of the Council ⁽⁴³⁾ which arose before the end of the transition period shall, in relation to that database, maintain an enforceable intellectual property right in the United Kingdom, under the law of the United Kingdom, that affords the same level of protection as that provided for in Directive 96/9/EC, provided that the holder of that right continues to comply with the requirements of Article 11 of that Directive. The term of protection of that right under the law of the United Kingdom shall be at least equal to the remaining period of protection under Article 10 of Directive 96/9/EC.

2. The following persons and undertakings shall be deemed to comply with the requirements of Article 11 of Directive 96/9/EC:

- (a) United Kingdom nationals;
- (b) natural persons with a habitual residence in the United Kingdom;
- (c) undertakings established in the United Kingdom, provided that where such an undertaking has only its registered office in the United Kingdom, its operations are genuinely linked on an ongoing basis with the economy of the United Kingdom or of a Member State.

⁽⁴³⁾ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

*Article 59***Right of priority with respect to pending applications for European Union trade marks, Community designs and Community plant variety rights**

1. Where a person has filed an application for a European Union trade mark or a Community design in accordance with Union law before the end of the transition period and where that application was accorded a date of filing, that person shall have, for the same trade mark in respect of goods or services which are identical with or contained within those for which the application has been filed in the Union or for the same design, the right to file an application in the United Kingdom within 9 months from the end of the transition period. An application made pursuant to this Article shall be deemed to have the same filing date and date of priority as the corresponding application filed in the Union and, where appropriate, the seniority of a trade mark of the United Kingdom claimed under Article 39 or 40 of Regulation (EU) 2017/1001.
2. Where a person has filed an application for a Community plant variety right in accordance with Union law before the end of the transition period, that person shall have, for the purpose of filing an application for the same plant variety right in the United Kingdom, an ad hoc right of priority in the United Kingdom during a period of 6 months from the end of the transition period. The right of priority shall cause the date of priority of the application for the Community plant variety right to be deemed to be the date of application for a plant variety right in the United Kingdom for the purpose of determining distinctness, novelty and entitlement to the right.

*Article 60***Pending applications for supplementary protection certificates in the United Kingdom**

1. Regulations (EC) No 1610/96 ⁽⁴⁴⁾ and No 469/2009 ⁽⁴⁵⁾ of the European Parliament and of the Council, respectively, shall apply in respect of applications for supplementary protection certificates for plant protection products and for medicinal products, as well as to applications for the extension of the duration of such certificates, where such applications were submitted to an authority in the United Kingdom before the end of the transition period in cases where the administrative procedure for the grant of the certificate concerned or of the extension of its duration was ongoing at the end of the transition period.
2. Any certificate granted pursuant to paragraph 1 shall provide for the same level of protection as that provided for in Regulation (EC) No 1610/96 or Regulation (EC) No 469/2009.

*Article 61***Exhaustion of rights**

Intellectual property rights which were exhausted both in the Union and in the United Kingdom before the end of the transition period under the conditions provided for by Union law shall remain exhausted both in the Union and in the United Kingdom.

*TITLE V***ONGOING POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS***Article 62***Ongoing judicial cooperation proceedings in criminal matters**

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

⁽⁴⁴⁾ Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (OJ L 198, 8.8.1996, p. 30).

⁽⁴⁵⁾ Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ L 152, 16.6.2009, p. 1).

- (a) the Convention, established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽⁴⁶⁾, and the Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽⁴⁷⁾, shall apply in respect of mutual legal assistance requests received under the respective instrument before the end of the transition period by the central authority or judicial authority;
- (b) Council Framework Decision 2002/584/JHA ⁽⁴⁸⁾ shall apply in respect of European arrest warrants where the requested person was arrested before the end of the transition period for the purposes of the execution of a European 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;
- (c) Council Framework Decision 2003/577/JHA ⁽⁴⁹⁾ shall apply in respect of freezing orders received before the end of the transition period by the central authority or the competent judicial authority for execution, or by a judicial authority in the executing State with no jurisdiction to recognise or execute a freezing order, but which transmits the freezing order *ex officio* to the competent judicial authority for execution;
- (d) Council Framework Decision 2005/214/JHA ⁽⁵⁰⁾ shall apply in respect of decisions received before the end of the transition period by the central authority or the competent authority in the executing State, or by an authority of the executing State with no jurisdiction to recognise or execute a decision, but which transmits the decision *ex officio* to the competent authority for execution;
- (e) Council Framework Decision 2006/783/JHA ⁽⁵¹⁾ shall apply in respect of confiscation orders received before the end of the transition period by the central authority or the competent authority of the executing State, or by an authority in the executing State with no jurisdiction to recognise or execute a confiscation order, but which transmits the confiscation order *ex officio* to the competent authority for execution;
- (f) Council Framework Decision 2008/909/JHA ⁽⁵²⁾ shall apply:
 - (i) in respect of judgments received before the end of the transition period by the competent authority of the executing State, or by an authority of the executing State with no competence to recognise and enforce a judgment, but which transmits the judgment *ex officio* to the competent authority for execution;
 - (ii) for the purposes of Article 4(6) or Article 5(3) of Framework Decision 2002/584/JHA, where that Framework Decision is applicable by virtue of point (b) of this paragraph;
- (g) Council Framework Decision 2008/675/JHA ⁽⁵³⁾ shall apply in respect of new criminal proceedings within the meaning of Article 3 of that Framework Decision that are initiated before the end of the transition period;
- (h) Council Framework Decision 2009/315/JHA ⁽⁵⁴⁾ shall apply in respect of requests for information on conviction received before the end of the transition period by the central authority; however, after the end of the transition period, replies to such requests shall not be transmitted through the European Criminal Records Information System established pursuant to the Council Decision 2009/316/JHA ⁽⁵⁵⁾;

⁽⁴⁶⁾ OJ C 197, 12.7.2000, p. 3.

⁽⁴⁷⁾ OJ C 326, 21.11.2001, p. 2.

⁽⁴⁸⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁽⁴⁹⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽⁵⁰⁾ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

⁽⁵¹⁾ Council Framework Decision 2006/783/JHA of 7 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 54).

⁽⁵²⁾ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

⁽⁵³⁾ Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32).

⁽⁵⁴⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

⁽⁵⁵⁾ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

- (i) Council Framework Decision 2009/829/JHA ⁽⁵⁶⁾ shall apply in respect of decisions on supervision measures received before the end of the transition period by the central authority or the competent authority in the executing State, or by an authority of the executing State with no competence to recognise a decision, but which forwards it *ex officio* to the competent authority for execution;
- (j) Article 10(3) of Directive 2011/93/EU of the European Parliament and the Council ⁽⁵⁷⁾ shall apply in respect of requests for information received before the end of the transition period by the central authority; however, after the end of the transition period, replies to such requests shall not be transmitted through the European Criminal Records Information System established pursuant to Decision 2009/316/JHA;
- (k) Directive 2011/99/EU of the European Parliament and of the Council ⁽⁵⁸⁾ shall apply in respect of European protection orders received before the end of the transition period by the central authority or the competent authority of the executing State, or by an authority of the executing State with no competence to recognise a European protection order, but which forwards it *ex officio* to the competent authority for execution;
- (l) Directive 2014/41/EU of the European Parliament and of the Council ⁽⁵⁹⁾ shall apply in respect of European Investigation Orders received before the end of the transition period by the central authority or the executing authority, or by an authority in the executing State with no competence to recognise or execute a European Investigation Order which forwards it *ex officio* to the executing authority for execution.

2. The competent authorities of the United Kingdom may continue to participate in the joint investigation teams in which they were participating before the end of the transition period, where those investigation teams were set up either in accordance with Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union or in accordance with Council Framework Decision 2002/465/JHA ⁽⁶⁰⁾.

By way of derogation from Article 8 of this Agreement, the United Kingdom shall be entitled to use, for no longer than one year after the end of the transition period, the Secure Information Exchange Network Application (SIENA) to the extent strictly necessary for the purpose of exchanging information within the joint investigation teams referred to in the first subparagraph of this paragraph. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of SIENA. The Union shall communicate the amount of those costs to the United Kingdom by 31 March 2021. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

3. Eurojust may, upon a request by the United Kingdom, subject to compliance with point (a) of Article 26a(7) and Article 27 of Council Decision 2002/187/JHA ⁽⁶¹⁾, provide information, including personal data, from its Case Management system, if necessary to complete the ongoing procedures referred to in points (a), (b), (c), (e) and (l) of paragraph 1 of this Article or the activities of the joint investigation teams referred to in paragraph 2 of this Article. The United Kingdom's competent authorities may, upon request, provide Eurojust with information in their possession if necessary to complete the ongoing procedures referred to in points (a), (b), (c), (e) and (l) of paragraph 1 of this Article or the activities of the joint investigation teams referred to in paragraph 2 of this Article. Where expenses of any extraordinary nature arise out of the application of this paragraph, the Joint Committee shall determine the manner in which such expenses are to be addressed.

⁽⁵⁶⁾ Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p. 20).

⁽⁵⁷⁾ Directive 2011/93/EU of the European Parliament and the Council of 13 December 2011 on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁽⁵⁸⁾ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, p. 2).

⁽⁵⁹⁾ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁽⁶⁰⁾ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

⁽⁶¹⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

Article 63

Ongoing law enforcement cooperation proceedings, police cooperation and exchange of information

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

(a) Articles 39 and 40 of the Convention implementing the Schengen Agreement of 14 June 1985 ("Schengen Implementing Convention") ⁽⁶²⁾, in conjunction with Articles 42 and 43 thereof, shall apply in respect of:

- (i) requests in accordance with Article 39 of the Schengen Implementing Convention that are received before the end of the transition period by the central body responsible in the Contracting Party for international police cooperation or by competent authorities of the requested Party, or by requested police authorities which do not have the power to deal with the request, but which forward the request to the competent authorities;
- (ii) requests for assistance in accordance with Article 40(1) of the Schengen Implementing Convention that are received before the end of the transition period by an authority designated by a Contracting Party;
- (iii) cross-border surveillance that is carried out without prior authorisation in accordance with Article 40(2) of the Schengen Implementing Convention, where that surveillance started before the end of the transition period;

(b) the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations ⁽⁶³⁾ shall apply in respect of:

- (i) requests for information that are received before the end of the transition period by the requested authority;
- (ii) requests for surveillance that are received before the end of the transition period by the requested authority;
- (iii) requests for enquiries that are received before the end of the transition period by the requested authority;
- (iv) requests for notification that are received before the end of the transition period by the requested authority;
- (v) requests for authorisation of cross-border surveillance or for entrusting observation to the officers of the Member State in whose territory observation is carried out that are received before the end of the transition period by an authority designated by the requested Member State that is empowered to grant the requested authorisation or to pass on the request;
- (vi) cross-border surveillance that is carried out without prior authorisation in accordance with Article 40(2) of the Schengen Implementing Convention, where that surveillance started before the end of the transition period;
- (vii) requests to carry out controlled delivery that are received before the end of the transition period by the requested authority;
- (viii) requests to authorise covert investigations that are received before the end of the transition period by the requested authority;
- (ix) joint special investigation teams that are set up pursuant to Article 24 of that Convention before the end of the transition period;

(c) Council Decision 2000/642/JHA ⁽⁶⁴⁾ shall apply in respect of requests that are received before the end of the transition period by the requested Financial Intelligence Unit;

(d) Council Framework Decision 2006/960/JHA ⁽⁶⁵⁾ shall apply in respect of requests that are received before the end of the transition period by the requested competent law enforcement authority;

⁽⁶²⁾ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

⁽⁶³⁾ OJ C 24, 23.1.1998, p. 2.

⁽⁶⁴⁾ Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (OJ L 271, 24.10.2000, p. 4).

⁽⁶⁵⁾ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

- (e) Council Decision 2007/533/JHA ⁽⁶⁶⁾ shall apply in respect of the exchange of supplementary information where there was a hit before the end of the transition period on an alert issued in the Schengen Information System, provided its provisions apply to the United Kingdom on the last day of the transition period. By way of derogation from Article 8 of this Agreement, the United Kingdom shall be entitled to use, for no longer than 3 months after the end of the transition period, the Communication Infrastructure as referred to in Article 8(1) of Decision 2007/533/JHA to the extent strictly necessary for the purpose of exchanging such supplementary information. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of the Communication Infrastructure. The Union shall communicate to the United Kingdom the amount of those costs by 31 March 2021. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed;
- (f) Council Decision 2007/845/JHA ⁽⁶⁷⁾ shall apply in respect of requests received before the end of the transition period by an Asset Recovery Office;
- (g) Directive (EU) 2016/681 of the European Parliament and of the Council ⁽⁶⁸⁾ shall apply in respect of requests received by the passenger information unit in accordance with Articles 9 and 10 of that Directive before the end of the transition period.

2. By way of derogation from Article 8, the United Kingdom shall be entitled to use, for no longer than one year after the end of the transition period, the Secure Information Exchange Network Application (SIENA) to the extent strictly necessary to complete the ongoing procedures referred to in points (c), (d), (f) and (g) of paragraph 1 of this Article. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of SIENA. The Union shall communicate to the United Kingdom the amount of those costs by 31 March 2021. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

Article 64

Confirmation of receipt or arrest

1. The competent issuing or requesting authority may request an acknowledgement of the receipt of a judicial decision or request referred to in points (a), (c) to (e), (f)(i) and (h) to (l) of Article 62(1) and points (a)(i) and (ii), points (b)(i) to (v) and (vii), (viii) and (ix), and points (c), (d), (f) and (g) of Article 63(1) within 10 days after the end of the transition period where it has doubts as to whether such a judicial decision or request was received by the executing or requested authority before the end of the transition period.
2. In the cases referred to in point (b) of Article 62(1), where the competent issuing judicial authority has doubts as to whether the requested person was arrested pursuant to Article 11 of Framework Decision 2002/584/JHA before the end of the transition period, it may request from the competent executing judicial authority a confirmation of the arrest within 10 days after the end of the transition period.
3. Unless confirmation has already been provided pursuant to the applicable provisions of Union law, the executing or requested authority referred to in paragraphs 1 and 2 shall reply to a request for confirmation of receipt or arrest within 10 days after receiving the request.

⁽⁶⁶⁾ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

⁽⁶⁷⁾ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

⁽⁶⁸⁾ 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 L 119, 4.5.2016, p. 132).

*Article 65***Other applicable Union acts**

Directive 2010/64/EU of the European Parliament and of the Council ⁽⁶⁹⁾ and Directive 2012/13/EU of the European Parliament and of the Council ⁽⁷⁰⁾ shall apply in respect of the proceedings referred to in point (b) of Article 62(1) of this Agreement.

TITLE VI

ONGOING JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS*Article 66***Applicable law in contractual and non-contractual matters**

In the United Kingdom, the following acts shall apply as follows:

- (a) Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽⁷¹⁾ shall apply in respect of contracts concluded before the end of the transition period;
- (b) Regulation (EC) No 864/2007 of the European Parliament and of the Council ⁽⁷²⁾ shall apply in respect of events giving rise to damage, where such events occurred before the end of the transition period.

*Article 67***Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities**

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, in respect of legal proceedings instituted before the end of the transition period and in respect of proceedings or actions that are related to such legal proceedings pursuant to Articles 29, 30 and 31 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽⁷³⁾, Article 19 of Regulation (EC) No 2201/2003 or Articles 12 and 13 of Council Regulation (EC) No 4/2009 ⁽⁷⁴⁾, the following acts or provisions shall apply:

- (a) the provisions regarding jurisdiction of Regulation (EU) No 1215/2012;
- (b) the provisions regarding jurisdiction of Regulation (EU) 2017/1001, of Regulation (EC) No 6/2002, of Regulation (EC) No 2100/94, of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁷⁵⁾ and of Directive 96/71/EC of the European Parliament and of the Council ⁽⁷⁶⁾;
- (c) the provisions of Regulation (EC) No 2201/2003 regarding jurisdiction;
- (d) the provisions of Regulation (EC) No 4/2009 regarding jurisdiction.

⁽⁶⁹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽⁷⁰⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁷¹⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

⁽⁷²⁾ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).

⁽⁷³⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

⁽⁷⁴⁾ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

⁽⁷⁵⁾ 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 L 119, 4.5.2016, p. 1).

⁽⁷⁶⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

2. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:

- (a) Regulation (EU) No 1215/2012 shall apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period, and to authentic instruments formally drawn up or registered and court settlements approved or concluded before the end of the transition period;
- (b) the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded before the end of the transition period;
- (c) the provisions of Regulation (EC) No 4/2009 regarding recognition and enforcement shall apply to decisions given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded, and authentic instruments established before the end of the transition period;
- (d) Regulation (EC) No 805/2004 of the European Parliament and of the Council ⁽⁷⁷⁾ shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded and authentic instruments drawn up before the end of the transition period, provided that the certification as a European Enforcement Order was applied for before the end of the transition period.

3. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following provisions shall apply as follows:

- (a) Chapter IV of Regulation (EC) No 2201/2003 shall apply to requests and applications received by the central authority or other competent authority of the requested State before the end of the transition period;
- (b) Chapter VII of Regulation (EC) No 4/2009 shall apply to applications for recognition or enforcement as referred to in point (c) of paragraph 2 of this Article and requests received by the central authority of the requested State before the end of the transition period;
- (c) Regulation (EU) 2015/848 of the European Parliament and of the Council ⁽⁷⁸⁾ shall apply to insolvency proceedings, and actions referred to in Article 6(1) of that Regulation, provided that the main proceedings were opened before the end of the transition period;
- (d) Regulation (EC) No 1896/2006 of the European Parliament and of the Council ⁽⁷⁹⁾ shall apply to European payment orders applied for before the end of the transition period; where, following such an application, the proceedings are transferred according to Article 17(1) of that Regulation, the proceedings shall be deemed to have been instituted before the end of the transition period;
- (e) Regulation (EC) No 861/2007 of the European Parliament and of the Council ⁽⁸⁰⁾ shall apply to small claims procedures for which the application was lodged before the end of the transition period;
- (f) Regulation (EU) No 606/2013 of the European Parliament and of the Council ⁽⁸¹⁾ shall apply to certificates issued before the end of the transition period.

⁽⁷⁷⁾ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15).

⁽⁷⁸⁾ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

⁽⁷⁹⁾ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

⁽⁸⁰⁾ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

⁽⁸¹⁾ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

*Article 68***Ongoing judicial cooperation procedures**

In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

- (a) Regulation (EC) No 1393/2007 of the European Parliament and of the Council ⁽⁸²⁾ shall apply to judicial and extrajudicial documents which were received for the purposes of service before the end of the transition period by one of the following:
 - (i) a receiving agency;
 - (ii) a central body of the State where the service is to be effected; or
 - (iii) diplomatic or consular agents, postal services or judicial officers, officials or other competent persons of the State addressed, as referred to in Articles 13, 14 and 15 of that Regulation;
- (b) Council Regulation (EC) No 1206/2001 ⁽⁸³⁾ shall apply to requests received before the end of the transition period by one of the following:
 - (i) a requested court;
 - (ii) a central body of the State where the taking of evidence is requested; or
 - (iii) a central body or competent authority referred to in Article 17(1) of that Regulation;
- (c) Council Decision 2001/470/EC ⁽⁸⁴⁾ shall apply to requests that were received before the end of the transition period; the requesting contact point may request an acknowledgement of receipt within 7 days of the end of the transition period where it has doubts as to whether the request was received before the end of the transition period.

*Article 69***Other applicable provisions**

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

- (a) Council Directive 2003/8/EC ⁽⁸⁵⁾ shall apply to applications for legal aid that were received by the receiving authority before the end of the transition period. The requesting authority may request an acknowledgement of receipt within 7 days of the end of the transition period where it has doubts as to whether the request was received before that date;
- (b) Directive 2008/52/EC of the European Parliament and of the Council ⁽⁸⁶⁾ shall apply where, before the end of the transition period:
 - (i) the parties agreed to use mediation after the dispute had arisen;
 - (ii) mediation was ordered by the court; or
 - (iii) a court invited the parties to use mediation;
- (c) Council Directive 2004/80/EC ⁽⁸⁷⁾ shall apply to applications received by the deciding authority before the end of the transition period.

2. Point (a) of paragraph 1 and point (a) of paragraph 2 of Article 67 of this Agreement shall also apply in respect of the provisions of Regulation (EU) No 1215/2012 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁸⁸⁾.

⁽⁸²⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

⁽⁸³⁾ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

⁽⁸⁴⁾ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

⁽⁸⁵⁾ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31.1.2003, p. 41).

⁽⁸⁶⁾ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

⁽⁸⁷⁾ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

⁽⁸⁸⁾ OJ L 299, 16.11.2005, p. 62.

3. Point (a) of Article 68 of this Agreement shall also apply with regard to the provisions of Regulation (EC) No 1393/2007 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters ⁽⁸⁹⁾.

TITLE VII

DATA AND INFORMATION PROCESSED OR OBTAINED BEFORE THE END OF THE TRANSITION PERIOD, OR ON THE BASIS OF THIS AGREEMENT

Article 70

Definition

For the purposes of this Title, "Union law on the protection of personal data" means:

- (a) Regulation (EU) 2016/679, with the exception of Chapter VII thereof;
- (b) Directive (EU) 2016/680 of the European Parliament and of the Council ⁽⁹⁰⁾;
- (c) Directive 2002/58/EC of the European Parliament and of the Council ⁽⁹¹⁾;
- (d) any other provisions of Union law governing the protection of personal data.

Article 71

Protection of personal data

1. Union law on the protection of personal data shall apply in the United Kingdom in respect of the processing of personal data of data subjects outside the United Kingdom, provided that the personal data:

- (a) were processed under Union law in the United Kingdom before the end of the transition period; or
- (b) are processed in the United Kingdom after the end of the transition period on the basis of this Agreement.

2. Paragraph 1 shall not apply to the extent the processing of the personal data referred to therein is subject to an adequate level of protection as established in applicable decisions under Article 45(3) of Regulation (EU) 2016/679 or Article 36(3) of Directive (EU) 2016/680.

3. To the extent that a decision referred to in paragraph 2 has ceased to be applicable, the United Kingdom shall ensure a level of protection of personal data essentially equivalent to that under Union law on the protection of personal data in respect of the processing of personal data of data subjects referred to in paragraph 1.

⁽⁸⁹⁾ OJ L 300 17.11.2005, p. 55.

⁽⁹⁰⁾ 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 L 119, 4.5.2016, p. 89).

⁽⁹¹⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

*Article 72***Confidential treatment and restricted use of data and information in the United Kingdom**

Without prejudice to Article 71, in addition to Union law on the protection of personal data, the provisions of Union law on confidential treatment, restriction of use, storage limitation and requirement to erase data and information shall apply in respect of data and information obtained by authorities or official bodies of or in the United Kingdom or by contracting entities, as defined in Article 4 of Directive 2014/25/EU of the European Parliament and of the Council ⁽⁹²⁾, that are of or in the United Kingdom:

- (a) before the end of the transition period; or
- (b) on the basis of this Agreement.

*Article 73***Treatment of data and information obtained from the United Kingdom**

The Union shall not treat data and information obtained from the United Kingdom before the end of the transition period, or obtained after the end of the transition period on the basis of this Agreement, differently from data and information obtained from a Member State, on the sole ground of the United Kingdom having withdrawn from the Union.

*Article 74***Information security**

1. The provisions of Union law on the protection of EU classified information and Euratom classified information shall apply in respect of classified information that was obtained by the United Kingdom either before the end of the transition period or on the basis of this Agreement or that was obtained from the United Kingdom by the Union or a Member State either before the end of the transition period or on the basis of this Agreement.
2. The obligations resulting from Union law regarding industrial security shall apply to the United Kingdom in cases where the tendering, contracting or grant award procedure for the classified contract, classified subcontract or classified grant agreement was launched before the end of the transition period.
3. The United Kingdom shall ensure that cryptographic products that use classified cryptographic algorithms developed under the control of, and evaluated and approved by the Crypto Approval Authority of a Member State or of the United Kingdom, which have been approved by the Union by the end of the transition period and that are present in the United Kingdom, are not transferred to a third country.
4. Any requirements, limitations and conditions set out in the Union approval of cryptographic products shall apply to those products.

⁽⁹²⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

TITLE VIII

ONGOING PUBLIC PROCUREMENT AND SIMILAR PROCEDURES

Article 75

Definition

For the purposes of this Title, "relevant rules" means the general principles of Union law applicable to the award of public contracts, Directives 2009/81/EC ⁽⁹³⁾, 2014/23/EU ⁽⁹⁴⁾, 2014/24/EU ⁽⁹⁵⁾ and 2014/25/EU ⁽⁹⁶⁾ of the European Parliament and of the Council, Regulations (EC) No 2195/2002 ⁽⁹⁷⁾ and (EC) No 1370/2007 ⁽⁹⁸⁾ of the European Parliament and of the Council, Article 4 of Council Regulation (EEC) No 3577/92 ⁽⁹⁹⁾, Articles 11 and 12 of Council Directive 96/67/EC ⁽¹⁰⁰⁾, Articles 16, 17 and 18 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council ⁽¹⁰¹⁾, Articles 6 and 7 of Regulation (EU) 2017/352 of the European Parliament and of the Council ⁽¹⁰²⁾, and any other specific provisions of Union law governing public procurement procedures.

Article 76

Rules applicable to ongoing procedures

1. The relevant rules shall apply:

- (a) without prejudice to point (b), in respect of procedures launched by contracting authorities or contracting entities from the Member States or the United Kingdom under those rules before the end of the transition period and not yet finalised on the last day of the transition period, including procedures using dynamic purchasing systems as well as procedures for which the call for competition takes the form of a prior information notice or periodic indicative notice or a notice on the existence of a qualification system; and
- (b) in respect of the procedures referred to in Article 29(2), (3) and (4) of Directive 2009/81/EC, Article 33(2) to (5) of Directive 2014/24/EU and Article 51(2) of Directive 2014/25/EU which relate to the performance of the following framework agreements concluded by contracting authorities or contracting entities from the Member States or the United Kingdom, including the award of contracts based on such framework agreements:
 - (i) framework agreements concluded before the end of the transition period that have neither expired nor been terminated on the last day of the transition period; or
 - (ii) framework agreements concluded after the end of the transition period in accordance with a procedure that falls under point (a) of this paragraph.

⁽⁹³⁾ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

⁽⁹⁴⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

⁽⁹⁵⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽⁹⁶⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

⁽⁹⁷⁾ Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).

⁽⁹⁸⁾ 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) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

⁽⁹⁹⁾ Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

⁽¹⁰⁰⁾ Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).

⁽¹⁰¹⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

⁽¹⁰²⁾ Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).

2. Without prejudice to the application of any restriction in accordance with Union law, the non-discrimination principle shall be complied with by contracting authorities and contracting entities with regard to tenderers or, as applicable, persons who are otherwise entitled to submit applications, from the Member States and the United Kingdom in relation to the procedures referred to in paragraph 1.

3. A procedure referred to in paragraph 1 shall be considered to have been launched when a call for competition or any other invitation to submit applications has been made in accordance with the relevant rules. Where the relevant rules allow for the use of procedures that do not require the use of a call for competition or other invitations to submit applications, the procedure shall be considered to have been launched when the contracting authority or contracting entity contacted economic operators in relation to the specific procedure.

4. A procedure referred to in paragraph 1 shall be considered finalised:

- (a) upon publication of a contract award notice in accordance with the relevant rules or, where those rules do not require the publication of a contract award notice, upon conclusion of the relevant contract; or
- (b) upon informing tenderers or persons otherwise entitled to submit applications, as the case may be, of the reasons why the contract was not awarded, if the contracting authority or contracting entity decided not to award a contract.

5. This Article shall not affect Union or United Kingdom rules on customs, the movement of goods, the provision of services, the recognition of professional qualifications or intellectual property.

Article 77

Review procedures

Council Directives 89/665/EEC ⁽¹⁰³⁾ and 92/13/EEC ⁽¹⁰⁴⁾ shall apply in respect of the public procurement procedures referred to in Article 76 of this Agreement which fall within the scope of those Directives.

Article 78

Cooperation

By way of derogation from Article 8 of this Agreement, Article 61(2) of Directive 2014/24/EU shall apply for a period not exceeding 9 months from the end of the transition period in respect of the procedures under that Directive that were launched by contracting authorities from the United Kingdom before the end of the transition period and were not yet finalised on the last day of the transition period.

TITLE IX

EURATOM RELATED ISSUES

Article 79

Definitions

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

- (a) "Community" means the European Atomic Energy Community;
- (b) "safeguards" means activities to verify that nuclear material and equipment are not diverted from their intended use as declared by the users and activities to verify that international legal obligations to use nuclear material and equipment for peaceful purposes are honoured;

⁽¹⁰³⁾ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

⁽¹⁰⁴⁾ Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

- (c) "special fissile materials" means special fissile materials as defined in point (1) of Article 197 of the Euratom Treaty;
- (d) "ores" means ores as defined in point (4) of Article 197 of the Euratom Treaty;
- (e) "source materials" means source materials as defined in point (3) of Article 197 of the Euratom Treaty;
- (f) "nuclear material" means ores, source materials and special fissile materials;
- (g) "spent fuel" and "radioactive waste" mean spent fuel and radioactive waste as defined in points (7) and (11) of Article 3 of Council Directive 2011/70/Euratom⁽¹⁰⁵⁾.

Article 80

End of Community responsibility for matters related to the United Kingdom

1. The United Kingdom shall have sole responsibility for ensuring that all ores, source materials and special fissile materials covered by the Euratom Treaty and present on the territory of the United Kingdom at the end of the transition period are handled in accordance with relevant and applicable international treaties and conventions, including but not limited to international treaties and conventions on nuclear safety, safeguards, non-proliferation and physical protection of nuclear materials, and international treaties and conventions on safety of spent fuel management and the safety of radioactive waste management.
2. The United Kingdom shall have sole responsibility for ensuring its compliance with international obligations arising as a consequence of its membership of the International Atomic Energy Agency or as a consequence of the Treaty on the Non-Proliferation of Nuclear Weapons or any other relevant international treaties or conventions to which the United Kingdom is a party.

Article 81

Safeguards

The United Kingdom shall implement a safeguards regime. This safeguards regime shall apply a system offering equivalent effectiveness and coverage as that provided by the Community in the territory of the United Kingdom in line with the Agreement between the United Kingdom of Great Britain and Northern Ireland, the European Atomic Energy Community and the International Atomic Energy Agency for the Application of Safeguards in the United Kingdom of Great Britain and Northern Ireland in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons [INFCIRC/263], as amended.

Article 82

Specific obligations under international agreements

The United Kingdom shall ensure that any specific obligations under agreements concluded by the Community with third countries or international organisations in relation to any nuclear equipment, nuclear material or other nuclear items present on the territory of the United Kingdom at the end of the transition period are fulfilled, or otherwise identify appropriate arrangements in agreement with the third country or international organisation concerned.

Article 83

Ownership and rights of use and consumption of special fissile materials in the United Kingdom

1. Special fissile materials present on the territory of the United Kingdom in respect of which Article 86 of the Euratom Treaty applied until the end of the transition period shall cease to be the property of the Community at the end of the transition period.

⁽¹⁰⁵⁾ Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ L 199, 2.8.2011, p. 48).

2. Special fissile materials referred to in paragraph 1 shall become the property of the persons or undertakings that had unlimited right of use and consumption of those materials at the end of the transition period in accordance with Article 87 of the Euratom Treaty.

3. Where the right of use and consumption of special fissile materials referred to in paragraph 2 ("materials concerned") is with a Member State, or with persons or undertakings established in the territory of a Member State, in order to protect the integrity of the common supply policy established under Chapter 6 of Title II of the Euratom Treaty and of the nuclear common market established under Chapter 9 of that Title, including with regard to the level of safeguards applicable to the materials concerned, the following shall apply:

- (a) having regard to Article 5 of this Agreement, the Community shall have the right to require that the materials concerned be deposited with the Agency established under point (b) of Article 52(2) of the Euratom Treaty or in other stores which are or can be supervised by the European Commission;
- (b) the Community shall have the right to conclude contracts relating to the supply of the materials concerned to any person or undertaking established in the territory of the United Kingdom or in a third country in accordance with Article 52(2) of the Euratom Treaty;
- (c) Article 20 of Commission Regulation (Euratom) No 302/2005 ⁽¹⁰⁶⁾, with the exception of points (b) and (c) of paragraph 1, shall apply in respect of the materials concerned;
- (d) the export of the materials concerned to a third country shall be authorised by the competent authorities of the Member State in which the person or undertaking with the right to use and consume the materials concerned is established in accordance with Article 9(2) of Council Regulation (EC) No 428/2009 ⁽¹⁰⁷⁾;
- (e) in respect of the materials concerned, the Community shall have the right to exert any other rights arising under the Euratom Treaty from ownership pursuant to Article 86 of that Treaty.

4. Member States, persons or undertakings that have the unlimited right of use and consumption of special fissile materials present on the territory of the United Kingdom at the end of the transition period shall retain that right.

Article 84

Equipment and other property related to the provision of safeguards

1. Community equipment and other property related to the provision of safeguards under the Euratom Treaty located in the United Kingdom at the end of the transition period, as set out at Annex V, shall become the property of the United Kingdom. The United Kingdom shall reimburse to the Union the value of that equipment and other property, the calculation of which shall be based on the value assigned to that equipment and other property in the consolidated accounts for the year 2020.

2. The United Kingdom shall assume all of the Community's rights, liabilities and obligations associated with the equipment and other property referred to in paragraph 1.

Article 85

Spent fuel and radioactive waste

Article 4(1) and (2) and the first subparagraph of Article 4(4) of Directive 2011/70/Euratom shall apply in respect of the United Kingdom's ultimate responsibility for spent fuel and radioactive waste that was generated in the United Kingdom and is present on the territory of a Member State at the end of the transition period.

⁽¹⁰⁶⁾ Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards (OJ L 54, 28.2.2005, p. 1).

⁽¹⁰⁷⁾ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

TITLE X

UNION JUDICIAL AND ADMINISTRATIVE PROCEDURES

Chapter 1

JUDICIAL PROCEDURES

Article 86

Pending cases before the Court of Justice of the European Union

1. The Court of Justice of the European Union shall continue to have jurisdiction in any proceedings brought by or against the United Kingdom before the end of the transition period. Such jurisdiction shall apply to all stages of proceedings, including appeal proceedings before the Court of Justice and proceedings before the General Court where the case is referred back to the General Court.
2. The Court of Justice of the European Union shall continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period.
3. For the purposes of this Chapter, proceedings shall be considered as having been brought before the Court of Justice of the European Union, and requests for preliminary rulings shall be considered as having been made, at the moment at which the document initiating the proceedings has been registered by the registry of the Court of Justice or the General Court, as the case may be.

Article 87

New cases before the Court of Justice

1. If the European Commission considers that the United Kingdom has failed to fulfil an obligation under the Treaties or under Part Four of this Agreement before the end of the transition period, the European Commission may, within 4 years after the end of the transition period, bring the matter before the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.
2. If the United Kingdom does not comply with a decision referred to in Article 95(1) of this Agreement, or fails to give legal effect in the United Kingdom's legal order to a decision, as referred to in that provision, that was addressed to a natural or legal person residing or established in the United Kingdom, the European Commission may, within 4 years from the date of the decision concerned, bring the matter to the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.
3. In deciding to bring matters under this Article, the European Commission shall apply the same principles in respect of the United Kingdom as in respect of any Member State.

Article 88

Procedural rules

The provisions of Union law governing the procedure before the Court of Justice of the European Union shall apply in respect of the proceedings and requests for preliminary rulings referred to in this Title.

Article 89

Binding force and enforceability of judgments and orders

1. Judgments and orders of the Court of Justice of the European Union handed down before the end of the transition period, as well as such judgments and orders handed down after the end of the transition period in proceedings referred to in Articles 86 and 87, shall have binding force in their entirety on and in the United Kingdom.

2. If, in a judgment referred to in paragraph 1, the Court of Justice of the European Union finds that the United Kingdom has failed to fulfil an obligation under the Treaties or this Agreement, the United Kingdom shall take the necessary measures to comply with that judgment.

3. Articles 280 and 299 TFEU shall apply in the United Kingdom in respect of the enforcement of the judgments and orders of the Court of Justice of the European Union referred to in paragraph 1 of this Article.

Article 90

Right to intervene and participate in the procedure

Until the judgments and orders of the Court of Justice of the European Union in all proceedings and requests for preliminary rulings referred to in Article 86 have become final, the United Kingdom may intervene in the same way as a Member State or, in the cases brought before the Court of Justice of the European Union in accordance with Article 267 TFEU, participate in the procedure before the Court of Justice of the European Union in the same way as a Member State. During that period, the Registrar of the Court of Justice of the European Union shall notify the United Kingdom, at the same time and in the same manner as the Member States, of any case referred to the Court of Justice of the European Union for a preliminary ruling by a court or tribunal of a Member State.

The United Kingdom may also intervene or participate in the procedure before the Court of Justice of the European Union in the same way as a Member State:

- (a) in relation to cases which concern a failure to fulfil obligations under the Treaties, where the United Kingdom was subject to the same obligations before the end of the transition period, and where such cases are brought before the Court of Justice of the European Union in accordance with Articles 258 TFEU before the end of the period referred to in Article 87(1) or, as the case may be, until the moment, after the end of that period, at which the last judgment or order rendered by the Court of Justice of the European Union on the basis of Article 87(1) has become final;
- (b) in relation to cases which concern acts or provisions of Union law which were applicable before the end of the transition period to and in the United Kingdom and which are brought before Court of Justice of the European Union in accordance with Article 267 TFEU before the end of the period referred to in Article 87(1) or, as the case may be, until the moment, after the end of that period, at which the last judgment or order rendered by the Court of Justice on the basis of Article 87(1) has become final; and
- (c) in relation to the cases referred to in Article 95(3).

Article 91

Representation before the Court

1. Without prejudice to Article 88, where, before the end of the transition period, a lawyer authorised to practise before the courts or tribunals of the United Kingdom represented or assisted a party in proceedings before the Court of Justice of the European Union or in relation to requests for preliminary rulings made before the end of the transition period, that lawyer may continue to represent or assist that party in those proceedings or in relation to those requests. This right shall apply to all stages of proceedings, including appeal proceedings before the Court of Justice and proceedings before the General Court after a case has been referred back to it.

2. Without prejudice to Article 88, lawyers authorised to practise before the courts or tribunals of the United Kingdom may represent or assist a party before the Court of Justice of the European Union in the cases referred to in Article 87 and Article 95(3). Lawyers authorised to practise before the courts or tribunals of the United Kingdom may also represent or assist the United Kingdom in the proceedings covered by Article 90 in which the United Kingdom has decided to intervene or participate.

3. When representing or assisting a party before the Court of Justice of the European Union in the cases referred to in paragraphs 1 and 2, lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States representing or assisting a party before the Court of Justice of the European Union.

Chapter 2

ADMINISTRATIVE PROCEDURES

Article 92

Ongoing administrative procedures

1. The institutions, bodies, offices and agencies of the Union shall continue to be competent for administrative procedures which were initiated before the end of the transition period concerning:

- (a) compliance with Union law by the United Kingdom, or by natural or legal persons residing or established in the United Kingdom; or
- (b) compliance with Union law relating to competition in the United Kingdom.

2. Without prejudice to paragraph 3, for the purposes of this Chapter an administrative procedure shall be considered as having been initiated at the moment at which it has been formally registered with the Union institution, body, office or agency.

3. For the purposes of this Chapter:

- (a) an administrative procedure on State aid governed by Council Regulation (EU) 2015/1589 ⁽¹⁰⁸⁾ shall be considered as having been initiated at the moment at which the procedure has been allocated a case number;
- (b) proceedings for the application of Article 101 or 102 TFEU conducted by the European Commission under Council Regulation (EC) No 1/2003 ⁽¹⁰⁹⁾ shall be considered as having been initiated at the moment at which the European Commission has decided to initiate proceedings in accordance with Article 2(1) of Commission Regulation (EC) No 773/2004 ⁽¹¹⁰⁾;
- (c) proceedings in connection with the control of concentrations between undertakings governed by Council Regulation (EC) No 139/2004 ⁽¹¹¹⁾ shall be considered as having been initiated at the moment at which:
 - (i) a concentration of Union dimension has been notified to the European Commission in accordance with Articles 1, 3 and 4 of Regulation (EC) No 139/2004;
 - (ii) the time limit of 15 working days referred to in Article 4(5) of Regulation (EC) No 139/2004 has expired without any of the Member States competent to examine the concentration under their national competition law having expressed its disagreement as regards the request to refer the case to the European Commission; or
 - (iii) the European Commission has decided, or is deemed to have decided, to examine the concentration in accordance with Article 22(3) of Regulation (EC) No 139/2004;
- (d) an investigation by the European Securities and Markets Authority of an alleged infringement listed in Annex III to Regulation (EC) No 1060/2009 of the European Parliament and of the Council ⁽¹¹²⁾ or Annex I to Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹¹³⁾ shall be considered as having been initiated at the moment at which that Authority has appointed an independent investigating officer in accordance with Article 23e(1) of Regulation (EC) No 1060/2009 or Article 64(1) of Regulation (EU) No 648/2012.

4. The Union shall provide the United Kingdom with a list of all individual ongoing administrative procedures that fall within the scope of paragraph 1 within 3 months after the end of the transition period. By way of derogation from the first sentence, in the case of individual ongoing administrative procedures of the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority, the Union shall provide the United Kingdom with a list of such ongoing administrative procedures within 1 month after the end of the transition period.

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

⁽¹⁰⁹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽¹¹⁰⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

⁽¹¹¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

⁽¹¹²⁾ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

⁽¹¹³⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

5. In an administrative procedure on State aid governed by Regulation (EU) 2015/1589, the European Commission shall be bound in relation to the United Kingdom by the applicable case law and best practices, as if the United Kingdom were still a Member State. In particular, the European Commission shall, within a reasonable period of time, adopt one of the following decisions:

- (a) a decision finding that the measure does not constitute aid pursuant to Article 4(2) of Regulation (EU) 2015/1589;
- (b) a decision not to raise objections pursuant to Article 4(3) of Regulation (EU) 2015/1589;
- (c) a decision to initiate formal investigation proceedings pursuant to Article 4(4) of Regulation (EU) 2015/1589.

Article 93

New State aid and European Anti-Fraud Office procedures

1. In respect of aid granted before the end of the transition period, for a period of 4 years after the end of the transition period, the European Commission shall be competent to initiate new administrative procedures on State aid governed by Regulation (EU) 2015/1589 concerning the United Kingdom.

The European Commission shall continue to be competent after the end of the 4-year period for procedures initiated before the end of that period.

Article 92(5) of this Agreement shall apply *mutatis mutandis*.

The European Commission shall inform the United Kingdom of any new administrative proceedings on State aid initiated under the first subparagraph of this paragraph within 3 months of initiating it.

2. Without prejudice to Articles 136 and 138 of this Agreement, for a period of 4 years after the end of the transition period, the European Anti-Fraud Office (OLAF) shall be competent to initiate new investigations governed by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁴⁾ in respect of:

- (a) facts that occurred before the end of the transition period; or
- (b) any customs debt arising after the end of the transition period from the discharge procedures referred to in Article 49 (1) of this Agreement.

OLAF shall continue to be competent after the end of the 4-year period for procedures initiated before the end of that period.

OLAF shall inform the United Kingdom of any new investigation initiated under the first subparagraph of this paragraph within 3 months of initiating that investigation.

Article 94

Procedural rules

1. The provisions of Union law governing the different types of administrative procedures covered by this Chapter shall apply to the procedures referred to in Articles 92, 93 and 96.

2. When representing or assisting a party in relation to the administrative procedures referred to in Articles 92 and 93, the lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States who represent or assist a party in relation to such administrative procedures.

⁽¹⁴⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

3. Article 128(5) shall apply to the extent necessary for any procedures referred to in Articles 92 and 93 after the end of the transition period.

Article 95

Binding force and enforceability of decisions

1. Decisions adopted by institutions, bodies, offices and agencies of the Union before the end of the transition period, or adopted in the procedures referred to in Articles 92 and 93 after the end of the transition period, and addressed to the United Kingdom or to natural and legal persons residing or established in the United Kingdom, shall be binding on and in the United Kingdom.

2. Unless otherwise agreed between the European Commission and the designated national competition authority of the United Kingdom, the European Commission shall continue to be competent to monitor and enforce commitments given or remedies imposed in, or in relation to, the United Kingdom in connection with any proceedings for the application of Articles 101 or 102 TFEU conducted by the European Commission under Regulation (EC) No 1/2003 or proceedings conducted by the European Commission under Regulation (EC) No 139/2004 in connection with the control of concentrations between undertakings. If so agreed between the European Commission and the designated national competition authority of the United Kingdom, the European Commission shall transfer the monitoring and enforcement of such commitments or remedies in the United Kingdom to the designated national competition authority of the United Kingdom.

3. The legality of a decision referred to in paragraph 1 of this Article shall be reviewed exclusively by the Court of Justice of the European Union in accordance with Article 263 TFEU.

4. Article 299 TFEU shall apply in the United Kingdom in respect of the enforcement of decisions referred to in paragraph 1 of this Article that impose pecuniary obligations on natural and legal persons residing or established in the United Kingdom.

Article 96

Other ongoing procedures and reporting obligations

1. Technical examinations conducted by United Kingdom Examination Offices in cooperation with the Community Plant Variety Office pursuant to Regulation (EC) No 2100/94 which were ongoing on the day before the date of entry into force of this Agreement shall continue and be concluded in compliance with that Regulation.

2. Article 12(2a) and (3) and Articles 14, 15 and 16 of Directive 2003/87/EC of the European Parliament and of the Council ⁽¹¹⁵⁾ shall apply to and in the United Kingdom in respect of greenhouse gases emitted during the last year of the transition period.

3. Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council ⁽¹¹⁶⁾ and Articles 26 and 27 of Regulation (EC) No 1005/2009 of the European Parliament and of the Council ⁽¹¹⁷⁾ shall apply to and in the United Kingdom in respect of data reporting for the last year of the transition period.

⁽¹¹⁵⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁽¹¹⁶⁾ Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195).

⁽¹¹⁷⁾ Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1).

4. Article 8(1), (2), (3) and (7) of Regulation (EC) 443/2009 of the European Parliament and of the Council ⁽¹¹⁸⁾, and Annex II to that Regulation, and Article 8(1), (2), (3), (8) and (10) of Regulation (EU) 510/2011 of the European Parliament and of the Council ⁽¹¹⁹⁾, and Annex II to that Regulation, as well as Articles 2 to 5, 7 and 8(2) and (3) of Commission Regulation (EU) No 1014/2010 and Articles 3 to 6 and 8 and Article 9(2) and (3) of Commission Implementing Regulation (EU) No 293/2012 ⁽¹²⁰⁾ shall apply to and in the United Kingdom in respect of the monitoring and reporting of relevant vehicle carbon dioxide emissions during the last year of the transition period.

5. Articles 5, 7, 9 and 10, Article 11(3), points (a) and (d) of Article 17(1), and Articles 19, 22 and 23 of Regulation (EU) No 525/2013 of the European Parliament and of the Council ⁽¹²¹⁾ and Articles 3, 7 and 11 of Decision No 406/2009/EC of the European Parliament and of the Council ⁽¹²²⁾ shall apply to the United Kingdom in respect of greenhouse gases emitted during 2019 and 2020, and Article 5 of Commission Regulation (EU) No 389/2013 ⁽¹²³⁾ shall apply to the United Kingdom until the closure of the second commitment period of the Kyoto Protocol.

6. By way of derogation from Article 8 of this Agreement:

- (a) to the extent necessary to comply with paragraphs 2, 4 and 5 of this Article, the United Kingdom and operators in the United Kingdom shall have access to:
 - (i) the Union Registry and the United Kingdom's Kyoto Protocol Registry established by Regulation (EU) No 389/2013; and
 - (ii) the Central Data Repository of the European Environment Agency as provided for by Regulation (EU) No 1014/2010, Implementing Regulation (EU) No 293/2012 and Commission Implementing Regulation (EU) No 749/2014 ⁽¹²⁴⁾;
- (b) to the extent necessary to comply with paragraph 3 of this Article undertakings in the United Kingdom shall have access to:
 - (i) the reporting tool based on the format set out in the Annex to Commission Implementing Regulation (EU) No 1191/2014 ⁽¹²⁵⁾ for the purposes of managing and reporting on fluorinated greenhouse gases; and
 - (ii) the Business Data Repository used for reporting by undertakings under Article 27 of Regulation (EC) No 1005/2009.

Upon a request from the United Kingdom, for a period ending one year after the end of the transition period, the Union shall provide the necessary information for the United Kingdom to:

- (a) comply with its reporting obligations under Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer; and
- (b) apply penalties in accordance with Article 25 of Regulation (EU) No 517/2014 and Article 29 of Regulation (EC) No 1005/2009.

⁽¹¹⁸⁾ Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1).

⁽¹¹⁹⁾ Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1).

⁽¹²⁰⁾ Commission Implementing Regulation (EU) No 293/2012 of 3 April 2012 on monitoring and reporting of data on the registration of new light commercial vehicles pursuant to Regulation (EU) No 510/2011 of the European Parliament and of the Council (OJ L 98, 4.4.2012, p. 1).

⁽¹²¹⁾ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

⁽¹²²⁾ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

⁽¹²³⁾ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

⁽¹²⁴⁾ Commission Implementing Regulation (EU) No 749/2014 of 30 June 2014 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 203, 11.7.2014, p. 23).

⁽¹²⁵⁾ Commission Implementing Regulation (EU) No 1191/2014 of 30 October 2014 determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases (OJ L 318, 5.11.2014, p. 5).

*Article 97***Representation in ongoing proceedings before the European Union Intellectual Property Office**

Where, before the end of the transition period, a person who is authorised to represent a natural or legal person before the European Union Intellectual Property Office in accordance with Union law was representing a party in a procedure brought before that Office, that representative may continue to represent that party in that procedure. This right shall apply to all stages of the procedure before that Office.

When representing a party before the European Union Intellectual Property Office in the proceedings referred to in the first subparagraph, such representative shall in every respect be treated as a professional representative authorised to represent a natural or legal person before the European Union Intellectual Property Office in accordance with Union law.

*TITLE XI***ADMINISTRATIVE COOPERATION PROCEDURES BETWEEN MEMBER STATES AND THE UNITED KINGDOM***Article 98***Administrative cooperation for customs**

1. Administrative cooperation procedures between a Member State and the United Kingdom set out in Annex VI that were launched in accordance with Union law before the end of the transition period shall be completed by that Member State and the United Kingdom in accordance with the relevant provisions of Union law.
2. Administrative cooperation procedures between a Member State and the United Kingdom set out in Annex VI that are launched within a period of 3 years after the end of the transition period but concern facts that occurred before the end of the transition period shall be completed by that Member State and the United Kingdom in accordance with the relevant provisions of Union law.

*Article 99***Administrative cooperation for matters related to indirect tax**

1. Council Regulation (EU) No 904/2010⁽¹²⁶⁾ shall apply until 4 years after the end of the transition period in respect of cooperation between the competent authorities responsible for the application of the legislation on VAT in the Member States and the United Kingdom in relation to transactions that took place before the end of the transition period and in relation to transactions covered by Article 51(1) of this Agreement.
2. Council Regulation (EU) No 389/2012⁽¹²⁷⁾ shall apply until 4 years after the end of the transition period in respect of cooperation between the competent authorities responsible for the application of the legislation on excise duties in the Member States and the United Kingdom in relation to movements of excise goods that took place before the end of the transition period and in relation to movements of excise goods covered by Article 52 of this Agreement.
3. By way of derogation from Article 8, the United Kingdom shall have access, to the extent strictly necessary to exercise its rights and comply with obligations under this Article, to the networks, information systems and databases listed in Annex IV. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating that access. The Union shall communicate to the United Kingdom the amount of those costs by 31 March of each year until the end of the period referred to in Annex IV. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

⁽¹²⁶⁾ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

⁽¹²⁷⁾ Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

*Article 100***Mutual assistance for the recovery of claims relating to taxes, duties and other measures**

1. Council Directive 2010/24/EU ⁽¹²⁸⁾ shall apply until 5 years after the end of the transition period between the Member States and the United Kingdom in respect of claims relating to amounts that became due before the end of the transition period, claims relating to transactions that took place before the end of the transition period but where the amounts became due after that period, and claims relating to transactions covered by Article 51(1) of this Agreement or movements of excise goods covered by Article 52 of this Agreement.
2. By way of derogation from Article 8, the United Kingdom shall have access, to the extent strictly necessary to exercise its rights and comply with obligations under this Article, to the networks, information systems and databases listed in Annex IV. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating that access. The Union shall communicate to the United Kingdom the amount of those costs by 31 March of each year until the end of the period referred to in Annex IV. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

*TITLE XII***PRIVILEGES AND IMMUNITIES***Article 101***Definitions**

1. For the purposes of this Title, "members of the institutions" means, irrespective of their nationality, the President of the European Council, the members of the European Commission, the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, the members of the Court of Auditors, the members of the organs of the European Central Bank, the members of the organs of the European Investment Bank, as well as all other persons assimilated to any of those categories of persons under Union law for the purposes of Protocol (No 7) on the Privileges and Immunities of the European Union ("Protocol on the Privileges and Immunities"). The term "members of the institutions" does not include members of the European Parliament.
2. Regulation (EURATOM, ECSC, EEC) No 549/69 of the Council ⁽¹²⁹⁾ shall apply to determine the categories of officials and other servants covered by Articles 110 to 113 of this Agreement.

*Chapter 1***PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE UNION***Article 102***Inviolability**

Article 1 of the Protocol on the Privileges and Immunities shall apply in respect of premises, buildings, property and assets of the Union in the United Kingdom used by the Union before the end of the transition period, until they are no longer in official use or have been removed from the United Kingdom. The Union shall notify the United Kingdom when its premises, buildings, property or assets are no longer in such use or have been removed from the United Kingdom.

⁽¹²⁸⁾ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

⁽¹²⁹⁾ Regulation (EURATOM, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1).

*Article 103***Archives**

Article 2 of the Protocol on the Privileges and Immunities shall apply in respect of all archives of the Union in the United Kingdom at the end of the transition period, until they have been removed from the United Kingdom. The Union shall notify the United Kingdom of the removal of any of its archives from the United Kingdom.

*Article 104***Taxation**

Article 3 of the Protocol on the Privileges and Immunities shall apply in respect of the Union's assets, revenues and other property in the United Kingdom at the end of the transition period, until they are no longer in official use or have been removed from the United Kingdom.

Chapter 2

COMMUNICATIONS*Article 105***Communications**

Article 5 of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of the official communications, official correspondence, and transmission of documents in relation to activities of the Union pursuant to this Agreement.

Chapter 3

MEMBERS OF THE EUROPEAN PARLIAMENT*Article 106***Immunity of members of the European Parliament**

Article 8 of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of opinions expressed or votes cast before the end of the transition period by members of the European Parliament, including former members, irrespective of their nationality, in the performance of their duties.

*Article 107***Social security**

Former members of the European Parliament, irrespective of their nationality, who draw a pension in that capacity, as well as persons entitled to survivor's pensions as survivors of former members, irrespective of their nationality, shall be exempted from obligatory affiliation to and payment into national social security systems in the United Kingdom, under the same conditions as were applicable on the last day of the transition period, provided that the former members of the European Parliament were members of the European Parliament before the end of the transition period.

*Article 108***Avoidance of double taxation on pensions and transitional allowances**

Articles 12, 13 and 14 of Decision 2005/684/EC, Euratom of the European Parliament ⁽¹³⁰⁾ shall apply in the United Kingdom in respect of pensions and transitional allowances paid to former members of the European Parliament, irrespective of their nationality, and Article 17 of that Decision shall apply in respect of persons entitled to survivor's pensions as survivors of former members, irrespective of their nationality, to the extent that the entitlement to a pension or transitional allowance was earned before the end of the transition period.

Chapter 4

REPRESENTATIVES OF MEMBER STATES AND OF THE UNITED KINGDOM TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE UNION*Article 109***Privileges, immunities and facilities**

1. Article 10 of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of representatives of Member States and of the United Kingdom who take part in the work of the institutions, bodies, offices and agencies of the Union, of their advisers and technical experts, and of members of the advisory bodies of the Union, irrespective of their nationality, as regards their participation in such work:

- (a) that took place before the end of the transition period;
- (b) that takes place after the end of the transition period in connection with activities of the Union pursuant to this Agreement.

2. Article 10 of the Protocol on the Privileges and Immunities shall apply in the Union in respect of representatives of the United Kingdom who take part in the work of the institutions, bodies, offices and agencies of the Union, and of their advisers and technical experts, as regards their participation in such work:

- (a) that took place before the end of the transition period;
- (b) that takes place after the end of the transition period in connection with activities of the Union pursuant to this Agreement.

Chapter 5

MEMBERS OF THE INSTITUTIONS, OFFICIALS AND OTHER SERVANTS*Article 110***Privileges and Immunities**

1. Article 11(a) of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of acts performed, including in respect of their words spoken or written, by members of the institutions, officials and other servants of the Union, including former members, former officials and former other servants, of any nationality, in their official capacity:

- (a) before the end of the transition period;
- (b) after the end of the transition period in connection with activities of the Union pursuant to this Agreement.

⁽¹³⁰⁾ Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ L 262, 7.10.2005, p. 1).

2. The first, second and third paragraphs of Article 3 of Protocol (No 3) on the Statute of the Court of Justice of the European Union shall apply in the United Kingdom in respect of the Judges of the Court of Justice of the European Union and the Advocates-General until the decisions of the Court of Justice of the European Union in all proceedings and requests for preliminary rulings referred to in Articles 86 and 87 of this Agreement have become final, and shall apply thereafter, including in respect of former Judges and former Advocates-General, as regards all acts performed by them in their official capacity, including words spoken or written, before the end of the transition period or in relation to the proceedings referred to in Articles 86 and 87.

3. Article 11(b) to (e) of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of officials and other servants of the Union of any nationality, as well as in respect of their spouses and dependent members of their families, irrespective of their nationality, if those officials or other servants entered the service of the Union before the end of the transition period, until those persons have completed their relocation to the Union.

Article 111

Taxation

Article 12 of the Protocol on the Privileges and Immunities shall apply in the United Kingdom in respect of members of the institutions, officials and other servants of the Union of any nationality, including former members, former officials and former other servants, if those members, officials or other servants entered the service of the Union before the end of the transition period, provided that the persons concerned are liable to pay tax for the benefit of the Union on the salaries, wages, emoluments and pensions paid to them by the Union.

Article 112

Domicile for tax purposes

1. Article 13 of the Protocol on the Privileges and Immunities shall apply in respect of members of the institutions, officials and other servants of the Union of any nationality, who entered the service of the Union before the end of the transition period, as well as, irrespective of their nationality, in respect of spouses not separately engaged in a gainful occupation and children who are dependent on and in the care of such members, officials or other servants.

2. Paragraph 1 shall apply only in respect of persons who established their residence in a Member State solely by reason of the performance of their duties in the service of the Union and who had their domicile in the United Kingdom for tax purposes at the time of entering the service of the Union, and in respect of persons who established their residence in the United Kingdom solely by reason of the performance of their duties in the service of the Union and who had their domicile for tax purposes in a Member State at the time of entering the service of the Union.

Article 113

Social security contributions

Members of the institutions, officials and other servants of the Union of any nationality, including former members, former officials and former other servants, who entered the service of the Union before the end of the transition period and who reside in the United Kingdom, as well as, irrespective of their nationality, spouses not separately engaged in a gainful occupation and children who are dependent on and in the care of such members, officials or other servants, shall be exempted from obligatory affiliation to and payment into national social security systems in the United Kingdom, under the same conditions as were applicable on the last day of the transition period, provided that the persons concerned are affiliated to the social security scheme of the Union.

*Article 114***Transfer of pension rights**

In respect of officials and other servants of the Union of any nationality, including former officials and former other servants, who entered the service of the Union before the end of the transition period and who seek to transfer pension rights out of or into the United Kingdom pursuant to Article 11(1), (2) or (3) and Article 12 of Annex VIII to the Staff Regulations of Officials of the European Union ⁽¹³¹⁾ or Articles 39, 109 and 135 of the Conditions of Employment of Other Servants of the European Union, the obligations of the United Kingdom shall be the same as those existing before the end of the transition period.

*Article 115***Unemployment insurance**

Articles 28a, 96, and 136 of the Conditions of Employment of Other Servants of the European Union shall apply in respect of other servants of the Union of any nationality, including former other servants, who contributed to the Union's unemployment scheme before the end of the transition period if they reside in the United Kingdom and are registered with the unemployment authorities of the United Kingdom after the end of the transition period.

*Chapter 6***OTHER PROVISIONS***Article 116***Waiver of immunities and cooperation**

1. Articles 17 and 18 of the Protocol on the Privileges and Immunities shall apply in respect of privileges, immunities and facilities accorded by this Title.
2. When taking a decision under Article 17 of the Protocol on the Privileges and Immunities on whether to waive immunity upon the request of the authorities of the United Kingdom, the Union shall afford the same consideration as it affords to requests from the authorities of the Member States in comparable situations.
3. Upon the request of the authorities of the United Kingdom, the Union shall notify those authorities of the status of any person which is relevant to that person's entitlement to a privilege or immunity under this Title.

*Article 117***European Central Bank**

1. This Title shall apply in respect of the European Central Bank ("ECB"), the members of its organs, its staff, and the representatives of the national central banks in the European System of Central Banks ("ESCB") who take part in the activities of the ECB.
2. The second paragraph of Article 22 of the Protocol on the Privileges and Immunities shall apply in respect of the ECB, the members of its organs, its staff, the representatives of the national central banks in the ESCB who take part in the activities of the ECB, and any property, assets and operations of the ECB in the United Kingdom held, managed or conducted pursuant to Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank.
3. Paragraph 2 shall apply in respect of:
 - (a) such property and assets of the ECB that are held in the United Kingdom at the end of the transition period; and

⁽¹³¹⁾ Staff Regulations of Officials of the European Union as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (b) such operations of the ECB in the United Kingdom or with United Kingdom counterparts, and ancillary activities related thereto, that were ongoing at the end of the transition period, or that are initiated after the end of the transition period as part of its activities to sustain operations that were ongoing at the end of the transition period, until their final maturity, disposal or completion.

Article 118

European Investment Bank

1. This Title shall apply in respect of the European Investment Bank ("EIB"), the members of its organs, its staff and the representatives of the Member States who take part in its activities, as well as to any subsidiaries or any other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund.
2. The second paragraph of Article 21 of the Protocol on the Privileges and Immunities shall apply in respect of the EIB, the members of its organs, its staff and the representatives of the Member States who take part in its activities, as well as to any subsidiaries or any other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund.
3. Paragraph 2 shall apply in respect of:
 - (a) such property and assets of the EIB or of any subsidiaries and other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund, that are held in the United Kingdom at the end of the transition period; and
 - (b) such borrowing, financing, guarantee, investment, treasury and technical assistance operations of the EIB and of any subsidiaries and other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund, in the United Kingdom or with United Kingdom counterparts, and ancillary activities related thereto, that were ongoing at the end of the transition period or that are initiated after the end of the transition period, as part of their activities to sustain operations that were ongoing at the end of the transition period until their final maturity, disposure, or completion.

Article 119

Host agreements

The Headquarters Agreement between the United Kingdom and the European Banking Authority of 8 May 2012, the Exchange of Letters concerning the Application in the United Kingdom of the Protocol on the Privileges and Immunities of the European Communities to the European Agency for the Evaluation of Medicinal Products of 24 June 1996, and the Agreement on the Hosting of the Galileo Security Monitoring Centre of 17 July 2013 shall apply, respectively, to the European Banking Authority, the European Medicines Agency and the Galileo Security Monitoring Centre, until their relocation to a Member State is completed. The date of notification by the Union of the completion date of the relocation shall constitute the termination date of those host agreements.

TITLE XIII

OTHER ISSUES RELATING TO THE FUNCTIONING OF THE INSTITUTIONS, BODIES, OFFICES AND AGENCIES OF THE UNION

Article 120

Obligation of professional secrecy

Article 339 TFEU and other provisions of Union law that impose an obligation of professional secrecy on certain individuals and institutions, bodies, offices and agencies of the Union shall apply in the United Kingdom in respect of any information of the kind covered by obligations of professional secrecy either obtained before the end of the transition

period or obtained after the end of the transition period in connection with activities of the Union pursuant to this Agreement. The United Kingdom shall respect such obligations of individuals and institutions, bodies, offices and agencies and shall ensure that they are complied with in its territory.

Article 121

Obligation of professional discretion

Article 19 of the Staff Regulations of Officials of the European Union and other provisions of Union law that impose an obligation of professional discretion on certain individuals shall apply in the United Kingdom in respect of any information either obtained before the end of the transition period or obtained after the end of the transition period in connection with activities of the Union pursuant to this Agreement. The United Kingdom shall respect such obligations of individuals and shall ensure that they are complied with in its territory.

Article 122

Access to documents

1. For the purposes of the provisions of Union law on access to documents of the institutions, bodies, offices and agencies of the Union, all references to Member States and their authorities shall be understood as including the United Kingdom and its authorities in respect of documents drawn up by or obtained by the institutions, bodies, offices and agencies of the Union:

- (a) before the end of the transition period; or
- (b) after the end of the transition period in connection with activities of the Union pursuant to this Agreement.

2. Article 5 and Article 9(5) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹³²⁾ and Article 5 of Decision ECB/2004/3 of the European Central Bank ⁽¹³³⁾ shall apply in the United Kingdom in respect of all documents falling within the scope of those provisions obtained by the United Kingdom:

- (a) before the end of the transition period; or
- (b) after the end of the transition period in connection with activities of the Union pursuant to this Agreement.

Article 123

European Central Bank

1. Articles 9.1, 17, 35.1, 35.2, and 35.4 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, shall apply in respect of the ECB, the members of its organs, its staff, the representatives of the national central banks in the ESCB who take part in the activities of the ECB, and any property, assets and operations of the ECB in the United Kingdom held, managed or conducted pursuant to that Protocol. The ECB shall be exempt from requirements to register in the United Kingdom or to obtain any form of licence, permit or other authorisation or permission from the United Kingdom to carry out its operations.

2. Paragraph 1 shall apply in respect of:

- (a) such property and assets of the ECB that are held in the United Kingdom at the end of the transition period; and
- (b) such operations of the ECB in the United Kingdom or with United Kingdom counterparts, and ancillary activities related thereto, that were ongoing at the end of the transition period, or that are initiated after the end of the transition period as part of its activities to sustain operations that were ongoing at the end of the transition period, until their final maturity, disposal or completion.

⁽¹³²⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽¹³³⁾ Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (2004/258/EC) (OJ L 80, 18.3.2004, p. 42).

*Article 124***European Investment Bank**

1. Article 13, Articles 20(2), 23(1), 23(4) and Article 26 and the first paragraph of Article 27 of Protocol (No 5) on the Statute of the European Investment Bank shall apply in respect of the EIB, the members of its organs, its staff and the representatives of the Member States who take part in its activities, as well as to any subsidiaries or any other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of that Protocol, in particular the European Investment Fund. The EIB and the European Investment Fund shall be exempt from requirements to register in the United Kingdom or to obtain any form of licence, permit or other authorisation or permission from the United Kingdom to carry out their operations. The currency of the United Kingdom shall remain freely transferable and convertible, subject to Article 23(2) of Protocol (No 5) on the Statute of the European Investment Bank in respect of the convertibility of the currency of the United Kingdom into a currency of a non-Member State, for the purposes of such operations.
2. Paragraph 1 shall apply in respect of:
 - (a) such property and assets of the EIB or of any subsidiaries and other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund, that are held in the United Kingdom at the end of the transition period; and
 - (b) such borrowing, financing, guarantee, investment, treasury and technical assistance operations of the EIB or of any subsidiaries and other entities established by the EIB before the end of the transition period in accordance with Article 28(1) of Protocol (No 5) on the Statute of the European Investment Bank, in particular the European Investment Fund, in the United Kingdom or with United Kingdom counterparts, and ancillary activities related thereto, that were ongoing at the end of the transition period or that are initiated after the end of the transition period, as part of their activities to sustain operations that were ongoing at the end of the transition period until their final maturity, disposure, or completion.

*Article 125***European Schools**

1. The United Kingdom shall be bound by the Convention defining the Statute of the European Schools ⁽¹³⁴⁾, as well as by the Regulations on Accredited European Schools adopted by the Board of Governors of the European Schools, until the end of the school year that is ongoing at the end of the transition period.
2. The United Kingdom shall, with respect to pupils who before 31 August 2021 acquired a European baccalaureate and to pupils who are enrolled in a cycle of secondary studies in a European School before 31 August 2021 and acquire a European baccalaureate after that date, ensure that such pupils enjoy the rights provided for in Article 5(2) of the Convention defining the Statute of the European Schools.

PART FOUR

TRANSITION

*Article 126***Transition period**

There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.

⁽¹³⁴⁾ OJ L 212, 17.8.1994, p. 3.

Article 127

Scope of the transition

1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

However, the following provisions of the Treaties, and acts adopted by the institutions, bodies, offices or agencies of the Union, shall not be applicable to and in the United Kingdom during the transition period:

- (a) provisions of the Treaties and acts which, pursuant to Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union or Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, or pursuant to the provisions of the Treaties on enhanced cooperation, were not binding upon and in the United Kingdom before the date of entry into force of this Agreement as well as acts amending such acts;
- (b) Article 11(4) TEU, point (b) of Article 20(2), Article 22 and the first paragraph of Article 24 TFEU, Articles 39 and 40 of the Charter of Fundamental Rights of the European Union, and the acts adopted on the basis of those provisions.

2. In the event that the Union and the United Kingdom reach an agreement governing their future relationship in the areas of the Common Foreign and Security Policy and the Common Security and Defence Policy which becomes applicable during the transition period, Chapter 2 of Title V of the TEU and the acts adopted on the basis of those provisions shall cease to apply to the United Kingdom from the date of application of that agreement.

3. During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

4. The United Kingdom shall not participate in any enhanced cooperation:

- (a) in relation to which authorisation was granted after the date of entry into force of this Agreement; or
- (b) within the framework of which no acts were adopted before the date of entry into force of this Agreement.

5. During the transition period, in relation to measures which amend, build upon or replace an existing measure adopted pursuant to Title V of Part Three of the TFEU by which the United Kingdom is bound before the date of entry into force of this Agreement, Article 5 of Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union and Article 4a of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice shall continue to apply *mutatis mutandis*. The United Kingdom shall not, however, have the right to notify its wish to take part in the application of new measures pursuant to Title V of Part Three of the TFEU other than those measures referred to in Article 4a of Protocol No 21.

In order to support continuing cooperation between the Union and the United Kingdom, under the conditions set out for cooperation with third countries in the relevant measures, the Union may invite the United Kingdom to cooperate in relation to new measures adopted under Title V of Part III TFEU.

6. Unless otherwise provided in this Agreement, during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1, including as implemented and applied by Member States, shall be understood as including the United Kingdom.

7. By way of derogation from paragraph 6:

- (a) for the purposes of Article 42(6) and Article 46 TEU and of Protocol (No 10) on permanent structured cooperation established by Article 42 TEU, any references to Member States shall be understood as not including the United Kingdom. This shall not preclude the possibility for the United Kingdom to be invited to participate as a third country in individual projects under the conditions set out in Council Decision (CFSP) 2017/2315 ⁽¹³⁵⁾ on an exceptional basis, or in any other form of cooperation to the extent allowed and under the conditions set out by future Union acts adopted on the basis of Article 42(6) and Article 46 TEU;
- (b) where acts of the Union provide for the participation of Member States, nationals of Member States or natural or legal persons residing or established in a Member State in an information exchange, procedure or programme which continues to be implemented or which starts after the end of the transition period, and where such participation would grant access to security-related sensitive information that only Member States, nationals of Member States, or natural or legal persons residing or established in a Member State, are to have knowledge of, in such exceptional circumstances the references to Member States in such Union acts shall be understood as not including the United Kingdom. The Union shall notify the United Kingdom of the application of this derogation;
- (c) for the purposes of the recruitment of officials and other servants of the institutions, bodies, offices or agencies of the Union, any references to Member States in Articles 27 and 28(a) of the Staff Regulations and in Article 1 of Annex X thereto and in Articles 12, 82 and 128 of the Conditions of Employment of Other Servants of the European Union, or in the relevant provisions of other staff rules applicable to those institutions, bodies, offices or agencies, shall be understood as not including the United Kingdom.

Article 128

Institutional arrangements

- 1. Notwithstanding Article 127, during the transition period Article 7 shall apply.
- 2. For the purposes of the Treaties, during the transition period, the parliament of the United Kingdom shall not be considered to be a national parliament of a Member State, except as regards Article 1 of Protocol (No 1) on the role of national parliaments in the European Union and, in respect of proposals which are in the public domain, Article 2 of that Protocol.
- 3. During the transition period, provisions of the Treaties which grant institutional rights to Member States enabling them to submit proposals, initiatives or requests to the institutions shall be understood as not including the United Kingdom ⁽¹³⁶⁾.
- 4. For the purposes of participation in the institutional arrangements laid down in Articles 282 and 283 TFEU and in Protocol (No 4) on the Statute of the European system of central banks and of the European Central Bank, with the exception of Article 21(2) of that Protocol, during the transition period, the Bank of England shall not be considered to be a national central bank of a Member State.
- 5. By way of derogation from paragraph 1 of this Article and from Article 7, during the transition period, representatives or experts of the United Kingdom, or experts designated by the United Kingdom, may, upon invitation, exceptionally attend meetings or parts of meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011, meetings or parts of meetings of Commission expert groups, meetings or parts of meetings of other similar entities, and meetings or parts of meetings of bodies, offices or agencies, where and when representatives or experts of the Member States or experts designated by Member States take part, provided that one of the following conditions is fulfilled:
 - (a) the discussion concerns individual acts to be addressed during the transition period to the United Kingdom or to natural or legal persons residing or established in the United Kingdom;

⁽¹³⁵⁾ Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States (OJ L 331, 14.12.2017, p. 57).

⁽¹³⁶⁾ This should in particular concern Articles 7, 30, 42(4), 48(2) to (6) and 49 TEU and Articles 25, 76(b), 82(3), 83(3), 86(1), 87(3), 135, 218(8), 223(1), 262, 311 and 341 TFEU.

- (b) the presence of the United Kingdom is necessary and in the interest of the Union, in particular for the effective implementation of Union law during the transition period.

During such meetings or parts of meetings, the representatives or experts of the United Kingdom or experts designated by the United Kingdom shall have no voting rights and their presence shall be limited to the specific agenda items that fulfil the conditions set out in point (a) or (b).

6. During the transition period, the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals or authorisations at the level of the Union or at the level of Member States acting jointly as referred to in the acts and provisions listed in Annex VII.

7. During the transition period, where draft Union acts identify or refer directly to specific Member State authorities, procedures, or documents, the United Kingdom shall be consulted by the Union on such drafts, with a view to ensuring the proper implementation and application of those acts by and in the United Kingdom.

Article 129

Specific arrangements relating to the Union's external action

1. Without prejudice to Article 127(2), during the transition period, the United Kingdom shall be bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly, as referred to in point (a)(iv) of Article 2. (*)

2. During the transition period, representatives of the United Kingdom shall not participate in the work of any bodies set up by international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, unless:

(a) the United Kingdom participates in its own right; or

(b) the Union exceptionally invites the United Kingdom to attend, as part of the Union's delegation, meetings or parts of meetings of such bodies, where the Union considers that the presence of the United Kingdom is necessary and in the interest of the Union, in particular for the effective implementation of those agreements during the transition period; such presence shall only be allowed where Member States participation is permitted under the applicable agreements.

3. In accordance with the principle of sincere cooperation, the United Kingdom shall refrain, during the transition period, from any action or initiative which is likely to be prejudicial to the Union's interests, in particular in the framework of any international organisation, agency, conference or forum of which the United Kingdom is a party in its own right.

4. Notwithstanding paragraph 3, during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union.

5. Without prejudice to Article 127(2), whenever there is a need for coordination, the United Kingdom may be consulted, on a case-by-case basis.

6. Following a decision of the Council falling under Chapter 2 of Title V TEU, the United Kingdom may make a formal declaration to the High Representative of the Union for Foreign Affairs and Security Policy, indicating that, for vital and stated reasons of national policy, in those exceptional cases it will not apply the decision. In a spirit of mutual solidarity, the United Kingdom shall refrain from any action likely to conflict with or impede Union action based on that decision, and the Member States shall respect the position of the United Kingdom.

7. During the transition period, the United Kingdom shall not provide commanders of civilian operations, heads of mission, operation commanders or force commanders for missions or operations conducted under Articles 42, 43 and 44 TEU, nor shall it provide the operational headquarters for such missions or operations, or serve as framework nation for Union battlegroups. During the transition period, the United Kingdom shall not provide the head of any operational actions under Article 28 TEU.

(*) The Union will notify the other parties to these agreements that during the transition period the United Kingdom is to be treated as a Member State for the purposes of these agreements.

*Article 130***Specific arrangements relating to fishing opportunities**

1. As regards the fixing of fishing opportunities within the meaning of Article 43(3) TFEU for any period falling within the transition period, the United Kingdom shall be consulted in respect of the fishing opportunities related to the United Kingdom, including in the context of the preparation of relevant international consultations and negotiations.
2. For the purposes of paragraph 1, the Union shall offer the opportunity to the United Kingdom to provide comments on the Annual Communication from the European Commission on fishing opportunities, the scientific advice from the relevant scientific bodies and the proposals from the European Commission for fishing opportunities for any period falling within the transition period.
3. Notwithstanding point (b) of Article 129(2), with a view to allowing the United Kingdom to prepare its future membership in relevant international fora, the Union may exceptionally invite the United Kingdom to attend, as part of the Union's delegation, international consultations and negotiations referred to in paragraph 1 of this Article, to the extent allowed for Member States and permitted by the specific forum.
4. Without prejudice to Article 127(1), the relative stability keys for the allocation of fishing opportunities referred to in paragraph 1 of this Article shall be maintained.

*Article 131***Supervision and enforcement**

During the transition period, the institutions, bodies, offices and agencies of the Union shall have the powers conferred upon them by Union law in relation to the United Kingdom and to natural and legal persons residing or established in the United Kingdom. In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties.

The first paragraph shall also apply during the transition period as regards the interpretation and application of this Agreement.

*Article 132***Extension of the transition period**

1. Notwithstanding Article 126, the Joint Committee may, before 1 July 2020, adopt a single decision extending the transition period for up to 1 or 2 years. (**)
2. In the event that the Joint Committee adopts a decision under paragraph 1, the following shall apply:
 - (a) by way of derogation from Article 127(6), the United Kingdom shall be considered as a third country for the purposes of the implementation of the Union programmes and activities committed under the multiannual financial framework applying as from the year 2021;
 - (b) by way of derogation from Article 127(1) and without prejudice to Part Five of this Agreement, the applicable Union law concerning the Union's own resources relating to the financial years covered by the extension of the transition period shall not apply to the United Kingdom after 31 December 2020;
 - (c) by way of derogation from Article 127(1) of this Agreement, Articles 107, 108 and 109 TFEU shall not apply to measures of the United Kingdom authorities, including on rural development, supporting the production of and trade in agricultural products in the United Kingdom up to an annual level of support which shall not be more than the total amount of expenditure incurred in the United Kingdom under the Common Agricultural Policy in 2019, and provided that a minimum percentage of that exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture. Such minimum percentage shall be determined on the basis of the last available percentage by which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture. In the event that the period by which the transition period is extended is not a multiple of 12 months, the maximum annual level of exempted support in the year for which the extended transition period covers less than 12 months shall be reduced pro rata;

(**) In case of extension, the Union will notify other parties to international agreements thereof.

- (d) for the period from 1 January 2021 to the end of the transition period, the United Kingdom shall make a contribution to the Union budget, as determined in accordance with paragraph 3;
 - (e) subject to point (d) of paragraph 3, Part Five of this Agreement shall not be affected.
3. A decision of the Joint Committee under paragraph 1 shall:
- (a) establish the appropriate amount of the contribution of the United Kingdom to the Union budget for the period from 1 January 2021 to the end of the transition period, taking into account the status of the United Kingdom during that period, as well as the modalities of payment of that amount;
 - (b) specify the maximum level of exempted support, as well as the minimum percentage thereof that shall comply with the provisions of Annex 2 to the WTO Agreement on Agriculture, as referred to in point (c) of paragraph 2;
 - (c) lay down any other measure necessary for the implementation of paragraph 2;
 - (d) adapt the dates or periods referred to in Articles 51, 62, 63, 84, 96, 125, 141, 156, 157 and Annexes IV and V to reflect the extension of the transition period.

PART FIVE

FINANCIAL PROVISIONS

Chapter 1

GENERAL PROVISIONS

Article 133

Currency to be used between the Union and the United Kingdom

Without prejudice to the applicable Union law concerning the Union's own resources, all amounts, liabilities, calculations, accounts and payments referred to in this Part shall be drawn up and implemented in euro.

Article 134

Facility offered to auditors in relation to the financial provisions

The United Kingdom shall inform the Union about the entities it has entrusted to carry out its audit of the implementation of the financial provisions covered by this Part.

On the United Kingdom's request, the Union shall provide those entrusted entities with any information that may reasonably be requested as regards the United Kingdom's rights and obligations under this Part and shall provide them with adequate assistance to allow them to accomplish their task. In providing information and assistance under this Article, the Union shall act in accordance with applicable Union law, in particular with Union rules on data protection.

The authorities of the United Kingdom and of the Union may agree on appropriate administrative arrangements to facilitate the application of the first and second paragraphs.

Chapter 2

THE UNITED KINGDOM'S CONTRIBUTION TO AND PARTICIPATION IN THE UNION BUDGET

Article 135

The United Kingdom's contribution to and participation in the implementation of the Union budgets for the years 2019 and 2020

1. For the years 2019 and 2020, in accordance with Part Four, the United Kingdom shall contribute to and participate in the implementation of the Union budgets.

2. By way of derogation from Part Four, amendments to Council Regulation (EU, Euratom) No 1311/2013 ⁽¹³⁷⁾ or Decision 2014/335/EU, Euratom that are adopted on or after the date of entry into force of this Agreement shall not apply to the United Kingdom insofar as those amendments have an impact on the United Kingdom's financial obligations.

Article 136

Provisions applicable after 31 December 2020 in relation to own resources

1. The applicable Union law concerning the Union's own resources relating to financial years until 2020 shall continue to apply to the United Kingdom after 31 December 2020, including where the own resources concerned are to be made available, corrected or subject to adjustments after that date.

2. Without prejudice to Article 135(2), the Union law referred to in paragraph 1 of this Article shall include in particular the following acts and provisions, including any amendment thereto, irrespective of the date of adoption, entry into force or application of the amendment:

- (a) Decision 2014/335/EU, Euratom;
- (b) Regulation (EU, Euratom) No 609/2014, and in particular Article 12 thereof in relation to the interest on amounts made available belatedly and Article 11 thereof in relation to the handling of the opt-out;
- (c) Regulation (EU, Euratom) No 608/2014 and in particular Article 1 thereof in relation to the calculation of the balance and Articles 2 to 8 thereof in relation to the implementing measures for the system of own resources;
- (d) Council Regulation (EEC, Euratom) No 1553/89 ⁽¹³⁸⁾;
- (e) Council Regulation (EC, Euratom) No 1287/2003 ⁽¹³⁹⁾;
- (f) Commission Implementing Decision (EU, Euratom) 2018/195 ⁽¹⁴⁰⁾;
- (g) Commission Implementing Decision (EU, Euratom) 2018/194 ⁽¹⁴¹⁾;
- (h) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁴²⁾ (the "Financial Regulation");
- (i) Article 287 TFEU on the role of the Court of Auditors as well as other rules concerning that institution;
- (j) Article 325 TFEU on combatting fraud and related acts, in particular Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁴³⁾ and Council Regulation (EC, Euratom) No 2988/95 ⁽¹⁴⁴⁾;
- (k) the annual budgets for the financial years until 2020 or, in the event that the annual budget has not been adopted, the rules applicable in accordance with Article 315 TFEU.

⁽¹³⁷⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁽¹³⁸⁾ Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

⁽¹³⁹⁾ Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) (OJ L 181, 19.7.2003, p. 1).

⁽¹⁴⁰⁾ Commission Implementing Decision (EU, Euratom) 2018/195 of 8 February 2018 establishing forms for reporting on fraud and irregularities affecting entitlements to traditional own resources and on inspections relating to traditional own resources pursuant to Council Regulation (EU, Euratom) No 608/2014 (OJ L 36, 9.2.2018, p. 33).

⁽¹⁴¹⁾ Commission Implementing Decision (EU, Euratom) 2018/194 of 8 February 2018 establishing models for statements of accounts for entitlements to own resources and a form for reports on irrecoverable amounts corresponding to the entitlements to own resources pursuant to Council Regulation (EU, Euratom) No 609/2014 (OJ L 36, 9.2.2018, p. 20).

⁽¹⁴²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁽¹⁴³⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽¹⁴⁴⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

3. By way of derogation from paragraphs 1 and 2, the following rules shall apply to the United Kingdom after 31 December 2020:

- (a) any amounts resulting, in respect of the United Kingdom, from adjustments to own resources entered into the budget and from adjustments related to the surplus or deficit, in relation to the financing of the Union budgets until 2020 in accordance with the Union law referred to in paragraphs 1 and 2, shall be due by or to the United Kingdom;
- (b) if, in accordance with the applicable Union law concerning the Union's own resources, the date on which the own resources are to be made available is after 28 February 2021, the payment shall be made on the earliest date referred to in Article 148(1) following the date on which the own resources are to be made available;
- (c) for the purpose of payment by the United Kingdom of traditional own resources after 28 February 2021, the amount of entitlements established in accordance with Article 2 of Regulation (EU, Euratom) No 609/2014 after the reduction of the collection costs in accordance with Articles 2(3) and 10(3) of Decision 2014/335/EU, Euratom shall be reduced by the United Kingdom's share of this amount;
- (d) by way of derogation from Article 7 of this Agreement, the representatives or experts of the United Kingdom, or experts designated by the United Kingdom may, upon invitation, exceptionally attend, without voting rights, the meetings of any committee established by the applicable Union law referred to in paragraphs 1 and 2 of this Article, such as the meetings of the Advisory Committee on Own Resources established by Article 7 of Regulation (EU, Euratom) No 608/2014 or the GNI Committee established by Article 4 of Regulation (EC, Euratom) No 1287/2003, to the extent that the work of such committees concerns the financial years until 2020;
- (e) any correction or adjustment to the own resources based on VAT and gross national income shall only be made if the relevant measures pursuant to the provisions referred to in paragraphs 1 and 2 are decided upon no later than 31 December 2028;
- (f) the separate account for traditional own resources referred to in the second subparagraph of Article 6(3) of Regulation (EU, Euratom) No 609/2014 shall be fully liquidated by 31 December 2025. Prior to 20 February 2026, a share of the amounts still in that account on 31 December 2025 and not being subject to European Commission inspection findings communicated prior to that date under the own resources legislation shall be made available to the Union budget corresponding to the share of the amounts made available to the Union on the amounts reported by the United Kingdom to the European Commission in the framework of the procedure laid down in Article 13 of Regulation (EU, Euratom) No 609/2014 during the period between 1 January 2014 and 31 December 2020.

Article 137

The United Kingdom's participation in the implementation of the Union programmes and activities in 2019 and 2020

1. In accordance with Part Four, the Union programmes and activities committed under the multiannual financial framework for the years 2014-2020 ("MFF 2014-2020") or previous financial perspectives shall be implemented in 2019 and 2020 with regard to the United Kingdom on the basis of the applicable Union law.

Regulation (EU) No 1307/2013 of the European Parliament and of the Council ⁽¹⁴⁵⁾ as applicable in the year 2020 shall not apply in the United Kingdom for claim year 2020. However, Article 13 of that Regulation shall apply in respect of the United Kingdom direct payments scheme for claim year 2020, provided that such scheme is equivalent to the scheme of Regulation (EU) No 1307/2013, as applicable in the year 2020.

2. By way of derogation from Part Four, the United Kingdom and projects located in the United Kingdom shall only be eligible for financial operations carried out within financial instruments managed directly or indirectly under Title X of the Financial Regulation or financial operations guaranteed by the Union budget under the European Fund for Strategic

⁽¹⁴⁵⁾ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

Investments (EFSI) established by Regulation (EU) 2015/1017 of the European Parliament and of the Council ⁽¹⁴⁶⁾ and the European Fund for Sustainable Development (EFSD) established by Regulation (EU) 2017/1601 of the European Parliament and of the Council ⁽¹⁴⁷⁾, provided that those financial operations were approved by the entities and bodies, including the EIB and the European Investment Fund ("EIF"), or by persons entrusted with the implementation of part of those actions before the date of entry into force of this Agreement, even if the signature of those financial operations took place after that date. In relation to those financial operations approved after the date of entry into force of this Agreement, entities established in the United Kingdom shall be treated as entities located outside the Union.

Article 138

Union law applicable after 31 December 2020 in relation to the United Kingdom's participation in the implementation of the Union programmes and activities committed under the MFF 2014-2020 or previous financial perspectives

1. In respect of the implementation of the Union programmes and activities committed under the MFF 2014-2020 or previous financial perspectives, applicable Union law, including the rules on financial corrections and on clearance of accounts, shall continue to apply to the United Kingdom after 31 December 2020 until the closure of those Union programmes and activities.
2. The applicable Union law referred to in paragraph 1 shall include in particular the following provisions, including any amendments to those provisions, irrespective of the date of adoption, entry into force or application of the amendment:
 - (a) the Financial Regulation;
 - (b) the basic acts, within the meaning of point (4) of Article 2 of the Financial Regulation, establishing Union programmes or activities referred to in the budget remarks concerning titles, chapters, articles or items under which the appropriations have been committed;
 - (c) Article 299 TFEU on the enforceability of pecuniary obligations;
 - (d) Article 287 TFEU on the role of the Court of Auditors as well as other rules concerning that institution;
 - (e) Article 325 TFEU on combatting fraud and related acts, in particular Regulation (EU, Euratom) No 883/2013 and Regulation (EC, Euratom) No 2988/95.
3. By way of derogation from Article 7, the representatives or experts of the United Kingdom, or experts designated by the United Kingdom, may, upon invitation, exceptionally attend, without voting rights, meetings of the committees that assist the European Commission in the implementation and management of the programmes established by Union law referred to in paragraph 1 or established by the European Commission in respect of the implementation of that law, to the extent that their work concerns the financial years until 2020.
4. By way of derogation from Article 8, the United Kingdom shall have access, to the extent strictly necessary for the implementation of the programmes and activities referred to in point (b) of paragraph 2, to the networks, information systems and the databases established under the relevant basic acts or by the related implementation rules derived from those basic acts.
5. On a proposal from the Committee on the financial provisions referred to in point (f) of Article 165(1), the Joint Committee may adopt, in conformity with the rules established in Article 166, technical measures to facilitate the closure of the programmes and activities referred to in paragraph 1 of this Article or to exempt the United Kingdom from obligations to take actions, during or after the closure of those programmes and activities, which are not relevant for a former Member State, provided that such technical measures respect the principle of sound financial management and do not result in an advantage in favour of the United Kingdom or the United Kingdom beneficiaries compared to Member States or third countries participating in the same programmes and activities financed by the Union budget.

⁽¹⁴⁶⁾ Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

⁽¹⁴⁷⁾ Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund (OJ L 249, 27.9.2017, p. 1).

*Article 139***Share of the United Kingdom**

The United Kingdom's share referred to in points (a) and (c) of Article 136(3), and in Articles 140 to 147 shall be a percentage calculated as the ratio between the own resources made available by the United Kingdom in the years 2014 to 2020 and the own resources made available during that period by all Member States and the United Kingdom as adjusted by the amount communicated to the Member States before 1 February 2022 in accordance with Article 10b(5) of Regulation (EU, Euratom) No 609/2014.

*Article 140***Outstanding commitments**

1. Unless otherwise provided for in this Agreement, the United Kingdom shall be liable to the Union for the United Kingdom's share of the budgetary commitments of the Union budget and the budgets of the Union decentralised agencies outstanding on 31 December 2020 and for the United Kingdom's share of the commitments made in 2021 on the carryover of commitment appropriations from the budget for 2020.

The first subparagraph shall not apply to the following commitments outstanding on 31 December 2020:

- (a) those commitments related to the programmes and bodies to which Article 11 of Regulation (EU, Euratom) No 609/2014 applies with regard to the United Kingdom;
- (b) those commitments financed by assigned revenue in the Union budget.

With regard to the Union's decentralised agencies, the amount of their commitments referred to in the first subparagraph shall only be taken into account in proportion to the share of contributions from the Union budget in their overall revenues for the period 2014-2020.

2. The Union shall calculate the amount of commitments referred to in paragraph 1 on 31 December 2020. It shall communicate that amount to the United Kingdom by 31 March 2021, adding a list with the reference key of each commitment, the associated budget lines, and the amount for each associated budget line.

3. The Union shall, by 31 March of each year, starting in 2022, with regard to the commitments referred to in paragraph 1, communicate to the United Kingdom:

- (a) information on the amount of commitments outstanding on 31 December of the previous year and on the payments and decommitments made in the previous year, including an update of the list referred to in paragraph 2;
- (b) an estimate of the expected payments in the current year based on the level of payment appropriations in the budget;
- (c) an estimate of the expected contribution of the United Kingdom to the payments referred to in point (b); and
- (d) other information, such as a medium term payment forecast.

4. The annual amount payable shall be calculated as the United Kingdom's share of the estimate referred to in point (b) of paragraph 3 adjusted by the difference between the payments made by the United Kingdom in the previous year and the United Kingdom's share of the payments made by the Union in the previous year on the outstanding commitments referred to in paragraph 1, reduced by the amount of net financial corrections in relation to programmes and activities financed under the MFF 2014-2020 or previous financial perspectives and reduced by the proceeds of any infringement procedures concerning the failure of a Member State to make available own resources related to financial years until 2020, provided that those amounts have been received by the budget in the previous year and are definitive. The annual amount payable by the United Kingdom shall not be adjusted in the given year.

In 2021, the annual amount payable by the United Kingdom shall be reduced by the United Kingdom's share in the financing of the budget for 2020 of the amount of payment appropriations carried over from 2020 to 2021 in accordance with Articles 12 and 13 of the Financial Regulation and by the United Kingdom's share of the total amount of traditional own resources made available to the Union in January and February 2021 in respect of which the Union's entitlements were established in accordance with Article 2 of Regulation (EU, Euratom) No 609/2014 in November and December 2020. The Union shall also reimburse to the United Kingdom the United Kingdom's share of the total amount of traditional own resources made available by the Member States after 31 December 2020 for goods released for free circulation in respect of ending or discharge of temporary storage or customs procedures referred to in Article 49(2) started before or on this date.

5. At the request of the United Kingdom, made at the earliest after 31 December 2028, the Union shall make an estimate of the remaining amounts to be paid by the United Kingdom under this Article, on the basis of a rule taking into account the amount of outstanding commitments at the end of the year and an estimate of any decommitments on those outstanding commitments, any financial corrections and any proceeds from the infringement procedures after the end of the year. After the confirmation by the United Kingdom of the acceptance of the proposal to the Committee on the financial provisions referred to in point (f) of Article 165(1) and the Joint Committee, the United Kingdom shall pay the estimated amount, as adjusted in accordance with paragraph 4 of this Article, in relation to the payments made by the United Kingdom in the previous year. The payment of the amounts referred to in this paragraph shall extinguish the remaining obligations of the United Kingdom or the Union under this Article.

Article 141

Fines decided upon before or on 31 December 2020

1. In respect of a fine decided upon by the Union before or on 31 December 2020 that has become definitive and that does not constitute assigned revenue, the Union shall reimburse the United Kingdom for its share of the amount of the fine collected by the Union, unless that amount has already been recorded as budget revenue in the Union budget before or on 31 December 2020.
2. In respect of a fine decided upon by the Union after 31 December 2020 in a procedure referred to in Article 92(1), the Union shall reimburse the United Kingdom for its share of the amount of the fine collected by the Union once that fine has become definitive.

Article 142

Union liabilities at the end of 2020

1. The United Kingdom shall be liable to the Union for its share of the financing of the Union's liabilities incurred until 31 December 2020, with the exception of the following:
 - (a) liabilities with corresponding assets, including: Union financial assistance loan assets and the associated balance sheet liabilities, assets corresponding to property, plant and equipment and provisions related to the Joint Research Centre's nuclear sites dismantlement, and all lease-related obligations, intangible assets and inventories, any assets and liabilities relating to the management of foreign currency risk, accrued and deferred income and all provisions other than in respect of fines, legal proceedings and financial guarantee liabilities; and
 - (b) liabilities and assets which are related to the operation of the budget and the management of own resources, including outstanding pre-financing advances, receivables, cash, payables, and accrued charges, including those related to the European Agricultural Guarantee Fund or already included in the outstanding commitments (RAL).
2. In particular, the United Kingdom shall be liable for its share of the Union's liability for pension rights and rights to other employment-related benefits accrued on or before 31 December 2020. Payments related to this liability shall be made in accordance with paragraphs 5 and 6.
3. The Union shall communicate to the United Kingdom by 31 March of each year, starting in 2022, the payments made during the previous year corresponding to the liabilities outstanding at 31 December 2020 and the amount of the contribution of the United Kingdom to those payments.
4. By 31 March of each year, starting in 2022, the Union shall communicate to the United Kingdom a specific document on pensions relating to the situation at 31 December of the preceding year in respect of the liability referred to in paragraph 2, which shall provide:
 - (a) the remaining amounts still to be paid in relation to the liabilities described in paragraph 5;
 - (b) the calculations made and the data and assumptions used to determine the amount that the United Kingdom is to pay, by 30 June of the current year, in relation to staff pension payments and the Union budget contributions to the Joint Sickness Insurance Scheme (JSIS) made in the preceding year in accordance with paragraph 6 and an estimate of those amounts for the current year;
 - (c) concerning the population at 31 December 2020, information on the numbers of actual beneficiaries and estimated future beneficiaries of the staff pension and sickness insurance schemes at the end of the previous year and their accumulated post-employment rights at that time; and

- (d) the outstanding United Kingdom liabilities calculated using actuarial valuations made in accordance with the relevant International Public Sector Accounting Standards and an explanation of the evolution of this liability compared to the previous year.

That document may be updated by 30 September of the same year to reflect the definitive figures for the preceding year.

5. With respect to the United Kingdom's liability for the pension rights and rights to other employment-related benefits referred to in paragraph 2 as regards pensions of the Members and EU high-level public office holders covered by Council Regulation No 422/67/EEC, 5/67/Euratom ⁽¹⁴⁸⁾, Decision 2005/684/EC, Euratom of the European Parliament ⁽¹⁴⁹⁾ and Council Regulation (EU) 2016/300 ⁽¹⁵⁰⁾, the United Kingdom shall contribute to the liabilities as they are recorded in the consolidated accounts of the Union for the financial year 2020 in 10 instalments starting on 31 October 2021.

6. With respect to the United Kingdom's liability for the pension rights and rights to other employment-related benefits referred to in paragraph 2 as regards pensions of officials of the Union established in accordance with Articles 77 to 84 of the Staff Regulations of Officials of the European Union and as regards the pensions of temporary staff, contract staff and parliamentary assistants established in accordance with Articles 33 to 40, Articles 101 to 114 and Article 135, respectively, of the Conditions of Employment of Other Servants of the European Union, the United Kingdom shall contribute annually to the net payments made from the Union budget to each beneficiary and to the related contribution of the Union budget to the JSIS for each beneficiary or person who benefits through a beneficiary. The payments of that contribution shall start on 30 June 2022.

For the pensions referred to in the first subparagraph, the payment by the United Kingdom shall be the sum of the net payments made by the Union budget in the preceding year for each beneficiary, multiplied by the United Kingdom's share and by a percentage that is specific to each beneficiary ("specific percentage"). The specific percentage shall be as follows:

- (a) for a beneficiary receiving pension on 1 January 2021, the specific percentage shall be 100 %;
- (b) for any other beneficiary of a pension, the specific percentage shall be calculated as the ratio between the pension rights acquired in accordance with the Staff Regulations of Officials of the European Union and in particular in Annex VIII thereto on or before 31 December 2020, including pension rights transferred in at that date, and the acquired pension rights at the date of retirement or death if earlier, or at the date the person leaves the scheme;
- (c) for the purposes of the contribution of the budget to the JSIS, the specific percentage shall be calculated as the ratio between the number of years during which the beneficiary contributed to the pension scheme until 31 December 2020 and the total number of years at retirement during which the beneficiary, or the person covered by the Staff Regulations of Officials of the European Union who is the basis for the rights under the JSIS, contributed to the pension scheme.

For a beneficiary of a survivor's pension or an orphan's pension established in accordance with the Staff Regulations of Officials of the European Union, the calculation shall be made on the basis of the career of the person covered by those Staff Regulations which is the basis for the survivor's pension or the orphan's pension.

As long as the liability in relation to this paragraph is not extinguished, in any given year ("year N") the United Kingdom may send the Union before 1 March of year N a request to pay the outstanding liability at 31 December of year N. The Union shall establish the amount of the outstanding liability in relation to the pension and JSIS post-employment benefits, using the same methodology as used in point (d) of paragraph 4. If the United Kingdom agrees, it shall pay that amount in five instalments, with the first payment taking place in the year N+1. The United Kingdom shall also cover its liability for the year N through the procedure set out in this paragraph. After that payment has been completed, and provided that the payments referred to in paragraph 5 have been completed, the remaining obligations under this Article shall be extinguished. The Committee on the financial provisions referred to in point (f) of Article 165(1) and the Joint Committee shall be informed of this situation.

⁽¹⁴⁸⁾ Regulation No 422/67/EEC, 5/67/Euratom of the Council of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice (OJ P 187, 8.8.1967, p. 1).

⁽¹⁴⁹⁾ Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ L 262, 7.10.2005, p. 1).

⁽¹⁵⁰⁾ Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders (OJ L 58, 4.3.2016, p. 1).

Article 143

Contingent financial liabilities related to loans for financial assistance, EFSI, EFSD and the external lending mandate.

1. The United Kingdom shall be liable to the Union for its share of the contingent financial liabilities of the Union arising from financial operations that were:
- (a) decided upon by the European Parliament and the Council or by the European Commission before the date of entry in force of this Agreement, where such financial operations relate to loans for financial assistance decided in accordance with Council Regulation (EU) No 407/2010 ⁽¹⁵¹⁾, Council Regulation (EC) No 332/2002 ⁽¹⁵²⁾, or the decisions of the European Parliament and the Council providing macro-financial assistance to various countries on the basis of a provisioning in accordance with Council Regulation (EC, Euratom) No 480/2009 ⁽¹⁵³⁾ or Council Regulation (EC, Euratom) No 2728/94 ⁽¹⁵⁴⁾;
 - (b) approved before the date of entry into force of this Agreement by the bodies, entities or persons that are directly entrusted with the implementation of financial operations in relation to budgetary guarantees that either were given in favour of the EIB through the EFSI in accordance with Regulation (EU) 2015/1017 or through the external lending mandate in accordance with Regulation (EC, Euratom) No 480/2009 or Regulation (EC, Euratom) No 2728/94 and Decision No 466/2014/EU of the European Parliament and of the Council ⁽¹⁵⁵⁾ or Decision No 1080/2011/EU of the European Parliament and of the Council ⁽¹⁵⁶⁾, or were given in favour of eligible counterparts (EFSD).

On 31 July 2019, the Union shall provide the United Kingdom with a specific report concerning those financial operations, providing, for each type of instrument, information on:

- (a) the financial liabilities arising from those financial operations on the date of entry into force of this Agreement;
- (b) where applicable, the provisions held on the date of entry into force of this Agreement in the respective guarantee funds or fiduciary accounts to cover the financial liabilities referred to in point (a) and the respective provisions committed and not yet paid.

In the consolidated accounts of the Union relating to the years 2019 and 2020, the payments made out of the provisions referred to in point (b) of the second subparagraph from the date of entry into force of this Agreement until 31 December 2019 and 2020, respectively, shall be disclosed for the same financial operations as referred to in this paragraph but which are decided upon on or after the date of entry into force of this Agreement.

The liability of the United Kingdom to the Union in relation to the financial operations referred to in this paragraph shall not be affected by any restructuring of those financial operations. In particular, the financial exposure of the United Kingdom shall not increase, in nominal terms, in comparison with the situation immediately prior to the restructuring.

2. For the financial operations referred to in paragraph 1, the Union shall be liable to the United Kingdom for its share of:

- (a) any amounts recovered by the Union from defaulting debtors or related to undue payments; and
- (b) any net revenue resulting from the difference between financial and operational revenues and financial and operational expenses, entered as revenue, general or assigned, in the Union budget.

For revenue of the asset management of the provisioning of instruments having a provisioning, the Union shall calculate a percentage of revenue as the ratio between the net revenue of the asset management of the previous year and the total provisioning existing at the end of the previous year. The amount of the liability toward the United Kingdom for revenue of the asset management of the provisioning shall be the amount obtained by multiplying the United Kingdom's current provisioning as referred to in paragraph 5 by that percentage of revenue.

⁽¹⁵¹⁾ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

⁽¹⁵²⁾ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

⁽¹⁵³⁾ Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

⁽¹⁵⁴⁾ Council Regulation (EC, Euratom) No 2728/94 of 31 October 1994 establishing a Guarantee Fund for external actions (OJ L 293, 12.11.1994, p. 1).

⁽¹⁵⁵⁾ Decision No 466/2014/EU of the European Parliament and the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (OJ L 135, 8.5.2014, p. 1).

⁽¹⁵⁶⁾ Decision No 1080/2011/EU of the European Parliament and of the Council of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC (OJ L 280, 27.10.2011, p. 1).

3. By 31 March 2021, for each instrument referred to in paragraph 1 that provides for provisioning from the Union's budget, the Union shall communicate to the United Kingdom:

- (a) its initial provisioning, calculated as the United Kingdom's share of the sum of:
 - (i) the provisions made in the corresponding guarantee fund by 31 December 2020;
 - (ii) the amount of provisions committed and not yet paid by 31 December 2020; and
 - (iii) the payments made from the date of entry into force of this Agreement until 31 December 2020 related to financial operations decided upon on or after the date of entry into force of this Agreement; and
- (b) its default provisioning rate, calculated as the ratio between the United Kingdom's initial provisioning for that instrument and the amount of the financial operations referred to in paragraph 1 as at 31 December 2020 decided upon before the date of entry into force of this Agreement.

4. On 31 March of each year, starting in 2021, until the amortisation, expiry or termination of the financial operations referred to in paragraph 1, the Union shall communicate to the United Kingdom information concerning those financial operations. The information shall contain, for each type of instrument:

- (a) the contingent liabilities outstanding at 31 December of the preceding year;
- (b) the payments made in the preceding year by the Union in relation to those financial operations and the amounts of such payments that have accumulated after 31 December 2020;
- (c) the United Kingdom's current provisioning and its current provisioning rate as set out in paragraph 5;
- (d) the reimbursements made to the United Kingdom in the preceding year in accordance with point (a) of paragraph 6 and the amounts of such reimbursements that have accumulated after 31 December 2020;
- (e) the amounts recovered and the net revenues entered in the Union budget as referred to in paragraph 2 for the preceding year;
- (f) if necessary, other useful information concerning the financial operations in the preceding year.

5. By 31 March of each year, for each instrument referred to in paragraph 1, where the basic act establishes provisioning from the Union budget, the Union shall:

- (a) calculate the United Kingdom's current provisioning, defined as the amount of the United Kingdom's initial provisioning reduced by:
 - (i) the United Kingdom's share of the accumulated payments referred to in point (b) of paragraph 4 made from the Union budget after 31 December 2020 in relation to financial operations decided upon before the date of entry into force of this Agreement;
 - (ii) the United Kingdom's share of the amount of decommitments made in the previous years on the outstanding commitments referred to in point (a)(ii) of paragraph 3 of this Article, as communicated pursuant to Article 140(3);
 - (iii) the accumulated level of reimbursements made to the United Kingdom as of 1 January 2021, as referred to in point (d) of paragraph 4;
- (b) communicate to the United Kingdom the current provisioning rate defined as the ratio between the United Kingdom's current provisioning and the amount of financial operations referred to in point (a) of paragraph 4.

6. Every year from 2022 onwards:

- (a) if the United Kingdom's current provisioning rate for an instrument exceeds its default provisioning rate for that instrument, the Union shall be liable to the United Kingdom for that instrument for the amount obtained by multiplying the amount of the financial liabilities referred to in point (a) of paragraph 4 by the difference between the current provisioning rate and the default provisioning rate. The Union's liability shall not exceed the United Kingdom's current provisioning as calculated in paragraph 5;
- (b) if, in a given year, the United Kingdom's current provisioning rate for an instrument becomes negative, the United Kingdom shall be liable to the Union for that instrument for the amount of the negative current provisioning. In the following years, the United Kingdom shall be liable to the Union for that instrument for its share of the payments made as communicated in accordance with point (b) of paragraph 4 of this Article and the United Kingdom's share of the amount of decommitments made in the previous year on the outstanding commitments referred to in point (a)(ii) of paragraph 3 of this Article, as communicated pursuant to Article 140(3).

7. If the United Kingdom's current provisioning is positive once the Union's financial operations related to an instrument referred to in paragraph 1 are extinguished, the Union shall be liable to the United Kingdom for the amount of the United Kingdom's current provisioning as calculated in accordance with paragraph 5.
8. After 31 December 2020, if payments are made from the Union budget for the financial operations referred to in paragraph 1 in relation to an instrument for which the basic act does not establish provisioning, the United Kingdom shall be liable to the Union for that instrument for its share of the payments made as communicated in accordance with point (b) of paragraph 4.
9. For the purposes of this Article, where financial liabilities, payments, recoveries or other amounts relate to financial operations referred to in paragraph 1 but it cannot be directly determined whether they arise from a particular financial operation as a result of the application of risk mutualisation or subordination mechanisms, the relevant financial liabilities, payments, recoveries or other amounts that are required to be determined for the application of this Article shall be calculated on a pro-rata basis based on the ratio between the amount of financial operations decided upon or approved before the date of entry into force of this Agreement on 31 December of the year before the calculation is made and the total amount of financial operations on the latter date.
10. Where financial operations as referred to in paragraph 1 are non-amortising, such financial operations shall be considered after 10 years as amortising in proportion to the amortisation of the remaining amortising operations.

Article 144

Financial instruments under direct or indirect implementation financed by the programmes of the MFF 2014-2020 or under earlier financial perspectives

1. From the date of entry into force of this Agreement until the full amortisation of the financial operations referred to in point (a) of this subparagraph, the Union shall identify the financial operations that:
 - (a) before the date of entry into force of this Agreement, have been decided upon by the European Commission and, where necessary, approved by the financial institutions which have been entrusted by the European Commission with the implementation of a financial instrument under a programme of the MFF 2014-2020 or under earlier financial perspectives under direct or indirect implementation; and
 - (b) have been decided upon and, where necessary, approved on or after the date of entry into force of this Agreement.

On 31 July 2019, in the report referred to in the second subparagraph of Article 143(1), the Union shall provide the following information concerning the financial instruments, under direct or indirect implementation, financed by the programmes of the MFF 2014-2020 or financed under earlier financial perspectives:

- (a) the financial liabilities arising from the operations decided upon before the date of entry into force of this Agreement by the European Commission or the entity entrusted by the European Commission with the implementation of the financial instrument; and
- (b) the payments made by the European Commission for the financial instruments and the amounts committed for the financial instruments that have not yet been paid at that date.

The liability of the Union to the United Kingdom in relation to the financial operations referred to in this paragraph shall not be affected by a restructuring of those financial operations, to the extent that such restructuring does not increase the financial exposure to the counterparty, in nominal terms, as it stood immediately prior to the restructuring.

2. On 31 March of each year, starting in 2021, until their amortisation, expiry or termination, for each financial instrument referred to in paragraph 1, the Union shall communicate to the United Kingdom the available information regarding the financial operations referred to in paragraph 1 that have been decided upon or approved before the date of entry into force of this Agreement and those that have been decided upon or approved on or after that date. For each instrument, the information shall contain:
 - (a) the financial liabilities as at 31 December of the preceding year arising from the financial operations decided upon by the European Commission, or approved by the entity entrusted by the European Commission with the implementation of the financial instrument, before the date of entry into force of this Agreement;
 - (b) the total financial liabilities as at 31 December of the preceding year arising from the financial operations decided upon by the European Commission, or by the entity entrusted by the European Commission with the implementation of the instrument;

- (c) the ratio between the amounts referred to in points (a) and (b);
 - (d) the payments made from the provisioning fund or from fiduciary accounts with the entrusted entities, where such payments relate to financial operations that were decided upon by the European Commission or were approved by the entity entrusted by the European Commission with the implementation of the financial instrument, after the date of entry into force of this Agreement;
 - (e) the part of the amounts paid back to the Union in accordance with Article 209(3) of the Financial Regulation, other than the returns provided for in point (f) of this paragraph, related to financial operations decided upon or approved before the date of entry into force of this Agreement;
 - (f) returns on resources of the financial instrument in the provisioning fund or in fiduciary accounts;
 - (g) the part of the amount of the provisioning fund or fiduciary accounts which has not been disbursed and which has been recovered by the European Commission;
 - (h) if necessary, other useful information concerning the financial operations in the preceding year.
3. The Union shall be liable to the United Kingdom for the United Kingdom's share of any amount referred in points (d) to (g) of paragraph 2.
4. For the purposes of this Article, where financial liabilities, payments, recoveries or other amounts relate to financial operations referred to in paragraph 1 but cannot be directly determined to arise from a particular financial operation as a result of the application of risk mutualisation or subordination mechanisms, the relevant financial liabilities, payments, recoveries or other amounts required to be determined for the application of this Article shall be calculated on a pro-rata basis, based on the ratio referred to in point (c) of paragraph 2.

Article 145

The European Coal and Steel Community

The Union shall be liable to the United Kingdom for its share of the net assets of the European Coal and Steel Community in liquidation on 31 December 2020.

The Union shall reimburse the United Kingdom for the relevant amount in five equal annual instalments on 30 June of each year, starting on 30 June 2021.

Article 146

Union investment in the EIF

The Union shall be liable to the United Kingdom for its share of the Union's investment in the paid-in capital of the EIF on 31 December 2020.

The Union shall reimburse the United Kingdom for the relevant amount in five equal annual instalments on 30 June of each year starting on 30 June 2021.

Article 147

Contingent liabilities related to legal cases

1. The United Kingdom shall be liable for its share of the payments required to discharge the contingent liabilities of the Union that become due in relation to legal cases concerning financial interests of the Union related to the budget and, in particular, in relation to Regulation (EC, Euratom) No 2988/95 or in relation to legal cases resulting from the execution of Union programmes and policies, provided that the facts forming the subject matter of those cases occurred no later than 31 December 2020.

The Union shall be liable to the United Kingdom for its share of any amount of subsequent recoveries related to the payments referred to in the first subparagraph.

2. The Union shall communicate to the United Kingdom the amounts referred to in paragraph 1 by 31 March of each year.

*Article 148***Payments after 2020**

1. The reference dates for payments by the United Kingdom to the Union or by the Union to the United Kingdom made after 31 December 2020 shall be 30 June and 31 October of every year for the amounts:

- (a) referred to in Article 49(2), Articles 50 and 53, Article 62(2), point (e) of Article 63(1), and Articles 63(2), 99(3), and 100(2);
- (b) referred to in Article 84(1);
- (c) referred to in points (a), (b), (c), (e) and (f) of Article 136(3), by the next reference date following the date of adjustment or correction;
- (d) resulting from corrective measures to be taken by the United Kingdom with regard to own resources due for financial years until 2020 as a result of controls executed under Regulation (EU, Euratom) No 608/2014 or Regulation (EEC, Euratom) No 1553/89 or for any other reason, by the next reference date following the date of the corrective measure;
- (e) referred to in Article 140(4), in two instalments on the reference dates for payments, the first instalment amounting to half of the second one;
- (f) referred to in Article 140(5), on 30 June following the confirmation by the United Kingdom of the acceptance of the proposal of the Union to the Committee on the financial provisions referred to in point (f) of Article 165(1) and the Joint Committee;
- (g) referred to in Article 141, by the next reference date following the adjustment of the own resources for the Member States resulting from the definitive entry of the fine into the Union budget;
- (h) referred to in Article 142(1), by the next reference date following the date of the communication referred to in paragraph 3;
- (i) referred to in Article 142(5) and the fourth subparagraph of Article 142(6), on 31 October of each year;
- (j) referred to in the first subparagraph of Article 142(6), on 30 June of each year;
- (k) referred to in Articles 143 and 144, by the next reference date following the date of the communication referred in Articles 143(4) and 144(2);
- (l) referred to in Articles 145 and 146;
- (m) referred to in Article 147(2), by the next reference date following the date of the communication referred to therein;
- (n) referred to in paragraph 3 as possible accrued interest.

Payments shall be made in four equal monthly instalments for payments that have a reference date of 30 June and in eight equal monthly instalments for payments that have a reference date of 31 October. All payments shall be made by the last working day of each month, starting on the reference date or, where the reference date is not a working day, the last working day before the reference date.

2. As long as there are still payments to be made by the Union to the United Kingdom or by the United Kingdom to the Union, the Union shall communicate to the United Kingdom on 16 April and on 16 September of each year a document specifying the relevant amounts to be paid, expressed in euro and in British pounds, based on the conversion rate applied by the European Central Bank on the first working day of the month. The Union or the United Kingdom shall pay the net amounts by the dates referred to in paragraph 1.

3. Any delay in payments by the United Kingdom to the Union or by the Union to the United Kingdom shall be subject to the payment of interest in accordance with Article 12 of Regulation (EU, Euratom) No 609/2014.

Chapter 3

EUROPEAN CENTRAL BANK*Article 149***Reimbursement of the paid-in capital**

The European Central Bank shall, on behalf of the Union, reimburse the Bank of England for the paid-in capital provided by the Bank of England. The date of the reimbursement and other practical arrangements shall be established in accordance with Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank.

Chapter 4

EUROPEAN INVESTMENT BANK*Article 150***Continued liability of the United Kingdom and reimbursement of the paid-in capital**

1. The United Kingdom shall remain liable, as set out in this Article, for the financial operations approved by the EIB before the date of entry into force of this Agreement, as further specified in paragraph 2 ("EIB financial operations"), even if the resulting financial exposure is assumed on or after the date of entry into force of this Agreement, and shall remain liable for other risks assumed by the EIB as set out in the second subparagraph.

The liability of the United Kingdom shall extend to the EIB financial operations and to asset-liability management risks and operational risks attributable to the EIB financial operations, in accordance with paragraph 6. For other such risks that are not associated with specific financial operations and are not attributable to the stock of financial operations built after the date of entry into force of this Agreement, the amount of the liability of the United Kingdom shall be proportional to the ratio between the remaining exposure due to EIB financial operations and the total amount of financial operations at the time the liability of the United Kingdom is triggered in accordance with paragraph 6.

The implementation of any post-withdrawal growth strategy of the EIB is not covered by the scope of this Article.

2. The EIB financial operations shall include loans, guarantees, fund investments, equity investments, bonds and other loan substitute products, and any other financing operations, with counterparties or regarding projects inside and outside the territory of the Member States, including operations guaranteed by third parties including the Member States or the Union.

The liability of the United Kingdom for EIB financial operations shall apply where the financial exposure of the EIB:

- (a) is based on an approval by the Board of Directors of the EIB given prior to the date of entry into force of this Agreement, or based on a decision adopted on the basis of a delegation by the Board of Directors given prior to the date of entry into force of this Agreement;
- (b) results from the restructuring of an EIB financial operation, to the extent that such restructuring does not increase the financial exposure to the counterparty, in nominal terms, as it stood immediately prior to the restructuring;
- (c) results from a change to an EIB financial operation, where that change was approved by the Board of Directors of the EIB on or after the date of entry into force of this Agreement, to the extent that such change does not increase the financial exposure to the counterparty as it stood immediately prior to the change; or
- (d) results from the institutional participation of the EIB in the capital of the EIF and the European Bank for Reconstruction and Development, as it stood immediately prior to the date of entry into force of this Agreement.

For the purposes of establishing the limits on the liability of the United Kingdom pursuant to paragraphs 3 and 5, the exposure of the EIB on account of EIB financial operations which, due to their nature, are not subject to amortisation, in particular equity-type investments, revolving mandates granted to the EIF, and the participation in the capital of the EIF and the European Bank for Reconstruction and Development, shall be considered to amortise as follows: for a period of 10 years from the entry into force of this Agreement, the amount of the non-amortising exposure under the EIB financial operation shall be considered to remain at the amount as approved by the EIB prior to the entry into force of this Agreement, reduced by any disposal made by the EIB since this date. After this period, the amount shall be treated as decreasing in proportion to the amortisation of the remaining amortising exposure on account of EIB financial operations.

3. For the purposes of paragraph 1, the United Kingdom shall be liable for its share of the uncalled subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement. The United Kingdom shall make payments to the EIB, up to the amount of its liability pursuant to this paragraph, when its liability is triggered in accordance with paragraph 6.

That total liability pursuant to this paragraph shall at no point exceed the amount of the United Kingdom's share of the uncalled subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement.

When the amount of the remaining exposure of the EIB under the EIB financial operations referred to in paragraph 1 is lower than the total amount of subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement, the amount of the liability of the United Kingdom pursuant to this paragraph shall, at any given time, be limited to the amount obtained by applying the ratio of the United Kingdom subscribed capital of the EIB and the total subscribed capital of the EIB as they stood immediately prior to the date of entry into force of this Agreement ("the United Kingdom share of the subscribed capital") to the difference between the amount of that remaining exposure at that time, and the total paid-in subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement.

4. The EIB shall pay to the United Kingdom on behalf of the Union an amount equal to the United Kingdom's share of the paid-in subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement. That payment shall be made in accordance with Protocol No 5 on the Statute of the European Investment Bank. It shall be made in 12 yearly instalments. The first 11 instalments, each equal to EUR 300 000 000, shall be due on 15 December of each year starting in 2019. The balance of EUR 195 903 950 shall be due on 15 December 2030. The payments made in accordance with this paragraph shall not release the United Kingdom from its liability under paragraph 5.

5. In addition to its liability under paragraph 3, for the purposes of paragraph 1, the United Kingdom shall be liable for its paid-in subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement. The United Kingdom shall make payments to the EIB, up to the amount of its liability, in accordance with this paragraph, when its liability is triggered under paragraph 6.

The total liability pursuant to this paragraph shall at no point exceed the amount of the paid-in subscribed capital of the United Kingdom in the EIB as it stood immediately prior to the date of entry into force of this Agreement.

When the remaining exposure of the EIB on account of the EIB financial operations referred to in paragraph 1 is lower than the total paid-in subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement, the amount of the liability of the United Kingdom pursuant to this paragraph shall, at any time, be limited to an amount obtained by applying the ratio of the United Kingdom share of the subscribed capital to the amount of that remaining exposure at that time.

6. The liability of the United Kingdom in accordance with this Article shall be triggered, on a *pari-passu* basis with respect to the Member States, in the event that the EIB requires the Member States to make payments on account of their uncalled subscribed capital or when the paid-in subscribed capital of the Member States is used.

When the liability of the United Kingdom pursuant to paragraph 3 is triggered, the United Kingdom shall pay the amount due to the EIB under the same conditions as apply to the Member States (including the timing and the terms of the payment), as decided by the Board of Directors of the EIB at the relevant time. The decision of the EIB requiring the Member States to make payments on account of their uncalled subscribed capital may, in particular, be related to the nature of underlying risk events and the financial position of the EIB in the light of its payment obligations, the state of its assets and liabilities, its standing in capital markets, and the provisions of its contingency and recovery planning as applicable at the relevant time.

When the liability of the United Kingdom pursuant to paragraph 5 is triggered, the United Kingdom shall pay the amount due to the EIB, in euro, within 30 days from the first demand from the EIB, and subject to the fourth subparagraph of this paragraph.

The liability of the United Kingdom triggered in accordance with paragraph 5 shall be fulfilled from the United Kingdom's share of paid-in subscribed capital of the EIB as it stood immediately prior to the date of entry into force of this Agreement up to the amount not yet paid to the United Kingdom in accordance with paragraph 4. The amount of annual instalments referred to in paragraph 4 shall be reduced accordingly. If the liability of the United Kingdom cannot be fully met in accordance with this method, the United Kingdom shall pay to the EIB the remaining amount due.

The EIB shall, on behalf of the Union, in each case establish the attribution of the events underlying the triggering of the liability of the United Kingdom to the relevant stock of financial operations or risks and the amount which the United Kingdom is obliged to pay to the EIB as follows:

- (a) to the extent that underlying events are attributable to EIB financial operations, or are attributable to associated asset-liability management risk or operational risk, the United Kingdom shall pay to the EIB an amount equal to the United Kingdom share of the subscribed capital of the total sum which the Member States are required to pay, or an amount equal to the United Kingdom share of the subscribed capital of the total sum by which the paid-in subscribed capital of the Member States is used, respectively;
- (b) to the extent that underlying events are attributable to other risks, and are not attributable to any specific financial operation or to the stock of financial operations built after the date of entry into force of this Agreement, the United Kingdom shall pay to the EIB the amount resulting from point (a) multiplied by the ratio of the remaining exposure due to EIB financial operations to the total amount of financial operations at the time the liability of the United Kingdom is triggered.

7. Except for the payments provided for in paragraph 4, the EIB shall not be obliged to make any other payment, return or remuneration on account of the termination of the membership of the United Kingdom of the EIB or on account of the retention by the United Kingdom of a liability in accordance with this Article.

8. On 31 July 2019, the EIB shall communicate to the United Kingdom the United Kingdom's exposure under the EIB financial operations, and the limit on the liability of the United Kingdom in accordance with paragraphs 3 and 5, reflecting the financial situation of the EIB and the liability of the United Kingdom as of the date of entry into force of this Agreement.

On 31 March of every year, starting in 2020, until the extinction of the liability of the United Kingdom in accordance with this Article, the EIB shall communicate to the United Kingdom the remaining exposure of the United Kingdom under the EIB financial operations, and the limit on the liability of the United Kingdom in accordance with paragraphs 3 and 5, reflecting the financial situation of the EIB and the liability of the United Kingdom as at 31 December of the preceding year. The report shall also disclose any material changes which, in the opinion of the EIB, have a material impact on the liability of the United Kingdom. The EIB shall also provide timely information if such changes occur during the year.

The EIB shall provide the United Kingdom with timely information regarding any upcoming triggering of the liability of the United Kingdom pursuant to this Article, in line with the information provided to the Member States. That information shall include information on the nature of the triggering event and the calculation of the amounts to be paid. The United Kingdom shall treat that information as strictly confidential until the EIB lifts the confidentiality or until the liability of the United Kingdom is triggered, whichever occurs first.

Article 151

Participation of the United Kingdom in EIB group after the withdrawal date

As from the date of entry into force of this Agreement, neither the United Kingdom nor projects located in the United Kingdom shall be eligible for new financial operations from the EIB group that are reserved for Member States, including those under Union mandates. Entities established in the United Kingdom shall be treated as entities located outside the Union.

The signature of financial operations relating to the United Kingdom, to United Kingdom entities, or to United Kingdom projects approved by the EIB group before the date of entry into force of this Agreement, may take place after that date on the same basis as that on which they were originally approved.

Chapter 5

**EUROPEAN DEVELOPMENT FUND AND THE UNITED KINGDOM'S GUARANTEE UNDER THE EDF
INTERNAL AGREEMENTS***Article 152***Participation in the European Development Fund**

1. The United Kingdom shall remain party to the European Development Fund ("EDF") until the closure of the 11th EDF and all previous unclosed EDFs, and shall in this respect assume the same obligations as the Member States under the Internal Agreement by which it was set up ("the 11th EDF Internal Agreement") ⁽¹⁵⁷⁾, and shall assume the obligations resulting from previous EDFs until their closure, including any such obligations under Council Regulations (EU) 2015/322 ⁽¹⁵⁸⁾ and (EU) 2015/323 ⁽¹⁵⁹⁾, subject to the conditions laid down in this Agreement. The United Kingdom shall be bound by the decisions of the Council setting out the annual contributions of Member States as adopted under Article 21 of Regulation (EU) 2015/323. United Kingdom beneficiaries shall remain eligible to participate in projects under the 11th EDF and previous EDFs under the same conditions as before the date of entry into force of this Agreement.
2. By way of derogation from Article 7 of this Agreement, the United Kingdom may participate, as an observer without voting rights, in the EDF Committee as established in accordance with Article 8 of the 11th EDF Internal Agreement and in the Investment Facility Committee as established in accordance with Article 9 of the 11th EDF Internal Agreement.
3. The overseas countries and territories referred to in point (e) of Article 3(1) shall benefit from the 11th EDF until its closure and from previous EDFs until their closure.
4. The United Kingdom's share of the Investment Facility of the EDF from successive EDF periods shall be reimbursed to the United Kingdom as the investment matures. The method for making this reimbursement shall be the same as the method set out in Article 144. Unless agreed otherwise, the United Kingdom's capital share shall not be recommitted beyond the end of the 11th EDF commitment period or rolled over into subsequent periods.

*Article 153***Reuse of the decommitments**

Where the amounts from projects under the 10th EDF or the amounts from previous EDFs have not been committed in accordance with Article 1(3) of the 11th EDF Internal Agreement, or have been decommitted in accordance with Article 1(4) of the 11th EDF Internal Agreement on the date of entry into force of this Agreement, the United Kingdom's share of those amounts shall not be reused.

The first paragraph shall apply to the United Kingdom's share of funds not committed or decommitted under the 11th EDF after 31 December 2020.

*Article 154***The United Kingdom's guarantee under the successive EDF Internal Agreements**

The United Kingdom shall remain liable in respect of its guarantees under Article 9 of the 4th EDF Internal Agreement ⁽¹⁶⁰⁾, Article 8 of the 5th ⁽¹⁶¹⁾, 6th ⁽¹⁶²⁾, 7th ⁽¹⁶³⁾ and 8th EDF Internal Agreement ⁽¹⁶⁴⁾, Article 6 of the 9th EDF Internal Agreement ⁽¹⁶⁵⁾ and Article 4 of the 10th ⁽¹⁶⁶⁾ and 11th EDF Internal Agreement.

⁽¹⁵⁷⁾ Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (OJ L 210, 6.8.2013, p. 1).

⁽¹⁵⁸⁾ Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund (OJ L 58, 3.3.2015, p. 1).

⁽¹⁵⁹⁾ Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ L 58, 3.3.2015, p. 17).

⁽¹⁶⁰⁾ OJ L 25, 30.1.1976, p. 168.

⁽¹⁶¹⁾ OJ L 347, 22.12.1980, p. 210.

⁽¹⁶²⁾ OJ L 86, 31.3.1986, p. 210.

⁽¹⁶³⁾ OJ L 229, 17.8.1991, p. 288.

⁽¹⁶⁴⁾ OJ L 156, 29.5.1998, p. 108.

⁽¹⁶⁵⁾ OJ L 317, 15.12.2000, p. 355.

⁽¹⁶⁶⁾ OJ L 247, 9.9.2006, p. 32.

The United Kingdom shall remain entitled to its share of any amounts recovered under the terms of the Member States' guarantees and to the balance of its Member State Call Account. The United Kingdom's share referred to in this subparagraph shall be in proportion to its respective participation in each guarantee agreement.

Chapter 6

TRUST FUNDS AND FACILITY FOR REFUGEES IN TURKEY

Article 155

Commitments toward the Trust Funds and the Facility for Refugees in Turkey

1. The United Kingdom shall honour the commitments it made before the date of entry into force of this Agreement to the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa, established by Commission Decision of 20 October 2015 ⁽¹⁶⁷⁾, to any future European Union Trust Fund created before the date of entry into force of this Agreement, and to the Facility for Refugees in Turkey, established by Commission decision of 24 November 2015 ⁽¹⁶⁸⁾ and any amendments thereto adopted before the date of entry into force of this Agreement.
2. The United Kingdom may participate in the relevant bodies related to the Facility for Refugees in Turkey, following the rules established for donors in accordance with Article 234(4) of the Financial Regulation.

Chapter 7

AGENCIES OF THE COUNCIL AND COMMON SECURITY AND DEFENCE POLICY OPERATIONS

Article 156

The United Kingdom's obligations from the date of entry into force of this Agreement

Until 31 December 2020, the United Kingdom shall contribute to the financing of the European Defence Agency, the European Union Institute for Security Studies, and the European Union Satellite Centre, as well as to the costs of Common Security and Defence Policy operations, on the basis of the contribution keys set out in point (a) of Article 14(9) of Council Decision (EU) 2016/1353 ⁽¹⁶⁹⁾, in Article 10(3) of Council Decision 2014/75/CFSP ⁽¹⁷⁰⁾, in Article 10(3) of Council Decision 2014/401/CFSP ⁽¹⁷¹⁾ and in the second subparagraph of Article 41(2) of the Treaty on European Union, respectively, and in accordance with Article 5 of this Agreement.

⁽¹⁶⁷⁾ Commission Decision of 20 October 2015 on the establishment of a European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (C(2015) 7293).

⁽¹⁶⁸⁾ Commission Decision of 24 November 2015 on the coordination of the actions of the Union and of the Member States through a coordination mechanism — the Refugee Facility for Turkey (OJ C 407, 8.12.2015, p. 8).

⁽¹⁶⁹⁾ Council Decision (EU) 2016/1353 of 4 August 2016 concerning the financial rules of the European Defence Agency and repealing Decision 2007/643/CFSP (OJ L 219, 12.8.2016, p. 98).

⁽¹⁷⁰⁾ Council Decision 2014/75/CFSP of 10 February 2014 on the European Union Institute for Security Studies (OJ L 41, 12.2.2014, p. 13).

⁽¹⁷¹⁾ Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre (OJ L 188, 27.6.2014, p. 73).

*Article 157***The United Kingdom's obligations after 31 December 2020**

1. Based on the accounts of the agencies, to the extent that the relevant liabilities have not been provisioned on 31 December 2020, the United Kingdom shall pay its share of the following liabilities in accordance with its contribution key for each of those agencies on the basis of their audited accounts on 31 December 2020:
 - (a) the pension liabilities for the personnel of the European Defence Agency, the European Union Institute for Security Studies, and the European Union Satellite Centre;
 - (b) any liabilities arising from the liquidation of the Western European Union.
2. The payment in relation to the liabilities referred to in paragraph 1 shall be made by 30 June 2021.

PART SIX

INSTITUTIONAL AND FINAL PROVISIONS

TITLE I

CONSISTENT INTERPRETATION AND APPLICATION*Article 158***References to the Court of Justice of the European Union concerning Part Two**

1. Where, in a case which commenced at first instance within 8 years from the end of the transition period before a court or tribunal in the United Kingdom, a question is raised concerning the interpretation of Part Two of this Agreement, and where that court or tribunal considers that a decision on that question is necessary to enable it to give judgment in that case, that court or tribunal may request the Court of Justice of the European Union to give a preliminary ruling on that question.

However, where the subject matter of the case before the court or tribunal in the United Kingdom is a decision on an application made pursuant to Article 18(1) or (4) or pursuant to Article 19, a request for a preliminary ruling may be made only where the case commenced at first instance within a period of 8 years from the date from which Article 19 applies.

2. The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings on requests pursuant to paragraph 1. The legal effects in the United Kingdom of such preliminary rulings shall be the same as the legal effects of preliminary rulings given pursuant to Article 267 TFEU in the Union and its Member States.
3. In the event that the Joint Committee adopts a decision under Article 132(1), the period of eight years referred to in the second subparagraph of paragraph 1 shall be automatically extended by the corresponding number of months by which the transition period is extended.

*Article 159***Monitoring of the implementation and application of Part Two**

1. In the United Kingdom, the implementation and application of Part Two shall be monitored by an independent authority (the "Authority") which shall have powers equivalent to those of the European Commission acting under the Treaties to conduct inquiries on its own initiative concerning alleged breaches of Part Two by the administrative authorities of the United Kingdom and to receive complaints from Union citizens and their family members for the purposes of conducting such inquiries. The Authority shall also have the right, following such complaints, to bring a legal action before a competent court or tribunal in the United Kingdom in an appropriate judicial procedure with a view to seeking an adequate remedy.

2. The European Commission and the Authority shall each annually inform the specialised Committee on citizens' rights referred to in point (a) of Article 165(1) on the implementation and application of Part Two in the Union and in the United Kingdom, respectively. The information provided shall, in particular, cover measures taken to implement or comply with Part Two and the number and nature of complaints received.

3. The Joint Committee shall assess, no earlier than 8 years after the end of the transition period, the functioning of the Authority. Following such assessment, it may decide, in good faith, pursuant to point (f) of Article 164(4) and Article 166, that the United Kingdom may abolish the Authority.

Article 160

Jurisdiction of the Court of Justice of the European Union concerning certain provisions of Part Five

Without prejudice to Article 87 of this Agreement, Articles 258, 260 and 267 TFEU shall apply in respect of the interpretation and application of applicable Union law referred to in Article 136 and Article 138(1) or (2) of this Agreement. To this effect, any reference made in Articles 258, 260 and 267 TFEU to a Member State shall be understood as including the United Kingdom.

Article 161

Procedures before the Court of Justice of the European Union

1. Where a court or tribunal of a Member State refers a question concerning the interpretation of this Agreement to the Court of Justice of the European Union for a preliminary ruling, the decision of the national court or tribunal containing that question shall be notified to the United Kingdom.

2. The provisions of Union law governing procedures brought before the Court of Justice of the European Union in accordance with Article 267 TFEU shall apply *mutatis mutandis* to requests for a ruling of the Court of Justice of the European Union made pursuant to Article 158 of this Agreement.

The provisions of Union law governing the procedure before the Court of Justice of the European Union shall apply in respect of the proceedings before the Court of Justice of the European Union and requests for preliminary rulings made in accordance with Article 160 of this Agreement.

3. In the cases brought before the Court of Justice of the European Union in accordance with paragraph 1 and Articles 158 and 160 of this Agreement and Article 12 of the Protocol on the Sovereign Base Areas:

- (a) the United Kingdom may participate in the proceedings before the Court of Justice of the European Union in the same way as a Member State;
- (b) lawyers authorised to practise before the courts or tribunals of the United Kingdom shall be entitled to represent or assist any parties to such proceedings before the Court of Justice of the European Union; in such cases those lawyers shall in every respect be treated as lawyers authorised to practise before courts of Member States representing or assisting a party before the Court of Justice of the European Union.

Article 162

Participation of the European Commission in cases pending in the United Kingdom

Where the consistent interpretation and application of this Agreement so requires, the European Commission may submit written observations to the courts and tribunals of the United Kingdom in pending cases where the interpretation of the Agreement is concerned. The European Commission may, with the permission of the court or tribunal in question, also make oral observations. The European Commission shall inform the United Kingdom of its intention to submit observations before formally making such submissions.

Article 163

Regular dialogue and exchange of information

In order to facilitate the consistent interpretation of this Agreement and in full deference to the independence of courts, the Court of Justice of the European Union and the United Kingdom's highest courts shall engage in regular dialogue, analogous to the dialogue in which the Court of Justice of the European Union engages with the highest courts of the Member States.

TITLE II

INSTITUTIONAL PROVISIONS*Article 164***Joint Committee**

1. A Joint Committee, comprising representatives of the Union and of the United Kingdom, is hereby established. The Joint Committee shall be co-chaired by the Union and the United Kingdom.
2. The Joint Committee shall meet at the request of the Union or the United Kingdom, and in any event shall meet at least once a year. The Joint Committee shall set its meeting schedule and its agenda by mutual consent. The work of the Joint Committee shall be governed by the rules of procedure set out in Annex VIII to this Agreement.
3. The Joint Committee shall be responsible for the implementation and application of this Agreement. The Union and the United Kingdom may each refer to the Joint Committee any issue relating to the implementation, application and interpretation of this Agreement.
4. The Joint Committee shall:
 - (a) supervise and facilitate the implementation and application of this Agreement;
 - (b) decide on the tasks of the specialised committees and supervise their work;
 - (c) seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement or of resolving disputes that may arise regarding the interpretation and application of this Agreement;
 - (d) consider any matter of interest relating to an area covered by this Agreement;
 - (e) adopt decisions and make recommendations as set out in Article 166; and
 - (f) adopt amendments to this Agreement in the cases provided for in this Agreement.
5. The Joint Committee may:
 - (a) delegate responsibilities to specialised committees, except those responsibilities referred to in points (b), (e) and (f) of paragraph 4;
 - (b) establish specialised committees other than those established by Article 165, in order to assist the Joint Committee in the performance of its tasks;
 - (c) change the tasks assigned to specialised committees and dissolve any of those committees;
 - (d) except in relation to Parts One, Four and Six, until the end of the fourth year following the end of the transition period, adopt decisions amending this Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when this Agreement was signed, and provided that such decisions may not amend the essential elements of this Agreement;
 - (e) adopt amendments to the rules of procedure set out in Annex VIII; and
 - (f) take such other actions in the exercise of its functions as decided by the Union and the United Kingdom.
6. The Joint Committee shall issue an annual report on the functioning of this Agreement.

*Article 165***Specialised committees**

1. The following specialised committees are hereby established:
 - (a) the Committee on citizens' rights;
 - (b) the Committee on the other separation provisions;
 - (c) the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland;

- (d) the Committee on issues related to the implementation of the Protocol relating to the Sovereign Base Areas in Cyprus;
- (e) the Committee on issues related to the implementation of the Protocol on Gibraltar; and
- (f) the Committee on the financial provisions.

Those specialised committees shall comprise representatives of the Union and representatives of the United Kingdom.

2. The work of the specialised committees shall be governed by the rules of procedure set out in Annex VIII to this Agreement.

Unless otherwise provided in this Agreement, or unless the co-chairs decide otherwise, the specialised committees shall meet at least once a year. Additional meetings may be held at the request of the Union, the United Kingdom, or of the Joint Committee. They shall be co-chaired by representatives of the Union and of the United Kingdom. The specialised committees shall set their meeting schedule and agenda by mutual consent. The specialised committees may draw up draft decisions and recommendations and refer them for adoption by the Joint Committee.

3. The Union and the United Kingdom shall ensure that their respective representatives on the specialised committees have the appropriate expertise with respect to the issues under discussion.

4. The specialised committees shall inform the Joint Committee of their meeting schedules and agenda sufficiently in advance of their meetings, and shall report to the Joint Committee on the results and conclusions of each of their meetings. The creation or existence of a specialised committee shall not prevent the Union or the United Kingdom from bringing any matter directly to the Joint Committee.

Article 166

Decisions and recommendations

- 1. The Joint Committee shall, for the purposes of this Agreement, have the power to adopt decisions in respect of all matters for which this Agreement so provides and to make appropriate recommendations to the Union and the United Kingdom.
- 2. The decisions adopted by the Joint Committee shall be binding on the Union and the United Kingdom, and the Union and the United Kingdom shall implement those decisions. They shall have the same legal effect as this Agreement.
- 3. The Joint Committee shall adopt its decisions and make its recommendations by mutual consent.

TITLE III

DISPUTE SETTLEMENT

Article 167

Cooperation

The Union and the United Kingdom shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt, through cooperation and consultations, to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 168

Exclusivity

For any dispute between the Union and the United Kingdom arising under this Agreement, the Union and the United Kingdom shall only have recourse to the procedures provided for in this Agreement.

*Article 169***Consultations and communications within the Joint Committee**

1. The Union and the United Kingdom shall endeavour to resolve any dispute regarding the interpretation and application of the provisions of this Agreement by entering into consultations in the Joint Committee in good faith, with the aim of reaching a mutually agreed solution. A party wishing to commence consultations shall provide written notice to the Joint Committee.
2. Any communication or notification between the Union and the United Kingdom provided for in this Title shall be made within the Joint Committee.

*Article 170***Initiation of the arbitration procedure**

1. Without prejudice to Article 160, if no mutually agreed solution has been reached within 3 months after a written notice has been provided to the Joint Committee in accordance with Article 169(1), the Union or the United Kingdom may request the establishment of an arbitration panel. Such request shall be made in writing to the other party and to the International Bureau of the Permanent Court of Arbitration. The request shall identify the subject matter of the dispute to be brought before the arbitration panel and a summary of the legal arguments in support of the request.
2. The Union and the United Kingdom may agree that the establishment of an arbitration panel may be requested before the expiry of the time limit laid down in paragraph 1.

*Article 171***Establishment of the arbitration panel**

1. The Joint Committee shall, no later than by the end of the transition period, establish a list of 25 persons who are willing and able to serve as members of an arbitration panel. To that end, the Union and the United Kingdom shall each propose ten persons. The Union and the United Kingdom shall also jointly propose five persons to act as chairperson of the arbitration panel. The Joint Committee shall ensure that the list complies with these requirements at any moment in time.
2. The list established pursuant to paragraph 1 shall only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence, and who possess specialised knowledge or experience of Union law and public international law. That list 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.
3. An arbitration panel shall be composed of five members.
4. Within 15 days of the date of a request in accordance with Article 170, the panel shall be established in accordance with paragraphs 5 and 6.
5. The Union and the United Kingdom shall each nominate two members from among the persons on the list established under paragraph 1. The chairperson shall be selected by consensus by the members of the panel from the persons jointly nominated by the Union and the United Kingdom to serve as a chairperson.

In the event that the members of the panel are unable to agree on the selection of the chairperson within the time limit laid down in paragraph 4, the Union or the United Kingdom may request the Secretary-General of the Permanent Court of Arbitration to select the chairperson by lot from among the persons jointly proposed by the Union and the United Kingdom to act as chairperson.

6. The Secretary-General of the Permanent Court of Arbitration shall make the selection referred to in second subparagraph of paragraph 5 within 5 days of the request referred to in paragraph 5. Representatives of the Union and of the United Kingdom shall be entitled to be present at the selection.
7. The date of establishment of the arbitration panel shall be the date on which the selection procedure is completed.

8. In the event that the list referred to in paragraph 1 has not been established by expiry of the time limit laid down in paragraph 4, the Union and the United Kingdom shall within 5 days each nominate two persons to serve as members of the panel. If persons have been proposed under paragraph 1, the nominations shall be made from among those persons. The chairperson shall then be appointed in accordance with the procedure set out in paragraph 5. In the event that the Union and the United Kingdom have not, within a further 5 days, jointly proposed at least one person to serve as chairperson, the Secretary-General of the Permanent Court of Arbitration shall within five days, after consultation with the Union and the United Kingdom, propose a chairperson who fulfils the requirements of paragraph 2. Unless either the Union or the United Kingdom objects to that proposal within 5 days, the person proposed by the Secretary-General of the Permanent Court of Arbitration shall be appointed.

9. In the event of failure to establish an arbitration panel within 3 months from the date of the request made pursuant to Article 170, the Secretary-General of the Permanent Court of Arbitration shall, upon request by either the Union or the United Kingdom, within 15 days of such request, after consultation with the Union and the United Kingdom, appoint persons who fulfil the requirements of paragraph 2 of this Article to constitute the arbitration panel.

Article 172

Rules of procedure

Dispute settlement procedures set out in this Title shall be governed by the rules of procedure set out in Part A of Annex IX ("Rules of Procedure"), the Joint Committee shall keep the functioning of those dispute settlement procedures under constant review and may amend the Rules of Procedure.

Article 173

Time-frame of the procedure before the arbitration panel

1. The arbitration panel shall notify its ruling to the Union, the United Kingdom and the Joint Committee within 12 months from the date of establishment of the arbitration panel. Where the arbitration panel considers that it cannot comply with this time limit, its chairperson shall notify the Union and the United Kingdom in writing, stating the reasons for the delay and the date on which the panel intends to conclude its work.

2. Within 10 days of the establishment of the arbitration panel the Union or the United Kingdom may submit a reasoned request to the effect that the case is urgent. In that case, the arbitration panel shall give a ruling on the urgency within 15 days from the receipt of such request. If it has determined the urgency of the case, the arbitration panel shall make every effort to notify its ruling to the Union and the United Kingdom within 6 months from the date of its establishment.

Article 174

Disputes raising questions of Union law

1. Where a dispute submitted to arbitration in accordance with this Title raises a question of interpretation of a concept of Union law, a question of interpretation of a provision of Union law referred to in this Agreement or a question of whether the United Kingdom has complied with its obligations under Article 89(2), 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 the request referred to in the first subparagraph 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 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 of Union law, interpretation of a provision of Union law referred to in this Agreement, or does not concern whether the United Kingdom has complied with its obligations under Article 89(2). 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 173 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.

4. The first subparagraph of Article 161(2) and Article 161(3) shall apply *mutatis mutandis* to the procedures brought before the Court of Justice of the European Union in accordance with this Article.

Article 175

Compliance with the arbitration panel ruling

The arbitration panel ruling shall be binding on the Union and the United Kingdom. The Union and the United Kingdom shall take any measures necessary to comply in good faith with the arbitration panel ruling and shall endeavour to agree on the period of time to comply with the ruling in accordance with the procedure in Article 176.

Article 176

Reasonable period of time for compliance

1. No later than 30 days after the notification of the arbitration panel ruling to the Union and the United Kingdom, the respondent shall, if the panel has ruled in favour of the complainant, notify the complainant of the time it considers it will require for compliance (the "reasonable period of time").

2. If there is disagreement between the Union and the United Kingdom on the reasonable period of time to comply with the arbitration panel ruling, the complainant shall, within 40 days of the notification by the respondent under paragraph 1, request the original arbitration panel in writing to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent. The arbitration panel shall notify its decision on the period for compliance to the Union and the United Kingdom within 40 days of the date of submission of the request.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. The time limit for notifying the decision shall be 60 days from the date of establishment of the new arbitration panel.

4. The respondent shall inform the complainant in writing of its progress in complying with the arbitration panel ruling referred to in Article 173 at least 1 month before the expiry of the reasonable period of time.

5. The reasonable period of time may be extended by mutual agreement of the Union and the United Kingdom.

Article 177

Review of any measure taken to comply with the arbitration panel ruling

1. The respondent shall notify the complainant before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. If, at the end of the reasonable period, the complainant considers that the respondent has failed to comply with the arbitration panel ruling referred to in Article 173, the complainant may request the original arbitration panel in writing to rule on the matter. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 90 days of the date of submission of the request.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. The time limit for notifying the ruling shall be 60 days from the date of establishment of the new arbitration panel.

4. Where a case referred to the arbitration panel pursuant to paragraph 2 raises a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in this Agreement, Article 174 shall apply *mutatis mutandis*.

*Article 178***Temporary remedies in case of non-compliance**

1. If the arbitration panel rules in accordance with Article 177(2) that the respondent has failed to comply with the arbitration panel ruling referred to in Article 173, at the request of the complainant it may impose a lump sum or penalty payment to be paid to the complainant. In determining the lump sum or penalty payment, the arbitration panel shall take into account the seriousness of the non-compliance and underlying breach of obligation, the duration of the non-compliance and underlying breach of obligation.

2. If, 1 month after the arbitration panel ruling referred to in paragraph 1, the respondent has failed to pay any lump sum or penalty payment imposed on it, or if, 6 months after the arbitration panel ruling referred to in Article 177(2), the respondent persists in not complying with the arbitration panel ruling referred to in Article 173, the complainant shall be entitled, upon notification to the respondent, to suspend obligations arising from:

- (a) any provision of this Agreement other than those contained in Part Two; or
- (b) parts of any other agreement between the Union and the United Kingdom under the conditions set out in that agreement.

The notification shall specify the provisions which the complainant intends to suspend. Before deciding to suspend parts of an agreement referred to in point (b) the complainant shall first consider whether the suspension of the provision of this Agreement in accordance with point (a) would be an appropriate response to the breach. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, where the suspension is based on the fact that the respondent persists in not complying with the arbitration panel ruling referred to in Article 173, whether a penalty payment has been imposed on the respondent and has been paid or is still being paid by the latter.

The complainant may implement the suspension at any moment but not earlier than 10 days after the date of the notification, unless the respondent has requested arbitration under paragraph 3.

3. If the respondent considers that the extent of the suspension set out in the notification referred to in paragraph 2 is not proportionate, it may request the original arbitration panel in writing to rule on the matter. Such request shall be notified to the complainant before the expiry of the 10-day period referred to in paragraph 2. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 60 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. In such cases, the period for notifying the ruling shall be 90 days from the date of establishment of the new arbitration panel.

5. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of this Agreement has been withdrawn or amended, so as to achieve conformity with the provisions of this Agreement, or until the Union and the United Kingdom have agreed to otherwise settle the dispute.

*Article 179***Review of any measure taken after temporary remedies**

1. Where the complainant has suspended obligations in accordance with Article 178 or where the arbitration panel has imposed a penalty payment on the respondent in accordance with Article 178(1), the respondent shall notify the complainant of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complainant or to the penalty payment.

2. If the Union and the United Kingdom do not reach an agreement on whether the notified measure brings the respondent into conformity with the provisions of this Agreement within 45 days of the date of submission of the notification, either party may request the original arbitration panel in writing to rule on the matter. Such request shall be notified simultaneously to the other party. The arbitration panel ruling shall be notified to the Union and the United Kingdom and to the Joint Committee within 75 days of the date of submission of the request.

If the arbitration panel rules that the respondent has brought itself into conformity with this Agreement, or if the complainant does not, within 45 days of the submission of the notification referred to in paragraph 1, request that the original arbitration panel rule on the matter:

- (a) the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration panel or the end of the 45-day period;
- (b) the penalty payment shall be terminated on the day after either the ruling of the arbitration panel or the end of the 45-day period.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. The period for notifying the ruling shall in that case be 90 days from the date of establishment of the new arbitration panel.

4. Where a case referred to the arbitration panel pursuant to paragraph 2 raises a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in this Agreement, Article 174 shall apply *mutatis mutandis*.

Article 180

Arbitration panel decisions and rulings

1. The arbitration panel shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of members of an arbitration panel shall be published.
2. Any ruling of the arbitration panel shall be binding on the Union and the United Kingdom. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement, and the reasoning behind any findings and conclusions. The Union and the United Kingdom shall make the arbitration panel rulings and decisions publicly available in their entirety, subject to the protection of confidential information.

Article 181

Members of an arbitration panel

1. The members of an arbitration panel shall be independent, shall serve in their individual capacity and shall not take instructions from any organisation or government, and shall comply with the Code of Conduct set out in Part B of Annex IX. The Joint Committee may amend that Code of Conduct.
2. The members of an arbitration panel shall, as from the establishment thereof, enjoy immunity from legal proceedings in the Union and the United Kingdom with respect to acts performed by them in the exercise of their functions on that arbitration panel.

TITLE IV

FINAL PROVISIONS

Article 182

Protocols and Annexes

The Protocol on Ireland / Northern Ireland, the Protocol relating to the Sovereign Base Areas in Cyprus, the Protocol on Gibraltar, and Annexes I to IX shall form an integral part of this Agreement.

Article 183

Authentic texts and depositary

This Agreement is drawn up in a single original 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, the texts in each of these languages being equally authentic.

The Secretary General of the Council shall be the depositary of this Agreement.

Article 184

Negotiations on the future relationship

The Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration of 17 October 2019 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.

Article 185

Entry into force and application

This Agreement shall enter into force on one of the following dates, whichever is the earliest:

- (a) the day following the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, provided that, prior to that date, the depositary of this Agreement has received the written notifications by the Union and the United Kingdom regarding the completion of the necessary internal procedures;
- (b) the first day of the month following the receipt by the depositary of this Agreement of the last of the written notifications referred to in point (a).

In the event that, prior to the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, the depositary of this Agreement has not received the written notifications referred to in point (a), this Agreement shall not enter into force.

When making the written notification referred to in the first paragraph, the Union, in respect of any Member State which has raised reasons related to fundamental principles of national law of that Member State, may declare that, during the transition period, in addition to the grounds for non-execution of a European arrest warrant referred to in Framework Decision 2002/584/JHA, the executing judicial authorities of that Member State may refuse to surrender its nationals to the United Kingdom pursuant to a European arrest warrant. In such a case, the United Kingdom may declare, no later than 1 month after the receipt of the Union's declaration, that its executing judicial authorities may refuse to surrender its nationals to that Member State.

Parts Two and Three, with the exception of Article 19, Article 34(1), Article 44, and Article 96(1), as well as Title I of Part Six and Articles 169 to 181, shall apply as from the end of the transition period.

The Protocol on Ireland/Northern Ireland shall apply as from the end of the transition period, with the exception of the following provisions of that Protocol, which shall apply as from the entry into force of this Agreement:

- Article 1;
- the third, fourth and sixth subparagraphs of Article 5 (2);
- the second sentence of Article 5(3);
- the last sentence of Article 10(2);
- Article 12(3);
- Article 13(8);
- Article 14;
- Article 15(1) to (4) and (6);
- Article 19;
- the first paragraph of Annex 6.

The Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, with the exception of Article 11 thereof, shall apply as from the end of the transition period.

The Protocol on Gibraltar, with the exception of Article 1 thereof, shall cease to apply at the end of the transition period.

Съставено в Брюксел и Лондон на двадесет и четвърти януари две хиляди и двадесета година.

Hecho en Bruselas y Londres, el veinticuatro de enero de dos mil veinte.

V Bruselu a v Londýně dne dvacátého čtvrtého ledna dva tisíce dvacet.

Udfærdiget i Bruxelles og London, den fireogtyvende januar to tusind og tyve.

Geschehen zu Brüssel und London am vierundzwanzigsten Januar zweitausendzwanzig.

Kahe tuhande kahekümneenda aasta jaanuarikuu kahekümne neljandal päeval Brüsselis ja Londonis.

Έγινε στις Βρυξέλλες και στο Λονδίνο, στις είκοσι τέσσερις Ιανουαρίου δύο χιλιάδες είκοσι.

Done at Brussels and London on the twenty-fourth day of January in the year two thousand and twenty.

Fait à Bruxelles et à Londres, le vingt-quatre janvier deux mille vingt.

Arna dhéanamh sa Bhruiséil agus i Londain, an ceathrú lá is fiche d'Eanáir an bhliain dhá mhíle fiche.

Sastavljeno u Bruxellesu i Londonu dvadeset četvrtog siječnja godine dvije tisuće dvadesete.

Fatto a Bruxelles e Londra, addì ventiquattro gennaio duemilaventi.

Briselē un Londonā, divi tūkstoši divdesmitā gada divdesmit ceturtajā janvārī.

Priimta du tūkstančiai dvidešimtų metų sausio dvidešimt ketvirtą dieną Briuselyje ir Londone.

Kelt Brüsszelben és Londonban, a kétézer-husznadik év január havának huszonnegyedik napján.

Magħmul fi Brussell u Londra, fl-erbgha u ghoxrin jum ta' Jannar fis-sena elfejn u ghoxrin.

Gedaan te Brussel en Londen, vierentwintig januari tweeduizend twintig.

Sporządzono w Brukseli i Londynie dnia dwudziestego czwartego stycznia roku dwa tysiące dwudziestego.

Feito em Bruxelas e em Londres, em vinte e quatro de janeiro de dois mil e vinte.

Întocmit la Bruxelles și la Londra la douăzeci și patru ianuarie două mii douăzeci.

V Bruseli a Londýne dvadsiateho štvrtého januára dvetisícdvadsať.

V Bruslju in Londonu, štiriindvajsetega januarja dva tisoč dvajset.

Tehty Brysselissä ja Lontoossa kahdentenakymmenentenäneljäntenä päivänä tammikuuta vuonna kaksituhattakaksikymmentä.

Som skedde i Bryssel och i London den tjugofjärde januari år tjugohundratjugo.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Thar ceann an Aontais Eorpaigh
Za Europsku uniju
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen

За Европейската общност за атомна енергия
Por la Comunidad Europea de la Energía Atómica
Za Evropské společenství pro atomovou energii
For Det Europæiske Atomenergifællesskab
Für die Europäische Atomgemeinschaft
Euroopa Aatomienergiaühenduse nimel
Για την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας
For the European Atomic Energy Community
Pour la Communauté européenne de l'énergie atomique
Thar ceann an Chomhphobail Eorpaigh do Fhuinneamh Adamhach
Za Europsku zajednicu za atomsku energiju
Per la Comunità europea dell'energia atomica
Eiropas Atomenerģijas Kopienas vārdā –
Europos atominės energijos bendrijos vardu
Az Európai Atomenergia-közösség részéről
F'isem il-Komunità Ewropea tal-Energija Atomika
Voor de Europese Gemeenschap voor Atoomenergie
W imieniu Europejskiej Wspólnoty Energii Atomowej
Pela Comunidade Europeia da Energia Atómica
Pentru Comunitatea Europeană a Energiei Atomice
Za Európske spoločenstvo pre atómovú energiu
Za Evropsko skupnost za atomsko energijo
Euroopan atomienergiajärjestön puolesta
För Europeiska atomenergigemenskapen

За Обединеното кралство Великобритания и Северна Ирландия
Por el Reino Unido de Gran Bretaña e Irlanda del Norte
Za Spojené království Velké Británie a Severního Írska
For Det Forenede Kongerige Storbritannien og Nordirland
Für das Vereinigte Königreich Großbritannien und Nordirland
Suurbritannia ja Põhja-Iiri Ühendkuningriigi nimel
Για το Ηνωμένο Βασίλειο της Μεγάλης Βρετανίας και της Βόρειας Ιρλανδίας
For the United Kingdom of Great Britain and Northern Ireland
Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
Thar ceann Ríocht Aontaithe na Breataine Móire agus Thuaisceart Éireann
Za Ujedinjenu Kraljevinu Velike Britanije i Sjeverne Irske
Per il Regno Unito di Gran Bretagna e Irlanda del Nord
Lielbritānijas un Ziemeļīrijas Apvienotās Karalistes vārdā –
Jungtinės Didžiosios Britanijos ir Šiaurės Airijos Karalystės vardu
Nagy-Britannia és Észak-Írország Egyesült Királysága részéről
Għar-Renju Unit tal-Gran Brittanja u l-Irlanda ta' Fuq
Voor het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland
W imieniu Zjednoczonego Królestwa Wielkiej Brytanii i Irlandii Północnej
Pelo Reino Unido da Grã-Bretanha e da Irlanda do Norte
Pentru Regatul Unit al Marii Britanii și Irlandei de Nord
Za Spojené kráľovstvo Veľkej Británie a Severného Írska
Za Združeno kraljestvo Velika Britanija in Severna Irska
Ison-Britannian ja Pohjois-Irlannin yhdistyneen kuningaskunnan puolesta
För Förenade konungariket Storbritannien och Nordirland



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PROTOCOLS

PROTOCOL ON IRELAND/NORTHERN IRELAND

The Union and the United Kingdom,

HAVING REGARD to the historic ties and enduring nature of the bilateral relationship between Ireland and the United Kingdom,

RECALLING that the United Kingdom's withdrawal from the Union presents a significant and unique challenge to the island of Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there,

RECOGNISING that it is necessary to address the unique circumstances on the island of Ireland through a unique solution in order to ensure the orderly withdrawal of the United Kingdom from the Union,

AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the "1998 Agreement"), which is annexed to the British-Irish Agreement of the same date (the "British-Irish Agreement"), including its subsequent implementation agreements and arrangements, should be protected in all its parts,

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement,

NOTING that Union law has provided a supporting framework for the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement,

RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship, as defined in Annex 2 of the British-Irish Agreement "Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship",

EMPHASISING that in order to ensure democratic legitimacy, there should be a process to ensure democratic consent in Northern Ireland to the application of Union law under this Protocol,

RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls,

NOTING that nothing in this Protocol prevents the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market,

UNDERLINING the Union's and the United Kingdom's shared aim of avoiding controls at the ports and airports of Northern Ireland, to the extent possible in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof,

RECALLING the commitments of the Union and the United Kingdom reflected in the Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union of 8 December 2017,

RECALLING that the Union and the United Kingdom have carried out a mapping exercise which shows that North-South cooperation relies to a significant extent on a common Union legal and policy framework,

NOTING that therefore the United Kingdom's withdrawal from the Union gives rise to substantial challenges to the maintenance and development of North-South cooperation,

RECALLING that the United Kingdom remains committed to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks for cooperation, including the continued operation of the North-South implementation bodies,

ACKNOWLEDGING the need for this Protocol to be implemented so as to maintain the necessary conditions for continued North-South cooperation, including for possible new arrangements in accordance with the 1998 Agreement,

RECALLING the Union's and the United Kingdom's commitments to the North South PEACE and INTERREG funding programmes under the current multi-annual financial framework and to the maintaining of the current funding proportions for the future programme,

AFFIRMING the commitment of the United Kingdom to facilitate the efficient and timely transit through its territory of goods moving from Ireland to another Member State or to a third country, and vice versa,

DETERMINED that the application of this Protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland,

UNDERLINING their firm commitment to no customs and regulatory checks or controls and related physical infrastructure at the border between Ireland and Northern Ireland,

RECALLING that Northern Ireland is part of the customs territory of the United Kingdom and will benefit from participation in the United Kingdom's independent trade policy,

HAVING REGARD to the importance of maintaining the integral place of Northern Ireland in the United Kingdom's internal market,

MINDFUL that the rights and obligations of Ireland under the rules of the Union's internal market and customs union must be fully respected,

HAVE AGREED UPON the following provisions, which shall be annexed to the Withdrawal Agreement:

Article 1

Objectives

1. This Protocol is without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.

Article 2

Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

Article 3

Common Travel Area

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.

2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.

Article 4

Customs territory of the United Kingdom

Northern Ireland is part of the customs territory of the United Kingdom.

Accordingly, nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries, provided that those agreements do not prejudice the application of this Protocol.

In particular, nothing in this Protocol shall prevent the United Kingdom from concluding agreements with a third country that grant goods produced in Northern Ireland preferential access to that country's market on the same terms as goods produced in other parts of the United Kingdom.

Nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of its Schedules of Concessions annexed to the General Agreement on Tariffs and Trade 1994.

Article 5

Customs, movement of goods

1. No customs duties shall be payable for a good brought into Northern Ireland from another part of the United Kingdom by direct transport, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

The customs duties in respect of a good being moved by direct transport to Northern Ireland other than from the Union or from another part of the United Kingdom shall be the duties applicable in the United Kingdom, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

No duties shall be payable by, as relief shall be granted to, residents of the United Kingdom for personal property, as defined in point (c) of Article 2(1) of Council Regulation (EC) No 1186/2009 ⁽¹⁾, brought into Northern Ireland from another part of the United Kingdom.

2. For the purposes of the first and second subparagraphs of paragraph 1, a good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union unless it is established that that good:

- (a) will not be subject to commercial processing in Northern Ireland; and
- (b) fulfils the criteria established by the Joint Committee in accordance with the fourth subparagraph of this paragraph.

For the purposes of this paragraph, "processing" means any alteration of goods, any transformation of goods in any way, or any subjecting of goods to operations other than for the purpose of preserving them in good condition or for adding or affixing marks, labels, seals or any other documentation to ensure compliance with any specific requirements.

Before the end of the transition period, the Joint Committee shall by decision establish the conditions under which processing is to be considered not to fall within point (a) of the first subparagraph, taking into account in particular the nature, scale and result of the processing.

Before the end of the transition period, the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union. The Joint Committee shall take into consideration, *inter alia*:

- (a) the final destination and use of the good;
- (b) the nature and value of the good;
- (c) the nature of the movement; and
- (d) the incentive for undeclared onward-movement into the Union, in particular incentives resulting from the duties payable pursuant to paragraph 1.

The Joint Committee may amend at any time its decisions adopted pursuant to this paragraph.

In taking any decision pursuant to this paragraph, the Joint Committee shall have regard to the specific circumstances in Northern Ireland.

3. Legislation as defined in point (2) of Article 5 of Regulation (EU) No 952/2013 shall apply to and in the United Kingdom in respect of Northern Ireland (not including the territorial waters of the United Kingdom). However, the Joint Committee shall establish the conditions, including in quantitative terms, under which certain fishery and aquaculture products, as set out in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council ⁽²⁾, brought into the customs territory of the Union defined in Article 4 of Regulation (EU) No 952/2013 by vessels flying the flag of the United Kingdom and having their port of registration in Northern Ireland are exempted from duties.

4. The provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

5. Articles 30 and 110 TFEU shall apply to and in the United Kingdom in respect of Northern Ireland. Quantitative restrictions on exports and imports shall be prohibited between the Union and Northern Ireland.

6. Customs duties levied by the United Kingdom in accordance with paragraph 3 are not remitted to the Union.

Subject to Article 10, the United Kingdom may in particular:

- (a) reimburse duties levied pursuant to the provisions of Union law made applicable by paragraph 3 in respect of goods brought into Northern Ireland;

⁽¹⁾ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

⁽²⁾ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

- (b) provide for circumstances in which a customs debt which has arisen is to be waived in respect of goods brought into Northern Ireland;
- (c) provide for circumstances in which customs duties are to be reimbursed in respect of goods that can be shown not to have entered the Union; and
- (d) compensate undertakings to offset the impact of the application of paragraph 3.

In taking decisions under Article 10, the European Commission shall take the circumstances in Northern Ireland into account as appropriate.

7. No duties shall be payable on consignments of negligible value, on consignments sent by one individual to another or on goods contained in travellers' personal baggage, under the conditions set out in the legislation referred to in paragraph 3.

Article 6

Protection of the UK internal market

1. Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to other parts of the United Kingdom's internal market. Provisions of Union law made applicable by this Protocol which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union. The United Kingdom shall ensure full protection under international requirements and commitments that are relevant to the prohibitions and restrictions on the exportation of goods from the Union to third countries as set out in Union law.
2. Having regard to Northern Ireland's integral place in the United Kingdom's internal market, the Union and the United Kingdom shall use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom, in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof. The Joint Committee shall keep the application of this paragraph under constant review and shall adopt appropriate recommendations with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible.
3. Nothing in this Protocol shall prevent a product originating from Northern Ireland from being presented as originating from the United Kingdom when placed on the market in Great Britain.
4. Nothing in this Protocol shall affect the law of the United Kingdom regulating the placing on the market in other parts of the United Kingdom of goods from Northern Ireland that comply with or benefit from technical regulations, assessments, registrations, certificates, approvals or authorisations governed by provisions of Union law referred to in Annex 2 to this Protocol.

Article 7

Technical regulations, assessments, registrations, certificates, approvals and authorisations

1. Without prejudice to the provisions of Union law referred to in Annex 2 to this Protocol, the lawfulness of placing goods on the market in Northern Ireland shall be governed by the law of the United Kingdom as well as, as regards goods imported from the Union, by Articles 34 and 36 TFEU.
2. Where provisions of Union law made applicable by this Protocol provide for the indication of a Member State, including in abbreviated form, in markings, labelling, tags, or by any other means, the United Kingdom in respect of Northern Ireland shall be indicated as "UK(NI)" or "United Kingdom (Northern Ireland)". Where provisions of Union law made applicable by this Protocol provide for the indication in the form of a numeric code, the United Kingdom in respect of Northern Ireland shall be indicated with a distinguishable numeric code.
3. By way of derogation from Article 13(1) of this Protocol and from Article 7 of the Withdrawal Agreement, in respect of the recognition in one Member State of technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of another Member State, or by a body established in another Member State, references to Member States in provisions of Union law made applicable by this Protocol shall not be read

as including the United Kingdom in respect of Northern Ireland as regards technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of the United Kingdom or by bodies established in the United Kingdom.

The first subparagraph shall not apply to registrations, certifications, approvals and authorisations of sites, installations or premises in Northern Ireland issued or carried out by competent authorities of the United Kingdom, where the registration, certification, approval or authorisation may require an inspection of the sites, installations or premises.

The first subparagraph shall not apply to veterinary certificates or official labels for plant reproductive material that are required by provisions of Union law made applicable by this Protocol.

The first subparagraph is without prejudice to the validity, in Northern Ireland, of assessments, registrations, certificates, approvals and authorisations issued or carried out, on the basis of provisions of Union law made applicable by this Protocol, by the competent authorities of the United Kingdom or by bodies established in the United Kingdom. Any conformity marking, logo or similar required by the provisions of Union law made applicable by this Protocol which is affixed by economic operators based on the assessment, registration, certificate, approval or authorisation issued by competent authorities of the United Kingdom or by bodies established in the United Kingdom shall be accompanied by the indication "UK(NI)".

The United Kingdom in respect of Northern Ireland may not initiate objection, safeguard or arbitration procedures provided for in provisions of Union law made applicable by this Protocol to the extent that those procedures concern the technical regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by competent authorities of the Member States or by bodies established in Member States.

The first subparagraph does not prevent the test and release by a qualified person in Northern Ireland of a batch of a medicinal product imported into or manufactured in Northern Ireland.

Article 8

VAT and excise

The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.

In respect of Northern Ireland, the authorities of the United Kingdom shall be responsible for the application and the implementation of the provisions listed in Annex 3 to this Protocol, including the collection of VAT and excise duties. Under the conditions set out in those provisions, revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union.

By way of derogation from the first paragraph, the United Kingdom may apply to supplies of goods taxable in Northern Ireland VAT exemptions and reduced rates that are applicable in Ireland in accordance with provisions listed in Annex 3 to this Protocol.

The Joint Committee shall regularly discuss the implementation of this Article, including as concerns the reductions and exemptions provided for in the provisions referred to in the first paragraph, and shall, where appropriate, adopt measures for its proper application, as necessary.

The Joint Committee may review the application of this Article, taking into account Northern Ireland's integral place in the United Kingdom's internal market, and may adopt appropriate measures as necessary.

Article 9

Single electricity market

The provisions of Union law governing wholesale electricity markets listed in Annex 4 to this Protocol shall apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

*Article 10***State aid**

1. The provisions of Union law listed in Annex 5 to this Protocol shall apply to the United Kingdom, including with regard to measures supporting the production of and trade in agricultural products in Northern Ireland, in respect of measures which affect that trade between Northern Ireland and the Union which is subject to this Protocol.
2. Notwithstanding paragraph 1, the provisions of Union law referred to in that paragraph shall not apply with respect to measures taken by the United Kingdom authorities to support the production of and trade in agricultural products in Northern Ireland up to a determined maximum overall annual level of support, and provided that a determined minimum percentage of that exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture. The determination of the maximum exempted overall annual level of support and the minimum percentage shall be governed by the procedures set out in Annex 6.
3. Where the European Commission examines information regarding a measure by the United Kingdom authorities that may constitute unlawful aid that is subject to paragraph 1, it shall ensure that the United Kingdom is kept fully and regularly informed of the progress and outcome of the examination of that measure.

*Article 11***Other areas of North-South cooperation**

1. Consistent with the arrangements set out in Articles 5 to 10, and in full respect of Union law, this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.

In full respect of Union law, the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland.

2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. The Joint Committee may make appropriate recommendations to the Union and the United Kingdom in this respect, including on a recommendation from the Specialised Committee.

*Article 12***Implementation, application, supervision and enforcement**

1. Without prejudice to paragraph 4, the authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.
2. Without prejudice to paragraph 4 of this Article, Union representatives shall have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol, as well as activities related to the implementation and application of Article 5, and the United Kingdom shall provide, upon request, all relevant information relating to such activities. The United Kingdom shall facilitate such presence of Union representatives and shall provide them with the information requested. Where the Union representative requests the authorities of the United Kingdom to carry out control measures in individual cases for duly stated reasons, the authorities of the United Kingdom shall carry out those control measures.

The Union and the United Kingdom shall exchange information on the application of Article 5 (1) and (2) on a monthly basis.

3. The practical working arrangements relating to the exercise of the rights of Union representatives referred to in paragraph 2 shall be determined by the Joint Committee, upon proposal from the Specialised Committee.

4. As regards the second subparagraph of paragraph 2 of this Article, Article 5 and Articles 7 to 10, the institutions, bodies, offices, and agencies of the Union shall in relation to the United Kingdom and natural and legal persons residing or established in the territory of the United Kingdom have the powers conferred upon them by Union law. In particular, the Court of Justice of the European Union shall have the jurisdiction provided for in the Treaties in this respect. The second and third paragraphs of Article 267 TFEU shall apply to and in the United Kingdom in this respect.

5. Acts of the institutions, bodies, offices, and agencies of the Union adopted in accordance with paragraph 4 shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.

6. When representing or assisting a party in relation to administrative procedures arising from the exercise of the powers of the institutions, bodies, offices, and agencies of the Union referred to in paragraph 4, lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States who represent or assist a party in relation to such administrative procedures.

7. In cases brought before the Court of Justice of the European Union pursuant to paragraph 4:

- (a) the United Kingdom may participate in the proceedings before the Court of Justice of the European Union in the same way as a Member State;
- (b) lawyers authorised to practise before the courts or tribunals of the United Kingdom may represent or assist a party before the Court of Justice of the European Union in such proceedings and shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States representing or assisting a party before the Court of Justice of the European Union.

Article 13

Common provisions

1. For the purposes of this Protocol, any reference to the United Kingdom in the applicable provisions of the Withdrawal Agreement shall be read as referring to the United Kingdom or to the United Kingdom in respect of Northern Ireland, as the case may be.

Notwithstanding any other provisions of this Protocol, any reference to the territory defined in Article 4 of Regulation (EU) No 952/2013 in the applicable provisions of the Withdrawal Agreement and of this Protocol, as well as in the provisions of Union law made applicable to and in the United Kingdom in respect of Northern Ireland by this Protocol, shall be read as including the part of the territory of the United Kingdom to which Regulation (EU) No 952/2013 applies by virtue of Article 5(3) of this Protocol.

Titles I and III of Part Three and Part Six of the Withdrawal Agreement shall apply without prejudice to the provisions of this Protocol.

2. Notwithstanding Article 4(4) and (5) of the Withdrawal Agreement, the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

3. Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced.

4. Where the Union adopts a new act that falls within the scope of this Protocol, but which neither amends nor replaces a Union act listed in the Annexes to this Protocol, the Union shall inform the United Kingdom of the adoption of that act in the Joint Committee. Upon the request of the Union or the United Kingdom, the Joint Committee shall hold an exchange of views on the implications of the newly adopted act for the proper functioning of this Protocol, within 6 weeks after the request.

As soon as reasonably practical after the Union has informed the United Kingdom in the Joint Committee, the Joint Committee shall either:

- (a) adopt a decision adding the newly adopted act to the relevant Annex to this Protocol; or

- (b) where an agreement on adding the newly adopted act to the relevant Annex to this Protocol cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.

If the Joint Committee has not taken a decision referred to in the second subparagraph within a reasonable time, the Union shall be entitled, after giving notice to the United Kingdom, to take appropriate remedial measures. Such measures shall take effect at the earliest 6 months after the Union informed the United Kingdom in accordance with the first subparagraph, but in no event shall such measures take effect before the date on which the newly adopted act is implemented in the Union.

5. By way of derogation from paragraph 1 of this Article and from Article 7 of the Withdrawal Agreement, unless the Union considers that full or partial access by the United Kingdom or the United Kingdom in respect of Northern Ireland, as the case may be, is strictly necessary to enable the United Kingdom to comply with its obligations under this Protocol, including where such access is necessary because access to the relevant information cannot be facilitated by the working group referred to in Article 15 of this Protocol or by any other practical means, 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 Protocol shall not be read as including the United Kingdom or the United Kingdom in respect of Northern Ireland, as the case may be.

6. Authorities of the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law made applicable by this Protocol.

7. Articles 346 and 347 TFEU shall apply to this Protocol as regards measures taken by a Member State or by the United Kingdom in respect of Northern Ireland.

8. Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable after the entry into force of the Withdrawal Agreement, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part.

Article 14

Specialised Committee

The Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland established by Article 165 of the Withdrawal Agreement ("Specialised Committee") shall:

- (a) facilitate the implementation and application of this Protocol;
- (b) examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies set up under the 1998 Agreement;
- (c) consider any matter of relevance to Article 2 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland;
- (d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and
- (e) make recommendations to the Joint Committee as regards the functioning of this Protocol.

Article 15

Joint consultative working group

1. A joint consultative working group on the implementation of this Protocol ("working group") is hereby established. It shall serve as a forum for the exchange of information and mutual consultation.

2. The working group shall be composed of representatives of the Union and the United Kingdom and shall carry out its functions under the supervision of the Specialised Committee, to which it shall report. The working group shall have no power to take binding decisions other than the power to adopt its own rules of procedure referred to in paragraph 6.
3. Within the working group:
 - (a) the Union and the United Kingdom shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol;
 - (b) the Union shall inform the United Kingdom about planned Union acts within the scope of this Protocol, including Union acts that amend or replace the Union acts listed in the Annexes to this Protocol;
 - (c) the Union shall provide to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and
 - (d) the United Kingdom shall provide to the Union all information that Member States are required to provide to one another or to the institutions, bodies, offices or agencies of the Union pursuant to the Union acts listed in the Annexes to this Protocol.
4. The working group shall be co-chaired by the Union and the United Kingdom.
5. The working group shall meet at least once a month, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, the Union and the United Kingdom may exchange information referred to in points (c) and (d) of paragraph 3 between meetings.
6. The working group shall adopt its own rules of procedure by mutual consent.
7. The Union shall ensure that all views expressed by the United Kingdom in the working group and all information provided by the United Kingdom in the working group, including technical and scientific data, are communicated to the relevant institutions, bodies, offices and agencies of the Union without undue delay.

Article 16

Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.
2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.
3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures set out in Annex 7 to this Protocol.

*Article 17***Protection of financial interests**

The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or the financial interests of the United Kingdom.

*Article 18***Democratic consent in Northern Ireland**

1. Within 2 months before the end of both the initial period and any subsequent period, the United Kingdom shall provide the opportunity for democratic consent in Northern Ireland to the continued application of Articles 5 to 10.
2. For the purposes of paragraph 1, the United Kingdom shall seek democratic consent in Northern Ireland in a manner consistent with the 1998 Agreement. A decision expressing democratic consent shall be reached strictly in accordance with the unilateral declaration concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol on Ireland/Northern Ireland made by the United Kingdom on 17 October 2019, including with respect to the roles of the Northern Ireland Executive and Assembly.
3. The United Kingdom shall notify the Union before the end of the relevant period referred to in paragraph 5 of the outcome of the process referred to in paragraph 1.
4. Where the process referred to in paragraph 1 has been undertaken and a decision has been reached in accordance with paragraph 2, and the United Kingdom notifies the Union that the outcome of the process referred to in paragraph 1 is not a decision that the Articles of this Protocol referred to in that paragraph should continue to apply in Northern Ireland, then those Articles and other provisions of this Protocol, to the extent that those provisions depend on those Articles for their application, shall cease to apply 2 years after the end of the relevant period referred to in paragraph 5. In such a case the Joint Committee shall address recommendations to the Union and to the United Kingdom on the necessary measures, taking into account the obligations of the parties to the 1998 Agreement. Before doing so, the Joint Committee may seek an opinion from institutions created by the 1998 Agreement.
5. For the purposes of this Article, the initial period is the period ending 4 years after the end of the transition period. Where the decision reached in a given period was on the basis of a majority of Members of the Northern Ireland Assembly, present and voting, the subsequent period is the 4 year period following that period, for as long as Articles 5 to 10 continue to apply. Where the decision reached in a given period had cross-community support, the subsequent period is the 8-year period following that period, for as long as Articles 5 to 10 continue to apply.
6. For the purposes of paragraph 5, cross-community support means:
 - (a) a majority of those Members of the Legislative Assembly present and voting, including a majority of the unionist and nationalist designations present and voting; or
 - (b) a weighted majority (60 %) of Members of the Legislative Assembly present and voting, including at least 40 % of each of the nationalist and unionist designations present and voting.

*Article 19***Annexes**

Annexes 1 to 7 shall form an integral part of this Protocol.

ANNEX 1

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)

- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ⁽¹⁾
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation ⁽²⁾
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ⁽³⁾
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ⁽⁴⁾
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC ⁽⁵⁾
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ⁽⁶⁾

⁽¹⁾ OJ L 373, 21.12.2004, p. 37.

⁽²⁾ OJ L 204, 26.7.2006, p. 23.

⁽³⁾ OJ L 180, 19.7.2000, p. 22.

⁽⁴⁾ OJ L 303, 2.12.2000, p. 16.

⁽⁵⁾ OJ L 180, 15.7.2010, p. 1.

⁽⁶⁾ OJ L 6, 10.1.1979, p. 24.

ANNEX 2

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 5(4)

1. General customs aspects ⁽¹⁾

- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽²⁾
- Council Regulation (EC) No 515/97 of 13 March 1997 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 ⁽³⁾
- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures ⁽⁴⁾

2. Protection of the Union's financial interests

For the purpose of the application of the acts listed in this section, the proper collection of customs duties by the United Kingdom in respect of Northern Ireland shall be considered as part of the protection of the financial interests of the Union.

- Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ⁽⁵⁾
- Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽⁶⁾

3. Trade statistics

- Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91 ⁽⁷⁾
- Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 ⁽⁸⁾

4. General trade related aspects

- Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 ⁽⁹⁾
- Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports ⁽¹⁰⁾
- Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Union import rules ⁽¹¹⁾
- Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas ⁽¹²⁾

⁽¹⁾ The headings and subheadings in this Annex are purely indicative.

⁽²⁾ OJ L 269, 10.10.2013, p. 1.

⁽³⁾ OJ L 82, 22.3.1997, p. 1.

⁽⁴⁾ OJ L 84, 31.3.2010, p. 1.

⁽⁵⁾ OJ L 248, 18.9.2013, p. 1.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁷⁾ OJ L 102, 7.4.2004, p. 1.

⁽⁸⁾ OJ L 152, 16.6.2009, p. 23.

⁽⁹⁾ OJ L 303, 31.10.2012, p. 1.

⁽¹⁰⁾ OJ L 83, 27.3.2015, p. 34.

⁽¹¹⁾ OJ L 160, 25.6.2015, p. 1.

⁽¹²⁾ OJ L 130, 19.5.2017, p. 1.

- Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (Western Balkans) ⁽¹³⁾
- Regulation (EU) 2017/1566 of the European Parliament and of the Council of 13 September 2017 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement ⁽¹⁴⁾
- Obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries

5. Trade defence instruments

- Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁵⁾
- Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁶⁾
- Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports ⁽¹⁷⁾
- Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries ⁽¹⁸⁾
- Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ⁽¹⁹⁾
- Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures ⁽²⁰⁾

6. Regulations on bilateral safeguards

- Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization ⁽²¹⁾
- Regulation (EU) 2015/1145 of the European Parliament and of the Council of 8 July 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Swiss Confederation ⁽²²⁾
- Regulation (EU) 2015/475 of the European Parliament and of the Council of 11 March 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Iceland ⁽²³⁾
- Regulation (EU) 2015/938 of the European Parliament and of the Council of 9 June 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Norway ⁽²⁴⁾

⁽¹³⁾ OJ L 328, 15.12.2009, p. 1.

⁽¹⁴⁾ OJ L 254, 30.9.2017, p. 1.

⁽¹⁵⁾ OJ L 176, 30.6.2016, p. 21.

⁽¹⁶⁾ OJ L 176, 30.6.2016, p. 55.

⁽¹⁷⁾ OJ L 83, 27.3.2015, p. 16.

⁽¹⁸⁾ OJ L 123, 19.5.2015, p. 33.

⁽¹⁹⁾ OJ L 83, 27.3.2015, p. 6.

⁽²⁰⁾ OJ L 83, 27.3.2015, p. 11.

⁽²¹⁾ OJ L 189, 27.6.2014, p. 50.

⁽²²⁾ OJ L 191, 17.7.2015, p. 1.

⁽²³⁾ OJ L 83, 27.3.2015, p. 1.

⁽²⁴⁾ OJ L 160, 25.6.2015, p. 57.

- Regulation (EU) No 332/2014 of the European Parliament and of the Council of 11 March 2014 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part ⁽²⁵⁾
- Regulation (EU) 2015/752 of the European Parliament and of the Council of 29 April 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part ⁽²⁶⁾
- Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ⁽²⁷⁾
- Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ⁽²⁸⁾
- Regulation (EU) 2016/400 of the European Parliament and of the Council of 9 March 2016 implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part ⁽²⁹⁾
- Regulation (EU) 2016/401 of the European Parliament and of the Council of 9 March 2016 implementing the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part ⁽³⁰⁾
- Regulation (EU) 2015/941 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part ⁽³¹⁾
- Regulation (EU) 2015/940 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part ⁽³²⁾
- Regulation (EU) 2015/939 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part ⁽³³⁾
- Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea ⁽³⁴⁾
- Regulation (EU) 2017/355 of the European Parliament and of the Council of 15 February 2017 on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo (*) of the other part ⁽³⁵⁾
- Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements ⁽³⁶⁾

⁽²⁵⁾ OJ L 103, 5.4.2014, p. 10.

⁽²⁶⁾ OJ L 123, 19.5.2015, p. 16.

⁽²⁷⁾ OJ L 17, 19.1.2013, p. 1.

⁽²⁸⁾ OJ L 17, 19.1.2013, p. 13.

⁽²⁹⁾ OJ L 77, 23.3.2016, p. 53.

⁽³⁰⁾ OJ L 77, 23.3.2016, p. 62.

⁽³¹⁾ OJ L 160, 25.6.2015, p. 76.

⁽³²⁾ OJ L 160, 25.6.2015, p. 69.

⁽³³⁾ OJ L 160, 25.6.2015, p. 62.

⁽³⁴⁾ OJ L 145, 31.5.2011, p. 19.

(*) This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.

⁽³⁵⁾ OJ L 57, 3.3.2017, p. 59.

⁽³⁶⁾ OJ L 185, 8.7.2016, p. 1.

7. Others

- Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems ⁽³⁷⁾

8. Goods - general provisions

- Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ⁽³⁸⁾, with the exception of provisions relating to rules on information society services
- Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council ⁽³⁹⁾
- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 ⁽⁴⁰⁾
- Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC ⁽⁴¹⁾
- Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC ⁽⁴²⁾
- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽⁴³⁾
- Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States ⁽⁴⁴⁾
- Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products ⁽⁴⁵⁾

9. Motor vehicles, including agricultural and forestry tractors

- Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles ⁽⁴⁶⁾
- Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC ⁽⁴⁷⁾
- Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC ⁽⁴⁸⁾
- Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC ⁽⁴⁹⁾

⁽³⁷⁾ OJ L 157, 9.6.2006, p. 1.

⁽³⁸⁾ OJ L 241, 17.9.2015, p. 1.

⁽³⁹⁾ OJ L 316, 14.11.2012, p. 12.

⁽⁴⁰⁾ OJ L 218, 13.8.2008, p. 30.

⁽⁴¹⁾ OJ L 218, 13.8.2008, p. 82.

⁽⁴²⁾ OJ L 218, 13.8.2008, p. 21.

⁽⁴³⁾ OJ L 11, 15.1.2002, p. 4.

⁽⁴⁴⁾ OJ L 337, 12.12.1998, p. 8.

⁽⁴⁵⁾ OJ L 210, 7.8.1985, p. 29.

⁽⁴⁶⁾ OJ L 42, 23.2.1970, p. 16.

⁽⁴⁷⁾ OJ L 158, 27.5.2014, p. 131.

⁽⁴⁸⁾ OJ L 310, 25.11.2005, p. 10.

⁽⁴⁹⁾ OJ L 161, 14.6.2006, p. 12.

- Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ⁽⁵⁰⁾
- Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) ⁽⁵¹⁾
- Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC ⁽⁵²⁾
- Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC ⁽⁵³⁾
- Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor ⁽⁵⁴⁾
- Regulation (EC) No 79/2009 of the European Parliament and of the Council of 14 January 2009 on type-approval of hydrogen-powered motor vehicles, and amending Directive 2007/46/EC ⁽⁵⁵⁾
- Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC ⁽⁵⁶⁾
- Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles ⁽⁵⁷⁾
- Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC ⁽⁵⁸⁾
- Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emissions performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles ⁽⁵⁹⁾
- Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles ⁽⁶⁰⁾
- Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles ⁽⁶¹⁾

10. Lifting and mechanical handling appliances

- Council Directive 73/361/EEC of 19 November 1973 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the certification and marking of wire-ropes, chains and hooks ⁽⁶²⁾
- Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts ⁽⁶³⁾

⁽⁵⁰⁾ OJ L 171, 29.6.2007, p. 1.

⁽⁵¹⁾ OJ L 263, 9.10.2007, p. 1.

⁽⁵²⁾ OJ L 151, 14.6.2018, p. 1.

⁽⁵³⁾ OJ L 35, 4.2.2009, p. 1.

⁽⁵⁴⁾ OJ L 200, 31.7.2009, p. 1.

⁽⁵⁵⁾ OJ L 35, 4.2.2009, p. 32.

⁽⁵⁶⁾ OJ L 188, 18.7.2009, p. 1.

⁽⁵⁷⁾ OJ L 60, 2.3.2013, p. 52.

⁽⁵⁸⁾ OJ L 123, 19.5.2015, p. 77.

⁽⁵⁹⁾ OJ L 140, 5.6.2009, p. 1.

⁽⁶⁰⁾ OJ L 145, 31.5.2011, p. 1.

⁽⁶¹⁾ OJ L 60, 2.3.2013, p. 1.

⁽⁶²⁾ OJ L 335, 5.12.1973, p. 51.

⁽⁶³⁾ OJ L 96, 29.3.2014, p. 251.

11. Gas appliances

- Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels ⁽⁶⁴⁾
- Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC ⁽⁶⁵⁾

12. Pressure vessels

- Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers ⁽⁶⁶⁾
- Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC ⁽⁶⁷⁾
- Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment ⁽⁶⁸⁾
- Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels ⁽⁶⁹⁾

13. Measuring instruments

- Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control ⁽⁷⁰⁾
- Council Directive 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers ⁽⁷¹⁾
- Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products ⁽⁷²⁾
- Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC ⁽⁷³⁾
- Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC ⁽⁷⁴⁾
- Directive 2011/17/EU of the European Parliament and of the Council of 9 March 2011 repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC regarding metrology ⁽⁷⁵⁾
- Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments ⁽⁷⁶⁾
- Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments ⁽⁷⁷⁾

14. Construction products, machinery, cableways, personal protective equipment

- Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ⁽⁷⁸⁾
- Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC ⁽⁷⁹⁾

⁽⁶⁴⁾ OJ L 167, 22.6.1992, p. 17.

⁽⁶⁵⁾ OJ L 81, 31.3.2016, p. 99.

⁽⁶⁶⁾ OJ L 147, 9.6.1975, p. 40.

⁽⁶⁷⁾ OJ L 165, 30.6.2010, p. 1.

⁽⁶⁸⁾ OJ L 189, 27.6.2014, p. 164.

⁽⁶⁹⁾ OJ L 96, 29.3.2014, p. 45.

⁽⁷⁰⁾ OJ L 106, 28.4.2009, p. 7.

⁽⁷¹⁾ OJ L 42, 15.2.1975, p. 14.

⁽⁷²⁾ OJ L 46, 21.2.1976, p. 1.

⁽⁷³⁾ OJ L 39, 15.2.1980, p. 40.

⁽⁷⁴⁾ OJ L 247, 21.9.2007, p. 17.

⁽⁷⁵⁾ OJ L 71, 18.3.2011, p. 1.

⁽⁷⁶⁾ OJ L 96, 29.3.2014, p. 107.

⁽⁷⁷⁾ OJ L 96, 29.3.2014, p. 149.

⁽⁷⁸⁾ OJ L 88, 4.4.2011, p. 5.

⁽⁷⁹⁾ OJ L 81, 31.3.2016, p. 51.

- Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC ⁽⁸⁰⁾
- Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ⁽⁸¹⁾
- Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC ⁽⁸²⁾
- Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors ⁽⁸³⁾

15. Electrical and radio equipment

- Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility ⁽⁸⁴⁾
- Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres ⁽⁸⁵⁾
- Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits ⁽⁸⁶⁾
- Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC ⁽⁸⁷⁾

16. Textiles, footwear

- Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council ⁽⁸⁸⁾
- Directive 94/11/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws, regulation and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer ⁽⁸⁹⁾

17. Cosmetics, toys

- Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products ⁽⁹⁰⁾
- Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys ⁽⁹¹⁾

18. Recreational craft

- Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC ⁽⁹²⁾

⁽⁸⁰⁾ OJ L 81, 31.3.2016, p. 1.

⁽⁸¹⁾ OJ L 157, 9.6.2006, p. 24.

⁽⁸²⁾ OJ L 252, 16.9.2016, p. 53.

⁽⁸³⁾ OJ L 162, 3.7.2000, p. 1.

⁽⁸⁴⁾ OJ L 96, 29.3.2014, p. 79.

⁽⁸⁵⁾ OJ L 96, 29.3.2014, p. 309.

⁽⁸⁶⁾ OJ L 96, 29.3.2014, p. 357.

⁽⁸⁷⁾ OJ L 153, 22.5.2014, p. 62.

⁽⁸⁸⁾ OJ L 272, 18.10.2011, p. 1.

⁽⁸⁹⁾ OJ L 100, 19.4.1994, p. 37.

⁽⁹⁰⁾ OJ L 342, 22.12.2009, p. 59.

⁽⁹¹⁾ OJ L 170, 30.6.2009, p. 1.

⁽⁹²⁾ OJ L 354, 28.12.2013, p. 90.

19. Explosives and pyrotechnic articles

- Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses ⁽⁹³⁾
- Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles ⁽⁹⁴⁾
- Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors ⁽⁹⁵⁾

20. Medicinal products

- Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ⁽⁹⁶⁾

The references to Community in the second subparagraph of Article 2 and in the second subparagraph of Article 48 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- 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 ⁽⁹⁷⁾

The references to Community in Articles 8(2) and 16b(1) of that Directive as well as the reference to Union in the second subparagraph of Article 104(3) of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland.

A medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

- Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 ⁽⁹⁸⁾, with the exception of Article 36
- Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products ⁽⁹⁹⁾
- Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 ⁽¹⁰⁰⁾
- Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products ⁽¹⁰¹⁾

The references to Community in Article 12(2) and the second paragraph of Article 74 of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland.

A veterinary medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

- Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council ⁽¹⁰²⁾

⁽⁹³⁾ OJ L 96, 29.3.2014, p. 1.

⁽⁹⁴⁾ OJ L 178, 28.6.2013, p. 27.

⁽⁹⁵⁾ OJ L 39, 9.2.2013, p. 1.

⁽⁹⁶⁾ OJ L 136, 30.4.2004, p. 1.

⁽⁹⁷⁾ OJ L 311, 28.11.2001, p. 67.

⁽⁹⁸⁾ OJ L 378, 27.12.2006, p. 1.

⁽⁹⁹⁾ OJ L 18, 22.1.2000, p. 1.

⁽¹⁰⁰⁾ OJ L 324, 10.12.2007, p. 121.

⁽¹⁰¹⁾ OJ L 311, 28.11.2001, p. 1.

⁽¹⁰²⁾ OJ L 152, 16.6.2009, p. 11.

- Article 13 of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use ⁽¹⁰³⁾
- Chapter IX of Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC ⁽¹⁰⁴⁾
- Directive 2009/35/EC of the European Parliament and of the Council of 23 April 2009 on the colouring matters which may be added to medicinal products ⁽¹⁰⁵⁾
- Regulation (EU) 2016/793 of the European Parliament and of the Council of 11 May 2016 to avoid trade diversion into the European Union of certain key medicines ⁽¹⁰⁶⁾

21. Medical devices

- Council Directive 93/42/EEC of 14 June 1993 concerning medical devices ⁽¹⁰⁷⁾
- Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices ⁽¹⁰⁸⁾
- Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices ⁽¹⁰⁹⁾
- 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 ⁽¹¹⁰⁾
- 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 ⁽¹¹¹⁾

22. Substances of human origin

- Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC ⁽¹¹²⁾
- Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells ⁽¹¹³⁾
- Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation ⁽¹¹⁴⁾

23. Chemicals and related

- Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers ⁽¹¹⁵⁾
- Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances ⁽¹¹⁶⁾
- Directive 2004/9/EC of the European Parliament and of the Council of 11 February 2004 on the inspection and verification of good laboratory practice (GLP) ⁽¹¹⁷⁾

⁽¹⁰³⁾ OJ L 121, 1.5.2001, p. 34.

⁽¹⁰⁴⁾ OJ L 158, 27.5.2014, p. 1.

⁽¹⁰⁵⁾ OJ L 109, 30.4.2009, p. 10.

⁽¹⁰⁶⁾ OJ L 135, 24.5.2016, p. 39.

⁽¹⁰⁷⁾ OJ L 169, 12.7.1993, p. 1.

⁽¹⁰⁸⁾ OJ L 331, 7.12.1998, p. 1.

⁽¹⁰⁹⁾ OJ L 189, 20.7.1990, p. 17.

⁽¹¹⁰⁾ OJ L 117, 5.5.2017, p. 1.

⁽¹¹¹⁾ OJ L 117, 5.5.2017, p. 176.

⁽¹¹²⁾ OJ L 33, 8.2.2003, p. 30.

⁽¹¹³⁾ OJ L 102, 7.4.2004, p. 48.

⁽¹¹⁴⁾ OJ L 207, 6.8.2010, p. 14.

⁽¹¹⁵⁾ OJ L 304, 21.11.2003, p. 1.

⁽¹¹⁶⁾ OJ L 50, 20.2.2004, p. 44.

⁽¹¹⁷⁾ OJ L 50, 20.2.2004, p. 28.

- Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽¹¹⁸⁾
- Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents ⁽¹¹⁹⁾
- Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC ⁽¹²⁰⁾
- Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals ⁽¹²¹⁾
- Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 ⁽¹²²⁾
- Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC ⁽¹²³⁾
- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ⁽¹²⁴⁾
- Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 ⁽¹²⁵⁾
- Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors ⁽¹²⁶⁾

24. Pesticides, biocides

- Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹²⁷⁾
- Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹²⁸⁾

The reference to Member States in Article 43 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹²⁹⁾

The references to Member State in Articles 3(3), 15(1) and 28(4) and point (g) of Article 75(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

25. Waste

- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽¹³⁰⁾
- Directive 94/62/EC of the European Parliament and of the Council 20 December 1994 on packaging and packaging waste ⁽¹³¹⁾

⁽¹¹⁸⁾ OJ L 174, 1.7.2011, p. 88.

⁽¹¹⁹⁾ OJ L 104, 8.4.2004, p. 1.

⁽¹²⁰⁾ OJ L 158, 30.4.2004, p. 7.

⁽¹²¹⁾ OJ L 201, 27.7.2012, p. 60.

⁽¹²²⁾ OJ L 137, 24.5.2017, p. 1.

⁽¹²³⁾ OJ L 266, 26.9.2006, p. 1.

⁽¹²⁴⁾ OJ L 396, 30.12.2006, p. 1.

⁽¹²⁵⁾ OJ L 353, 31.12.2008, p. 1.

⁽¹²⁶⁾ OJ L 47, 18.2.2004, p. 1.

⁽¹²⁷⁾ OJ L 309, 24.11.2009, p. 1.

⁽¹²⁸⁾ OJ L 70, 16.3.2005, p. 1.

⁽¹²⁹⁾ OJ L 167, 27.6.2012, p. 1.

⁽¹³⁰⁾ OJ L 190, 12.7.2006, p. 1.

⁽¹³¹⁾ OJ L 365, 31.12.1994, p. 10.

- Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC ⁽¹³²⁾
- Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel ⁽¹³³⁾

26. Environment, energy efficiency

- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ⁽¹³⁴⁾
- Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture ⁽¹³⁵⁾
- Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel ⁽¹³⁶⁾
- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC ⁽¹³⁷⁾
- Council Directive (EU) 2015/652 of 20 April 2015 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels ⁽¹³⁸⁾
- Directive 2004/42/EC of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC ⁽¹³⁹⁾
- Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market ⁽¹⁴⁰⁾
- Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community ⁽¹⁴¹⁾
- Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 ⁽¹⁴²⁾
- Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer ⁽¹⁴³⁾
- Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 ⁽¹⁴⁴⁾
- Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽¹⁴⁵⁾
- Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards ⁽¹⁴⁶⁾
- Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products ⁽¹⁴⁷⁾

⁽¹³²⁾ OJ L 330, 10.12.2013, p. 1.

⁽¹³³⁾ OJ L 337, 5.12.2006, p. 21.

⁽¹³⁴⁾ OJ L 317, 4.11.2014, p. 35.

⁽¹³⁵⁾ OJ L 168, 28.6.2007, p. 1.

⁽¹³⁶⁾ OJ L 27, 30.1.2010, p. 1.

⁽¹³⁷⁾ OJ L 350, 28.12.1998, p. 58.

⁽¹³⁸⁾ OJ L 107, 25.4.2015, p. 26.

⁽¹³⁹⁾ OJ L 143, 30.4.2004, p. 87.

⁽¹⁴⁰⁾ OJ L 295, 12.11.2010, p. 23.

⁽¹⁴¹⁾ OJ L 347, 30.12.2005, p. 1.

⁽¹⁴²⁾ OJ L 150, 20.5.2014, p. 195.

⁽¹⁴³⁾ OJ L 286, 31.10.2009, p. 1.

⁽¹⁴⁴⁾ OJ L 137, 24.5.2017, p. 1.

⁽¹⁴⁵⁾ OJ L 61, 3.3.1997, p. 1.

⁽¹⁴⁶⁾ OJ L 308, 9.11.1991, p. 1.

⁽¹⁴⁷⁾ OJ L 286, 31.10.2009, p. 36.

- Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur ⁽¹⁴⁸⁾
- Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom ⁽¹⁴⁹⁾
- Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment ⁽¹⁵⁰⁾
- Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters ⁽¹⁵¹⁾
- Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products ⁽¹⁵²⁾
- Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU ⁽¹⁵³⁾

27. Marine equipment

- Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC ⁽¹⁵⁴⁾

28. Rail transport

- Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union ⁽¹⁵⁵⁾, insofar as conditions and technical specifications for the placing on the market, putting into service and free movement of railway products are concerned

29. Food – general

- Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁵⁶⁾

The reference to Member State in the second subparagraph of Article 29(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 ⁽¹⁵⁷⁾
- Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁵⁸⁾

30. Food – hygiene

- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽¹⁵⁹⁾
- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽¹⁶⁰⁾

⁽¹⁴⁸⁾ OJ L 343, 27.12.2007, p. 1.

⁽¹⁴⁹⁾ OJ L 91, 9.4.1983, p. 30.

⁽¹⁵⁰⁾ OJ L 39, 13.2.2008, p. 1.

⁽¹⁵¹⁾ OJ L 342, 22.12.2009, p. 46.

⁽¹⁵²⁾ OJ L 285, 31.10.2009, p. 10.

⁽¹⁵³⁾ OJ L 198, 28.7.2017, p. 1.

⁽¹⁵⁴⁾ OJ L 257, 28.8.2014, p. 146.

⁽¹⁵⁵⁾ OJ L 138, 26.5.2016, p. 44.

⁽¹⁵⁶⁾ OJ L 31, 1.2.2002, p. 1.

⁽¹⁵⁷⁾ OJ L 304, 22.11.2011, p. 18.

⁽¹⁵⁸⁾ OJ L 404, 30.12.2006, p. 9.

⁽¹⁵⁹⁾ OJ L 139, 30.4.2004, p. 55.

⁽¹⁶⁰⁾ OJ L 139, 30.4.2004, p. 1.

- Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption ⁽¹⁶¹⁾

31. Food – ingredients, traces, residues, marketing standards

- Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽¹⁶²⁾

The reference to Member State in Article 3(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 ⁽¹⁶³⁾

- Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁶⁴⁾

- Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC ⁽¹⁶⁵⁾

- Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements ⁽¹⁶⁶⁾

- Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods ⁽¹⁶⁷⁾

- Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods ⁽¹⁶⁸⁾

The reference to Member State in Article 7(2) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ⁽¹⁶⁹⁾

- Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ⁽¹⁷⁰⁾

- Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 ⁽¹⁷¹⁾

- Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts ⁽¹⁷²⁾

- Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption ⁽¹⁷³⁾

- Council Directive 2001/110/EC of 20 December 2001 relating to honey ⁽¹⁷⁴⁾

⁽¹⁶¹⁾ OJ L 40, 11.2.1989, p. 34.

⁽¹⁶²⁾ OJ L 354, 31.12.2008, p. 1.

⁽¹⁶³⁾ OJ L 354, 31.12.2008, p. 7.

⁽¹⁶⁴⁾ OJ L 354, 31.12.2008, p. 16.

⁽¹⁶⁵⁾ OJ L 354, 31.12.2008, p. 34.

⁽¹⁶⁶⁾ OJ L 183, 12.7.2002, p. 51.

⁽¹⁶⁷⁾ OJ L 404, 30.12.2006, p. 26.

⁽¹⁶⁸⁾ OJ L 309, 26.11.2003, p. 1.

⁽¹⁶⁹⁾ OJ L 37, 13.2.1993, p. 1.

⁽¹⁷⁰⁾ OJ L 327, 11.12.2015, p. 1.

⁽¹⁷¹⁾ OJ L 181, 29.6.2013, p. 35.

⁽¹⁷²⁾ OJ L 66, 13.3.1999, p. 26.

⁽¹⁷³⁾ OJ L 197, 3.8.2000, p. 19.

⁽¹⁷⁴⁾ OJ L 10, 12.1.2002, p. 47.

- Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption ⁽¹⁷⁵⁾
- Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽¹⁷⁶⁾
- Commission Regulation (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries ⁽¹⁷⁷⁾
- Commission Regulation (EC) No 1375/2007 of 23 November 2007 on imports of residues from the manufacture of starch from maize from the United States of America ⁽¹⁷⁸⁾
- Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption ⁽¹⁷⁹⁾
- Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption ⁽¹⁸⁰⁾
- Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption ⁽¹⁸¹⁾
- Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC ⁽¹⁸²⁾
- Chapter IV of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽¹⁸³⁾
- Section 1 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁸⁴⁾

32. Food contact material

- Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁸⁵⁾
- The reference to Member State in Article 9(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.
- Council Directive 84/500/EEC of 15 October 1984 on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs ⁽¹⁸⁶⁾

33. Food – other

- Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation ⁽¹⁸⁷⁾

⁽¹⁷⁵⁾ OJ L 10, 12.1.2002, p. 53.

⁽¹⁷⁶⁾ OJ L 157, 15.6.2011, p. 1.

⁽¹⁷⁷⁾ OJ L 340, 19.12.2008, p. 45.

⁽¹⁷⁸⁾ OJ L 307, 24.11.2007, p. 5.

⁽¹⁷⁹⁾ OJ L 10, 12.1.2002, p. 58.

⁽¹⁸⁰⁾ OJ L 10, 12.1.2002, p. 67.

⁽¹⁸¹⁾ OJ L 15, 17.1.2002, p. 19.

⁽¹⁸²⁾ OJ L 314, 1.12.2015, p. 1.

⁽¹⁸³⁾ OJ L 347, 20.12.2013, p. 549.

⁽¹⁸⁴⁾ OJ L 347, 20.12.2013, p. 671.

⁽¹⁸⁵⁾ OJ L 338, 13.11.2004, p. 4.

⁽¹⁸⁶⁾ OJ L 277, 20.10.1984, p. 12.

⁽¹⁸⁷⁾ OJ L 66, 13.3.1999, p. 16.

- Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation ⁽¹⁸⁸⁾
- Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients ⁽¹⁸⁹⁾
- Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters ⁽¹⁹⁰⁾
- Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 ⁽¹⁹¹⁾
- Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 ⁽¹⁹²⁾
- Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 ⁽¹⁹³⁾
- Council Regulation (EC) No 733/2008 of 15 July 2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station ⁽¹⁹⁴⁾

34. Feed – products and hygiene

- Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC ⁽¹⁹⁵⁾
- Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed ⁽¹⁹⁶⁾
- Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁹⁷⁾

The references to national reference laboratories in point 6 of Annex II to that Regulation shall not be read as applying to the United Kingdom in respect of Northern Ireland. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

- Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community ⁽¹⁹⁸⁾
- Regulation (EC) No 1831/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene ⁽¹⁹⁹⁾

⁽¹⁸⁸⁾ OJ L 66, 13.3.1999, p. 24.

⁽¹⁸⁹⁾ OJ L 141, 6.6.2009, p. 3.

⁽¹⁹⁰⁾ OJ L 164, 26.6.2009, p. 45.

⁽¹⁹¹⁾ OJ L 189, 20.7.2007, p. 1.

⁽¹⁹²⁾ OJ L 150, 14.6.2018, p. 1.

⁽¹⁹³⁾ OJ L 13, 20.1.2016, p. 2.

⁽¹⁹⁴⁾ OJ L 201, 30.7.2008, p. 1.

⁽¹⁹⁵⁾ OJ L 229, 1.9.2009, p. 1.

⁽¹⁹⁶⁾ OJ L 140, 30.5.2002, p. 10.

⁽¹⁹⁷⁾ OJ L 268, 18.10.2003, p. 29.

⁽¹⁹⁸⁾ OJ L 92, 7.4.1990, p. 42.

⁽¹⁹⁹⁾ OJ L 35, 8.2.2005, p. 1.

35. **GMOs**

- Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed ⁽²⁰⁰⁾, with the exception of the second paragraph of Article 32

This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

The references to Member State in Articles 10(1) and 22(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

- Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC ⁽²⁰¹⁾
- Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms ⁽²⁰²⁾
- Part C of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC ⁽²⁰³⁾

36. **Live animals, germinal products and products of animal origin**

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

- Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽²⁰⁴⁾
- Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽²⁰⁵⁾
- Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals ⁽²⁰⁶⁾
- Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae ⁽²⁰⁷⁾
- Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽²⁰⁸⁾
- Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC ⁽²⁰⁹⁾
- Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species ⁽²¹⁰⁾
- Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species ⁽²¹¹⁾

⁽²⁰⁰⁾ OJ L 268, 18.10.2003, p. 1.

⁽²⁰¹⁾ OJ L 268, 18.10.2003, p. 24.

⁽²⁰²⁾ OJ L 287, 5.11.2003, p. 1.

⁽²⁰³⁾ OJ L 106, 17.4.2001, p. 1.

⁽²⁰⁴⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁰⁵⁾ OJ L 121, 29.7.1964, p. 1977.

⁽²⁰⁶⁾ OJ L 46, 19.2.1991, p. 19.

⁽²⁰⁷⁾ OJ L 192, 23.7.2010, p. 1.

⁽²⁰⁸⁾ OJ L 343, 22.12.2009, p. 74.

⁽²⁰⁹⁾ OJ L 268, 14.9.1992, p. 54.

⁽²¹⁰⁾ OJ L 194, 22.7.1988, p. 10.

⁽²¹¹⁾ OJ L 302, 19.10.1989, p. 1.

- Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species ⁽²¹²⁾
- Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC ⁽²¹³⁾
- Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals ⁽²¹⁴⁾
- Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC ⁽²¹⁵⁾
- Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽²¹⁶⁾
- Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 ⁽²¹⁷⁾
- Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) ⁽²¹⁸⁾

37. Animal disease control, zoonosis control

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

- Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽²¹⁹⁾
- Council Directive 77/391/EEC of 17 May 1977 introducing Community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle ⁽²²⁰⁾
- Council Directive 78/52/EEC of 13 December 1977 establishing the Community criteria for national plans for the accelerated eradication of brucellosis, tuberculosis and enzootic leukosis in cattle ⁽²²¹⁾
- Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC ⁽²²²⁾
- Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC ⁽²²³⁾
- Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽²²⁴⁾

⁽²¹²⁾ OJ L 224, 18.8.1990, p. 62.

⁽²¹³⁾ OJ L 62, 15.3.1993, p. 49.

⁽²¹⁴⁾ OJ L 328, 24.11.2006, p. 14.

⁽²¹⁵⁾ OJ L 139, 30.4.2004, p. 321.

⁽²¹⁶⁾ OJ L 18, 23.1.2003, p. 11.

⁽²¹⁷⁾ OJ L 178, 28.6.2013, p. 1.

⁽²¹⁸⁾ OJ L 300, 14.11.2009, p. 1.

⁽²¹⁹⁾ OJ L 147, 31.5.2001, p. 1.

⁽²²⁰⁾ OJ L 145, 13.6.1977, p. 44.

⁽²²¹⁾ OJ L 15, 19.1.1978, p. 34.

⁽²²²⁾ OJ L 306, 22.11.2003, p. 1.

⁽²²³⁾ OJ L 10, 14.1.2006, p. 16.

⁽²²⁴⁾ OJ L 316, 1.12.2001, p. 5.

- Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness ⁽²²⁵⁾
- Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever ⁽²²⁶⁾
- Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents ⁽²²⁷⁾
- Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease ⁽²²⁸⁾
- Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease ⁽²²⁹⁾
- Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC ⁽²³⁰⁾
- Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue ⁽²³¹⁾

38. Animal identification

- Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC ⁽²³²⁾
- Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 ⁽²³³⁾
- Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs ⁽²³⁴⁾

39. Animal breeding

- Article 37 and Article 64(3) of Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') ⁽²³⁵⁾

40. Animal welfare

- Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 ⁽²³⁶⁾
- Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing ⁽²³⁷⁾

41. Plant health

- Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽²³⁸⁾

⁽²²⁵⁾ OJ L 157, 10.6.1992, p. 19.

⁽²²⁶⁾ OJ L 192, 20.7.2002, p. 27.

⁽²²⁷⁾ OJ L 325, 12.12.2003, p. 1.

⁽²²⁸⁾ OJ L 260, 5.9.1992, p. 1.

⁽²²⁹⁾ OJ L 62, 15.3.1993, p. 69.

⁽²³⁰⁾ OJ L 325, 12.12.2003, p. 31.

⁽²³¹⁾ OJ L 327, 22.12.2000, p. 74.

⁽²³²⁾ OJ L 5, 9.1.2004, p. 8.

⁽²³³⁾ OJ L 204, 11.8.2000, p. 1.

⁽²³⁴⁾ OJ L 213, 8.8.2008, p. 31.

⁽²³⁵⁾ OJ L 171, 29.6.2016, p. 66.

⁽²³⁶⁾ OJ L 3, 5.1.2005, p. 1.

⁽²³⁷⁾ OJ L 303, 18.11.2009, p. 1.

⁽²³⁸⁾ OJ L 169, 10.7.2000, p. 1.

- Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC ⁽²³⁹⁾

42. Plant reproductive material

- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed ⁽²⁴⁰⁾
- Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine ⁽²⁴¹⁾
- Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material ⁽²⁴²⁾
- Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species ⁽²⁴³⁾
- Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed ⁽²⁴⁴⁾
- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ⁽²⁴⁵⁾
- Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes ⁽²⁴⁶⁾
- Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants ⁽²⁴⁷⁾
- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production ⁽²⁴⁸⁾

43. Official controls, veterinary checks

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

- Regulation (EU) 2017/625 of the European Parliament and of the Council 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 (Official Controls Regulation) ⁽²⁴⁹⁾
- Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽²⁵⁰⁾

⁽²³⁹⁾ OJ L 317, 23.11.2016, p. 4.

⁽²⁴⁰⁾ OJ L 125, 11.7.1966, p. 2309.

⁽²⁴¹⁾ OJ L 93, 17.4.1968, p. 15.

⁽²⁴²⁾ OJ L 11, 15.1.2000, p. 17.

⁽²⁴³⁾ OJ L 193, 20.7.2002, p. 1.

⁽²⁴⁴⁾ OJ L 193, 20.7.2002, p. 12.

⁽²⁴⁵⁾ OJ L 193, 20.7.2002, p. 33.

⁽²⁴⁶⁾ OJ L 193, 20.7.2002, p. 60.

⁽²⁴⁷⁾ OJ L 193, 20.7.2002, p. 74.

⁽²⁴⁸⁾ OJ L 267, 8.10.2008, p. 8.

⁽²⁴⁹⁾ OJ L 95, 7.4.2017, p. 1.

⁽²⁵⁰⁾ OJ L 165, 30.4.2004, p. 1.

- Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽²⁵¹⁾
- Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽²⁵²⁾
- Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽²⁵³⁾
- Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁵⁴⁾
- Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽²⁵⁵⁾

44. Sanitary and phytosanitary - Other

- Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC ⁽²⁵⁶⁾
- Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC ⁽²⁵⁷⁾

45. Intellectual property

- Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ⁽²⁵⁸⁾
- Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽²⁵⁹⁾
- Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 ⁽²⁶⁰⁾
- Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽²⁶¹⁾
- Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 ⁽²⁶²⁾

46. Fisheries and aquaculture

- Commission Regulation (EEC) No 3703/85 of 23 December 1985 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish ⁽²⁶³⁾
- Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products ⁽²⁶⁴⁾

⁽²⁵¹⁾ OJ L 139, 30.4.2004, p. 206.

⁽²⁵²⁾ OJ L 268, 24.9.1991, p. 56.

⁽²⁵³⁾ OJ L 24, 30.1.1998, p. 9.

⁽²⁵⁴⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁵⁵⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁵⁶⁾ OJ L 125, 23.5.1996, p. 3.

⁽²⁵⁷⁾ OJ L 125, 23.5.1996, p. 10.

⁽²⁵⁸⁾ OJ L 39, 13.2.2008, p. 16.

⁽²⁵⁹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁶⁰⁾ OJ L 84, 20.3.2014, p. 14.

⁽²⁶¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁶²⁾ OJ L 181, 29.6.2013, p. 15.

⁽²⁶³⁾ OJ L 351, 28.12.1985, p. 63.

⁽²⁶⁴⁾ OJ L 212, 22.7.1989, p. 79.

- Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito ⁽²⁶⁵⁾
- Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products ⁽²⁶⁶⁾
- Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms ⁽²⁶⁷⁾, insofar as it concerns provisions relating to minimum sizes of marine organisms
- Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 ⁽²⁶⁸⁾, insofar as it concerns provisions relating to marketing standards
- Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 ⁽²⁶⁹⁾, insofar as it concerns provisions relating to marketing standards and consumer information
- Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC ⁽²⁷⁰⁾, insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products
- Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 ⁽²⁷¹⁾
- Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus* spp. ⁽²⁷²⁾
- Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* and amending Council Regulation (EC) No 1984/2003 ⁽²⁷³⁾
- Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel ⁽²⁷⁴⁾

47. Other

- Part III of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽²⁷⁵⁾, with the exception of Chapter VI
- Council Regulation (EC) No 2964/95 of 20 December 1995 introducing registration for crude oil imports and deliveries in the Community ⁽²⁷⁶⁾
- Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins ⁽²⁷⁷⁾

⁽²⁶⁵⁾ OJ L 163, 17.6.1992, p. 1.

⁽²⁶⁶⁾ OJ L 334, 23.12.1996, p. 1.

⁽²⁶⁷⁾ OJ L 125, 27.4.1998, p. 1.

⁽²⁶⁸⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁶⁹⁾ OJ L 354, 28.12.2013, p. 1.

⁽²⁷⁰⁾ OJ L 354, 28.12.2013, p. 22.

⁽²⁷¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁷²⁾ OJ L 145, 31.5.2001, p. 1.

⁽²⁷³⁾ OJ L 194, 24.7.2010, p. 1.

⁽²⁷⁴⁾ OJ L 248, 22.9.2007, p. 17.

⁽²⁷⁵⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁷⁶⁾ OJ L 310, 22.12.1995, p. 5.

⁽²⁷⁷⁾ OJ L 373, 21.12.2004, p. 1.

- Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community ⁽²⁷⁸⁾
- Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ⁽²⁷⁹⁾
- Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods ⁽²⁸⁰⁾
- Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 ⁽²⁸¹⁾
- Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass ⁽²⁸²⁾
- Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items ⁽²⁸³⁾
- Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons ⁽²⁸⁴⁾
- 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 ⁽²⁸⁵⁾
- Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community ⁽²⁸⁶⁾
- Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ⁽²⁸⁷⁾
- Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds ⁽²⁸⁸⁾
- Restrictive measures in force based on Article 215 TFEU, insofar as they relate to trade in goods between the Union and third countries

⁽²⁷⁸⁾ OJ L 309, 25.11.2005, p. 9.

⁽²⁷⁹⁾ OJ L 127, 29.4.2014, p. 1.

⁽²⁸⁰⁾ OJ L 39, 10.2.2009, p. 1.

⁽²⁸¹⁾ OJ L 159, 28.5.2014, p. 1.

⁽²⁸²⁾ OJ L 326, 29.12.1969, p. 36.

⁽²⁸³⁾ OJ L 134, 29.5.2009, p. 1.

⁽²⁸⁴⁾ OJ L 256, 13.9.1991, p. 51.

⁽²⁸⁵⁾ OJ L 94, 30.3.2012, p. 1.

⁽²⁸⁶⁾ OJ L 146, 10.6.2009, p. 1.

⁽²⁸⁷⁾ OJ L 200, 30.7.2005, p. 1.

⁽²⁸⁸⁾ OJ L 358, 31.12.2002, p. 28.

ANNEX 3

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 8

1. Value Added Tax ⁽¹⁾

- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾
- Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State ⁽³⁾
- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax ⁽⁴⁾
- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures ⁽⁵⁾
- Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory ⁽⁶⁾
- Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries ⁽⁷⁾
- Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods ⁽⁸⁾
- Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries ⁽⁹⁾
- Obligations stemming from the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax ⁽¹⁰⁾
- Obligations stemming from the Cooperation agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests ⁽¹¹⁾

2. Excise

- Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ⁽¹²⁾
- Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 ⁽¹³⁾
- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures ⁽¹⁴⁾
- Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages ⁽¹⁵⁾
- Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages ⁽¹⁶⁾

⁽¹⁾ The headings and subheadings in this Annex are purely indicative.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 44, 20.2.2008, p. 23.

⁽⁴⁾ OJ L 268, 12.10.2010, p. 1.

⁽⁵⁾ OJ L 84, 31.3.2010, p. 1.

⁽⁶⁾ OJ L 326, 21.11.1986, p. 40.

⁽⁷⁾ OJ L 346, 29.12.2007, p. 6.

⁽⁸⁾ OJ L 292, 10.11.2009, p. 5.

⁽⁹⁾ OJ L 286, 17.10.2006, p. 15.

⁽¹⁰⁾ OJ L 195, 1.8.2018, p. 1.

⁽¹¹⁾ OJ L 46, 17.2.2009, p. 8.

⁽¹²⁾ OJ L 9, 14.1.2009, p. 12.

⁽¹³⁾ OJ L 121, 8.5.2012, p. 1.

⁽¹⁴⁾ OJ L 84, 31.3.2010, p. 1.

⁽¹⁵⁾ OJ L 316, 31.10.1992, p. 21.

⁽¹⁶⁾ OJ L 316, 31.10.1992, p. 29.

- Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco ⁽¹⁷⁾
 - Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽¹⁸⁾
 - Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene ⁽¹⁹⁾
 - Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products ⁽²⁰⁾
 - Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries ⁽²¹⁾
 - Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries ⁽²²⁾
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⁽¹⁷⁾ OJ L 176, 5.7.2011, p. 24.

⁽¹⁸⁾ OJ L 283, 31.10.2003, p. 51.

⁽¹⁹⁾ OJ L 291, 6.12.1995, p. 46.

⁽²⁰⁾ OJ L 162, 1.7.2003, p. 5.

⁽²¹⁾ OJ L 346, 29.12.2007, p. 6.

⁽²²⁾ OJ L 286, 17.10.2006, p. 15.

ANNEX 4

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 9

The following acts shall apply to and in the United Kingdom in respect of Northern Ireland insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.

Provisions relating to retail markets and consumer protection shall not apply. References to a provision of another Union act in the acts listed in this Annex shall not render the provision referred to applicable where it does not otherwise apply to and in the United Kingdom in respect of Northern Ireland, unless it is a provision governing wholesale electricity markets which applies in Ireland and is necessary for the joint operation of the single wholesale electricity market in Ireland and Northern Ireland.

- Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ⁽¹⁾
- Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ⁽²⁾
- Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ⁽³⁾
- Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment ⁽⁴⁾
- Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ⁽⁵⁾
- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) ⁽⁶⁾
- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC ⁽⁷⁾

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

⁽²⁾ OJ L 211, 14.8.2009, p. 15.

⁽³⁾ OJ L 211, 14.8.2009, p. 1.

⁽⁴⁾ OJ L 33, 4.2.2006, p. 22.

⁽⁵⁾ OJ L 326, 8.12.2011, p. 1.

⁽⁶⁾ OJ L 334, 17.12.2010, p. 17.

⁽⁷⁾ OJ L 275, 25.10.2003, p. 32.

ANNEX 5

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 10(1)

1. **State Aid rules in the TFEU ⁽¹⁾**

- 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 ⁽²⁾
- 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 ⁽³⁾
- Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽⁴⁾

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 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid ⁽⁵⁾

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 ⁽⁶⁾

3.3 *Sectorial block exemption regulations*

- Commission Regulation (EU) No 702/2014 of 25 June 2014 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 of the Treaty on the Functioning of the European Union ⁽⁷⁾
- Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union ⁽⁸⁾
- 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) Nos 1191/69 and 1107/70 ⁽⁹⁾
- Communication from the Commission on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road ⁽¹⁰⁾

⁽¹⁾ The headings and subheadings in this Annex are purely indicative.

⁽²⁾ OJ C 262, 19.7.2016, p. 1.

⁽³⁾ OJ C 8, 11.1.2012, p. 4.

⁽⁴⁾ OJ C 155, 20.6.2008, p. 10.

⁽⁵⁾ OJ L 248, 24.9.2015, p. 1.

⁽⁶⁾ OJ L 187, 26.6.2014, p. 1.

⁽⁷⁾ OJ L 193, 1.7.2014, p. 1.

⁽⁸⁾ OJ L 369, 24.12.2014, p. 37.

⁽⁹⁾ OJ L 315, 3.12.2007, p. 1.

⁽¹⁰⁾ OJ C 92, 29.3.2014, p. 1.

- Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ⁽¹¹⁾

3.4 *De minimis aid regulations*

- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid ⁽¹²⁾
- Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest ⁽¹³⁾
- Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector ⁽¹⁴⁾
- Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector ⁽¹⁵⁾

4. **Procedural rules**

- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ⁽¹⁶⁾
- 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 ⁽¹⁷⁾
- Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid ⁽¹⁸⁾
- Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽¹⁹⁾
- Commission notice on the enforcement of State aid law by national courts ⁽²⁰⁾
- Communication from the Commission on the revision of the method for setting the reference and discount rates ⁽²¹⁾
- Communication from the Commission - Code of Best Practice for the conduct of State aid control procedures ⁽²²⁾
- Commission communication C (2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions ⁽²³⁾

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 ⁽²⁴⁾

⁽¹¹⁾ OJ L 7, 11.1.2012, p. 3.

⁽¹²⁾ OJ L 352, 24.12.2013, p. 1.

⁽¹³⁾ OJ L 114, 26.4.2012, p. 8.

⁽¹⁴⁾ OJ L 352, 24.12.2013, p. 9.

⁽¹⁵⁾ OJ L 190, 28.6.2014, p. 45.

⁽¹⁶⁾ OJ L 248, 24.9.2015, p. 9.

⁽¹⁷⁾ OJ L 140, 30.4.2004, p. 1.

⁽¹⁸⁾ OJ C 272, 15.11.2007, p. 4.

⁽¹⁹⁾ OJ C 119, 22.5.2002, p. 22.

⁽²⁰⁾ OJ C 85, 9.4.2009, p. 1.

⁽²¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽²²⁾ OJ C 253, 19.7.2018, p. 14.

⁽²³⁾ OJ C 297, 9.12.2003, p. 6.

⁽²⁴⁾ OJ C 188, 20.6.2014, p. 4.

5.2 *Agricultural aid*

- European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 – 2020 ⁽²⁵⁾

5.3 *Fisheries and aquaculture aid*

- Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector ⁽²⁶⁾

5.4 *Regional aid*

- Guidelines on regional State aid for 2014-2020 ⁽²⁷⁾

5.5 *Research and development and innovation aid*

- Communication from the Commission — Framework for State aid for research and development and innovation ⁽²⁸⁾

5.6 *Risk capital aid*

- Communication from the Commission — Guidelines on State aid to promote risk finance investments ⁽²⁹⁾

5.7 *Rescue and restructuring aid*

- Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽³⁰⁾

5.8 *Training aid*

- Communication from the Commission – Criteria for the analysis of the compatibility of State aid for training subject to individual notification ⁽³¹⁾

5.9 *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 ⁽³²⁾

5.10 *Temporary rules in response to the economic and financial crisis*

- 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 ⁽³³⁾
- Communication from the Commission on the treatment of impaired assets in the Community banking sector ⁽³⁴⁾
- 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 ⁽³⁵⁾

5.11 *Export credit insurance*

- Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance ⁽³⁶⁾

⁽²⁵⁾ OJ C 204, 1.7.2014, p. 1.

⁽²⁶⁾ OJ C 217, 2.7.2015, p. 1.

⁽²⁷⁾ OJ C 209, 23.7.2013, p. 1.

⁽²⁸⁾ OJ C 198, 27.6.2014, p. 1.

⁽²⁹⁾ OJ C 19, 22.1.2014, p. 4.

⁽³⁰⁾ OJ C 249, 31.7.2014, p. 1.

⁽³¹⁾ OJ C 188, 11.8.2009, p. 1.

⁽³²⁾ OJ C 188, 11.8.2009, p. 6.

⁽³³⁾ OJ C 216, 30.7.2013, p. 1.

⁽³⁴⁾ OJ C 72, 26.3.2009, p. 1.

⁽³⁵⁾ OJ C 195, 19.8.2009, p. 9.

⁽³⁶⁾ OJ C 392, 19.12.2012, p. 1.

5.12 *Energy and environment*

5.12.1 Environment and energy

- Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 ⁽³⁷⁾
- Communication from the Commission — Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 ⁽³⁸⁾

5.12.2 Electricity (stranded costs)

- Commission Communication relating to the methodology for analysis of State aid linked to stranded costs ⁽³⁹⁾

5.12.3 Coal

- Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines ⁽⁴⁰⁾

5.13 *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 ⁽⁴¹⁾

5.14 *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 ⁽⁴²⁾

5.15 *Audiovisual, broadcasting and broadband*

5.15.1 Audiovisual production

- Communication from the Commission on State aid for films and other audiovisual works ⁽⁴³⁾

5.15.2 Broadcasting

- Communication from the Commission on the application of State aid rules to public service broadcasting ⁽⁴⁴⁾

5.15.3 Broadband network

- Communication from the Commission - Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks ⁽⁴⁵⁾

5.16 *Transport and infrastructure*

- Communication from the Commission - Community guidelines on State aid for railway undertakings ⁽⁴⁶⁾
- Community guidelines on State aid to maritime transport ⁽⁴⁷⁾

⁽³⁷⁾ OJ C 200, 28.6.2014, p. 1.

⁽³⁸⁾ OJ C 158, 5.6.2012, p. 4.

⁽³⁹⁾ http://ec.europa.eu/competition/state_aid/legislation/stranded_costs_en.pdf

⁽⁴⁰⁾ OJ L 336, 21.12.2010, p. 24.

⁽⁴¹⁾ OJ C 152, 26.6.2002, p. 5.

⁽⁴²⁾ OJ C 39, 6.2.1998, p. 2.

⁽⁴³⁾ OJ C 332, 15.11.2013, p. 1.

⁽⁴⁴⁾ OJ C 257, 27.10.2009, p. 1.

⁽⁴⁵⁾ OJ C 25, 26.1.2013, p. 1.

⁽⁴⁶⁾ OJ C 184, 22.7.2008, p. 13.

⁽⁴⁷⁾ OJ C 13, 17.1.2004, p. 3.

- Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea ⁽⁴⁸⁾
- Communication from the Commission providing guidance on State aid to ship-management companies ⁽⁴⁹⁾
- Communication from the Commission — Guidelines on State aid to airports and airlines ⁽⁵⁰⁾

5.17 *Services of general economic interest (SGEI)*

- Communication from the Commission — European Union framework for State aid in the form of public service compensation ⁽⁵¹⁾

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 ⁽⁵²⁾

⁽⁴⁸⁾ OJ C 317, 12.12.2008, p. 10.

⁽⁴⁹⁾ OJ C 132, 11.6.2009, p. 6.

⁽⁵⁰⁾ OJ C 99, 4.4.2014, p. 3.

⁽⁵¹⁾ OJ C 8, 11.1.2012, p. 15.

⁽⁵²⁾ OJ L 318, 17.11.2006, p. 17.

ANNEX 6

PROCEDURES REFERRED TO IN ARTICLE 10(2)

The Joint Committee shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage referred to in Article 10(2), taking into account the most recent information available. The initial maximum exempted overall annual level of support shall be informed by the design of the United Kingdom's future agricultural support scheme as well as the annual average of the total amount of expenditure incurred in Northern Ireland under the Common Agricultural Policy under the current MFF 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

The Joint Committee shall adjust the level of support and percentage referred to in the first paragraph informed by the design of the United Kingdom's agricultural support scheme to any variation in the overall amount of support available under the Common Agricultural Policy in the Union in each future Multiannual Financial Framework.

If the Joint Committee fails to determine the initial level of support and percentage in accordance with the first paragraph, or fails to adjust the level of support and percentage in accordance with the second paragraph, by the end of the transition period or within 1 year of the entry into force of a future Multiannual Financial Framework, as the case may be, application of Article 10(2) shall be suspended until the Joint Committee has determined or adjusted the level of support and percentage.

ANNEX 7

PROCEDURES REFERRED TO IN ARTICLE 16(3)

1. Where the Union or the United Kingdom is considering taking safeguard measures under Article 16(1) of this Protocol, it shall, without delay, notify the Union or the United Kingdom, as the case may be, through the Joint Committee and shall provide all relevant information.
 2. The Union and the United Kingdom shall immediately enter into consultations in the Joint Committee with a view to finding a commonly acceptable solution.
 3. The Union or the United Kingdom, as the case may be, may not take safeguard measures until 1 month has elapsed after the date of notification under point 1, unless the consultation procedure under point 2 has been concluded before the expiration of the state limit. When exceptional circumstances requiring immediate action exclude prior examination, the Union or the United Kingdom, as the case may be, may apply forthwith the protective measures strictly necessary to remedy the situation.
 4. The Union or the United Kingdom, as the case may be, shall, without delay, notify the measures taken to the Joint Committee and shall provide all relevant information.
 5. The safeguard measures taken shall be the subject of consultations in the Joint Committee every 3 months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application. The Union or the United Kingdom, as the case may be, may at any time request the Joint Committee to review such measures.
 6. Points 1 to 5 shall apply, *mutatis mutandis*, to rebalancing measures referred to in Article 16(2) of this Protocol.
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**PROTOCOL RELATING TO THE SOVEREIGN BASE AREAS OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND IN CYPRUS**

The Union and the United Kingdom,

RECALLING that the Joint Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Final Act of the Treaty concerning the Accession of the United Kingdom to the European Communities provided that the arrangements applicable to relations between the European Economic Community and the Sovereign Base Areas will be defined within the context of any agreement between the Community and the Republic of Cyprus,

CONFIRMING that the arrangements applicable to relations between the Union and the Sovereign Base Areas after the withdrawal of the United Kingdom from the Union should continue to be defined within the framework of the Republic of Cyprus' membership of the Union,

TAKING ACCOUNT of the provisions concerning the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia ("the Sovereign Base Areas") set out in the Treaty concerning the Establishment of the Republic of Cyprus and the associated Exchanges of Notes dated 16 August 1960 ("the Treaty of Establishment"),

CONFIRMING that the withdrawal of the United Kingdom from the Union should not affect the rights and obligations of the Republic of Cyprus under Union law or the rights and obligations of the parties to the Treaty of Establishment,

RECALLING that, from the date of accession of the Republic of Cyprus to the Union, Union law applies in the Sovereign Base Areas only to the extent necessary to ensure the implementation of the arrangements set out in Protocol No 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded ("Protocol No 3"),

NOTING the Exchange of Notes between the Government of the United Kingdom and the Government of the Republic of Cyprus concerning the administration of the Sovereign Base Areas, dated 16 August 1960, and the attached Declaration by the United Kingdom Government that one of the main objects to be achieved is the protection of the interests of those resident or working in the Sovereign Base Areas, and considering in this context that those persons should have, to the extent possible, the same treatment as those resident or working in the Republic of Cyprus,

NOTING the commitment of the United Kingdom to preserving the application of the arrangements made pursuant to the Treaty of Establishment whereby the authorities of the Republic of Cyprus administer a wide range of public services in the Sovereign Base Areas, including in the fields of agriculture, customs and taxation,

WHEREAS the Sovereign Base Areas should remain part of the customs territory of the Union after the withdrawal of the United Kingdom from the Union,

NOTING the provisions of the Treaty of Establishment regarding customs arrangements between the Sovereign Base Areas and the Republic of Cyprus and in particular those of Part I of Annex F to that Treaty,

NOTING the commitment of the United Kingdom not to create customs posts or other frontier barriers between the Sovereign Base Areas and the Republic of Cyprus and not to establish commercial or civilian seaports or airports,

DESIRING to determine appropriate arrangements for achieving the objectives of the arrangements set out in Protocol No 3 after the withdrawal of the United Kingdom from the Union,

CONSIDERING that the arrangements set out in this Protocol should ensure the proper implementation and enforcement of the relevant provisions of Union law in relation to the Sovereign Base Areas after the withdrawal of the United Kingdom from the Union,

CONSIDERING that appropriate arrangements need to be laid down as regards the relief and exemptions from duties and taxes that the armed forces of the United Kingdom and associated personnel can maintain after the withdrawal of the United Kingdom from the Union,

RECOGNISING that it is necessary to provide for specific arrangements for the checks on goods and persons crossing the external borders of the Sovereign Base Areas, as well as to provide for the terms under which the relevant provisions of Union law apply to the line between the areas in which the Government of the Republic of Cyprus does not exercise effective control and the Sovereign Base Area of Dhekelia, as currently provided on the basis of the Protocol No 10 on Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded ("Protocol No 10"),

RECOGNISING that cooperation between the Republic of Cyprus and the United Kingdom is essential to ensure the effective implementation of the arrangements laid down in this Protocol,

CONSIDERING that on the basis of the arrangements laid down in this Protocol, Union law will apply in relation to the Sovereign Base Areas in certain policy areas of the Union following the withdrawal of the United Kingdom from the Union,

RECOGNISING the unique arrangements relating to persons living and working in the Sovereign Base Areas under the Treaty of Establishment and the 1960 Declaration and the objective of the consistent application of relevant Union law in both the Republic of Cyprus and the Sovereign Base Areas in order to support those arrangements,

NOTING in this regard that through this Protocol the United Kingdom entrusts the Republic of Cyprus, as a Member State of the Union, with responsibility for implementing and enforcing provisions of Union law in the Sovereign Base Areas as provided for in this Protocol,

RECALLING that the Republic of Cyprus is responsible for the implementation and enforcement of Union law in relation to goods destined for or originating in the Sovereign Base Areas that are entering or leaving through a seaport or airport in the Republic of Cyprus,

UNDERLINING that the arrangements set out in this Protocol are without prejudice to Articles 1 and 2 of the Treaty of Establishment and to the positions of the Republic of Cyprus and the United Kingdom thereon,

CONSIDERING that the arrangements laid down in this Protocol should have the sole purpose of regulating the particular situation of the Sovereign Base Areas and should not apply to any other territory or serve as a precedent,

HAVE AGREED UPON the following provisions, which shall be annexed to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement"):

Article 1

General provisions

1. For the purposes of this Protocol, any reference to the United Kingdom in the applicable provisions of the Withdrawal Agreement shall be understood as referring to the United Kingdom in respect of the Sovereign Base Areas. Titles I, II and III of Part Three and Part Six thereof shall apply without prejudice to the provisions of this Protocol.
2. By way of derogation from Article 4(4) and (5) of the Withdrawal Agreement, the provisions of this Protocol referring to Union law or concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.
3. Notwithstanding Article 71 of the Withdrawal Agreement, in addition to any provisions of Union law on the protection of personal data applicable to and in the Sovereign Base Areas under this Protocol, Regulation (EU) 2016/679 and Directive (EU) 2016/680 shall apply in respect of personal data processed in the Sovereign Base Areas on the basis of this Protocol.

4. By way of derogation from Article 6(1) of the Withdrawal Agreement, where this Protocol makes reference to a Union act, the reference to that act shall be understood as referring to the act as amended or replaced. This paragraph shall not apply in relation to Article 4(3) and (10) of the Council Regulation (EC) 866/2004 ⁽¹⁾, to which Article 10(2) shall apply.

5. Where the Union considers, by way of derogation from Articles 7 and 8 of the Withdrawal Agreement, that full or partial access by the United Kingdom, or by the United Kingdom in respect of the Sovereign Base Areas, as the case may be, is strictly necessary to enable the United Kingdom to comply with its obligations under this Protocol, including where such access is necessary because access to the relevant information cannot be facilitated by other practical means, references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Protocol shall be understood as including the United Kingdom or the United Kingdom in respect of the Sovereign Base Areas, as the case may be in relation to access to any network, information system or database established on the basis of Union law.

Article 2

Customs territory of the Union

1. The Sovereign Base Areas, taking into account the Treaty of Establishment, shall be part of the customs territory of the Union. For this purpose, the provisions of Union law on customs and the common commercial policy, including provisions of Union law providing for customs controls of specific goods or for specific purposes, shall apply to and in the Sovereign Base Areas.

2. Goods produced by producers in the Sovereign Base Areas and placed on the market in the customs territory of the Union shall be considered to be goods in free circulation.

3. All goods intended for use in the Sovereign Base Areas shall enter the island of Cyprus through the civilian airports and seaports of the Republic of Cyprus, and all customs formalities, customs controls and collection of import duties related to them shall be carried out by the authorities of the Republic of Cyprus.

4. All goods intended for export shall exit the island of Cyprus through the civilian airports and seaports of the Republic of Cyprus and all customs export formalities and customs controls related to them shall be carried out by the authorities of the Republic of Cyprus.

5. Customs controls on documents and equipment referred to in paragraph 3 of section 11 of Annex C to the Treaty of Establishment shall be carried out in accordance with the provisions of that section.

6. By way of derogation from paragraphs 3 and 4, and with the sole purpose of supporting the operation of the Sovereign Base Areas as military bases, having regard to the Treaty of Establishment, the following provisions shall apply:

- (a) the following goods may enter or leave the island of Cyprus through a seaport or airport in the Sovereign Base Areas, subject to all customs formalities, customs controls and collection of duties related to those goods being carried out by the authorities of the Sovereign Base Areas:
 - (i) goods imported or exported for official or military purposes;
 - (ii) goods imported or exported in personal baggage, exclusively for their personal use, by or on behalf of United Kingdom personnel, as well as by other persons travelling on defence or official business;
- (b) parcels which are sent or received by United Kingdom personnel or their dependants and transported by the British Forces Post Office may enter or leave the island of Cyprus through a port or airport in the Sovereign Base Areas under the following conditions:
 - (i) incoming parcels addressed to United Kingdom personnel or their dependants shall be transported in a sealed container and conveyed following their arrival to a customs post in the Republic of Cyprus so that the completion of customs formalities, controls and the collection of import duties related to those products can be carried out by the authorities of the Republic of Cyprus;
 - (ii) outgoing parcels sent by United Kingdom personnel or their dependants shall be subject to customs control by the authorities of the Sovereign Base Areas.

⁽¹⁾ Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession (OJ L 161, 30.4.2004, p. 128).

For the purposes of this paragraph, "United Kingdom personnel or their dependants" means the persons defined in paragraph 1 of Part I of Annex B to the Treaty of Establishment.

The United Kingdom shall share relevant information with the Republic of Cyprus with a view to cooperating closely to prevent the evasion of duties and taxes, including smuggling.

7. Articles 34, 35 and 36 TFEU and other provisions of Union law on goods, in particular measures adopted pursuant to Article 114 TFEU, shall apply to and in the Sovereign Base Areas.

8. Goods arriving from the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control shall cross the line between those areas and the Eastern Sovereign Base Area in accordance with Regulation (EC) No 866/2004.

Without prejudice to Article 6 of this Protocol, the United Kingdom shall be responsible for the implementation and enforcement of Regulation (EC) No 866/2004 in relation to the Sovereign Base Areas in accordance with the provisions of that Regulation. The United Kingdom shall invite the authorities of the Republic of Cyprus to conduct any necessary veterinary, phytosanitary and food safety checks required under that Regulation.

9. The United Kingdom shall be responsible for the implementation and enforcement of the provisions of Union law referred to in paragraph 1 in relation to goods arriving in or leaving the Sovereign Base Areas under paragraph 6.

The United Kingdom shall also be responsible for issuing any licences, authorisations or certificates which may be required in respect of goods covered by paragraph 1 of section 5 of Annex F to the Treaty of Establishment.

10. The Republic of Cyprus shall be responsible for the implementation and enforcement in the Sovereign Base Areas of the provisions of Union law referred to in paragraph 7.

Article 3

Taxation

1. The provisions of Union law on turnover taxes, excise duties and other forms of indirect taxation adopted pursuant to Article 113 TFEU shall apply to and in the Sovereign Base Areas.

2. Transactions originating in or intended for the Sovereign Base Areas shall be treated as transactions originating in or intended for the Republic of Cyprus for the purposes of value added tax (VAT), excise duties and other forms of indirect taxation.

3. The Republic of Cyprus shall be responsible for the implementation and the enforcement of the provisions of Union law referred to in this Article in the Sovereign Base Areas, including for the collection of duties and taxes payable by civil natural or legal persons residing or established in the Sovereign Base Areas.

Article 4

Duty relief

1. Goods or services received, acquired or imported for use by the armed forces of the United Kingdom or the civilian staff accompanying them, or for supplying their messes or canteens, shall be exempted from customs duties, VAT and excise duties, provided that the persons concerned are eligible for such exemptions in accordance with the Treaty of Establishment. For this purpose, the United Kingdom shall issue exemption certificates upon approval by the Republic of Cyprus in relation to the goods covered by Article 2(3).

2. Any duties that may be collected by the United Kingdom authorities in the Sovereign Base Areas as a result of sale of the goods referred to in paragraph 1 shall be remitted to the authorities of the Republic of Cyprus.

Article 5

Social security

With a view to the continued protection of the rights of persons resident or employed in the territory of the Sovereign Base Areas, the United Kingdom and the Republic of Cyprus shall make further arrangements, where necessary, to ensure the proper implementation of Article 4 of Protocol No 3 after the end of the transition period.

*Article 6***Agriculture, fisheries and veterinary and phytosanitary rules**

The provisions of Union law on agriculture and fisheries in Title III of Part Three TFEU and acts adopted pursuant to those provisions, as well as the veterinary and phytosanitary rules adopted in particular pursuant to point (b) of Article 168(4) TFEU, shall apply to and in the Sovereign Base Areas.

The Republic of Cyprus shall be responsible for the implementation and enforcement of the provisions of Union law referred to in the first paragraph in the Sovereign Base Areas.

*Article 7***Checks on persons crossing the external borders of the Sovereign Base Areas**

1. For the purposes of this Article, "external borders of the Sovereign Base Areas" means the sea boundaries and the airports and seaports of the Sovereign Base Areas, but not their land and sea boundaries with the Republic of Cyprus. Subject to paragraph 6, for the purposes of paragraphs 2 and 7, "crossing points" means any crossing point authorised by the authorities of the United Kingdom for the crossing of the external borders of the Sovereign Base Areas.

2. The United Kingdom shall carry out checks on persons crossing the external borders of the Sovereign Base Areas. Those checks shall include the verification of travel documents. All persons shall undergo at least one such check in order to establish their identity. The United Kingdom shall only allow the external borders of the Sovereign Base Areas to be crossed at crossing points.

3. Nationals of third countries and nationals of the United Kingdom shall only be permitted to cross the external borders of the Sovereign Base Areas if they fulfil the following conditions:

- (a) they possess a valid travel document;
- (b) they are in possession of a valid visa for the Republic of Cyprus, if required;
- (c) they are engaged in a defence-related activity or are family members of a person who is engaged in such activity; and
- (d) they are not a threat to national security.

The condition specified in point (c) shall not apply to United Kingdom nationals crossing the boundary referred to in paragraph 6.

The United Kingdom may only derogate from the conditions referred to in the first subparagraph on humanitarian grounds, on grounds of national interest or in order to comply with its international obligations.

Members of a force, civilian component and dependants, as defined in Annex C to the Treaty of Establishment, shall be treated as not requiring a visa for the Republic of Cyprus.

4. Any applicant for asylum who first entered the island of Cyprus from outside the Union by one of the Sovereign Base Areas shall be taken back or readmitted to the Sovereign Base Areas at the request of the Member State in whose territory the applicant is present.

The Republic of Cyprus shall continue to cooperate with the United Kingdom with a view to devising practical ways and means of respecting the rights and satisfying the needs of asylum seekers and illegal migrants in the Sovereign Base Areas, bearing in mind humanitarian considerations and in compliance with the relevant Sovereign Base Area Administration legislation.

5. Without prejudice to paragraph 6, there shall be no checks on persons at the land and sea boundaries between the Sovereign Base Areas and the Republic of Cyprus.

6. The boundary between the Eastern Sovereign Base Area and those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control shall be treated as part of the external borders of the Sovereign Base Areas for the purposes of this Article for the duration of the suspension of the application of the acquis according to Article 1 of Protocol No 10. That boundary may only be crossed at the crossing points of Strovilia and Pergamos. With the prior agreement of and in cooperation with the United Kingdom authorities, the Republic of Cyprus may take further measures to combat illegal migration with respect to persons who have crossed that boundary.

7. The United Kingdom authorities shall use mobile units to carry out external border surveillance between border crossing points and at crossing points outside of normal opening hours at the external borders of the Sovereign Base Areas and at the boundary between the Sovereign Base Area of Dhekelia and those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control. That surveillance shall be carried out in such a way as to discourage persons from circumventing the checks at crossing points. The United Kingdom authorities shall deploy enough suitably qualified officers to carry out those checks and surveillance.

8. The United Kingdom authorities shall maintain constant close cooperation with the authorities of the Republic of Cyprus with a view to the effective implementation of the checks and surveillance referred to in paragraphs 6 and 7.

Article 8

Cooperation

The Republic of Cyprus and the United Kingdom shall cooperate to ensure the effective implementation of this Protocol, in particular with a view to countering fraud and any other illegal activities that affect the financial interests of the Union or of the United Kingdom. The Republic of Cyprus and the United Kingdom may make further arrangements concerning the implementation of any of the provisions of this Protocol. The Republic of Cyprus shall inform the European Commission of any such arrangements before their entry into force.

Article 9

Specialised Committee

1. The Specialised Committee on issues related to the implementation of the Protocol related to the Sovereign Base Areas in Cyprus established by Article 165 of the Withdrawal Agreement ("Specialised Committee") shall:

- (a) facilitate the implementation and application of this Protocol;
- (b) discuss any point of relevance to this Protocol giving rise to a difficulty and raised by the Union or the United Kingdom; and
- (c) make recommendations to the Joint Committee as regards the functioning of this Protocol, in particular proposals for amendments of the references to Union law in this Protocol.

2. The European Commission shall inform the Specialised Committee of any report submitted under Article 11 of Regulation (EC) No 866/2004 and shall consult the United Kingdom in relation to any Commission proposal to adopt an act amending or replacing that Regulation if the Sovereign Base Areas are affected.

Article 10

Joint Committee

1. The Joint Committee shall amend any references to Union law in this Protocol on a recommendation from the Specialised Committee.

2. If it considers it is necessary in order to maintain the good functioning of this Protocol, the Joint Committee may, on a recommendation from the Specialised Committee, take any decision necessary to replace in relation to this Protocol the provisions referred to in Article 1(4).

3. The Joint Committee may, on a recommendation from the Specialised Committee, amend Article 7(6) in relation to the crossing points identified in that provision.

Article 11

Operation of Article 6 of Protocol No 3 during the transition period

Notwithstanding Article 127(1) of the Withdrawal Agreement, any measures adopted during the transition period under Article 6 of Protocol No 3 shall not apply to or in the Sovereign Base Areas.

*Article 12***Supervision and enforcement**

1. In respect of the Sovereign Base Areas and in relation to natural and legal persons residing or established in the territory of those Areas, the institutions, bodies, offices and agencies of the Union shall have the powers conferred upon them by Union law in relation to this Protocol and provisions of Union law made applicable by it. In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties in this respect.
2. Acts of the institutions, bodies, offices and agencies adopted in accordance with paragraph 1 shall produce the same legal effects with regard to and in the Sovereign Base Areas as those which they produce within the Union and its Member States.

*Article 13***Responsibility for implementation**

1. Unless otherwise provided in this Protocol, the United Kingdom shall be responsible for the implementation and enforcement of this Protocol in the Sovereign Base Areas. Notwithstanding paragraph 3, the competent authorities of the United Kingdom shall enact the domestic legislation necessary to give effect to this Protocol in the Sovereign Base Areas.
 2. The United Kingdom shall retain the exclusive right to implement and enforce this Protocol in respect of its own authorities or on any immovable property owned or occupied by the Ministry of Defence of the United Kingdom, as well as any coercive enforcement power requiring the power to enter a dwelling house or a power of arrest. The United Kingdom shall retain other coercive enforcement powers unless otherwise provided in the legislation referred to in paragraph 1.
 3. The Republic of Cyprus is entrusted with the responsibility for implementing and enforcing this Protocol in the Sovereign Base Areas in accordance with Article 2(10) and Articles 3 and 6.
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PROTOCOL ON GIBRALTAR

The Union and the United Kingdom,

RECALLING that the United Kingdom is responsible for Gibraltar's external relations, and that Union law is applicable to Gibraltar to the extent provided in the 1972 Act of Accession by virtue of Article 355(3) TFEU,

RECALLING that this Protocol is to be implemented in accordance with the respective constitutional orders of the Kingdom of Spain and of the United Kingdom,

RECALLING that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement"), the law of the European Union and of Euratom in its entirety ceases, to apply to the United Kingdom, and therefore to Gibraltar, from the date of entry into force of the Withdrawal Agreement,

CONSIDERING that it is necessary to ensure an orderly withdrawal from the Union in relation to Gibraltar,

STRESSING that the orderly withdrawal of the United Kingdom from the Union in relation to Gibraltar implies that any potential negative effect on the close social and economic relations between Gibraltar and the surrounding area, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar in the Kingdom of Spain, is adequately addressed,

TAKING NOTE of the commitment of the United Kingdom in respect of Gibraltar to address the payment of benefits in a satisfactory manner by 31 December 2020,

AIMING at continuing to promote balanced economic and social development in the area, in particular in terms of labour conditions, and continuing to ensure the highest levels of environmental protection in accordance with Union law, as well as continuing to strengthen security for the inhabitants of the area, in particular through cooperation in police and customs matters,

ACKNOWLEDGING the benefits for the economic development of the area arising from the free movement of persons under Union law, which will continue to apply during the transition period,

REAFFIRMING in particular the ambition to protect public health, and highlighting the necessity to fight against the serious health, social, and economic consequences of smoking,

EMPHASISING also the need to combat fraud and smuggling and to protect the financial interests of all the parties concerned,

UNDERLINING that this Protocol is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to sovereignty and jurisdiction,

TAKING NOTE of the Memoranda of Understanding concluded between the Kingdom of Spain and the United Kingdom on 29 November 2018 in relation to citizens' rights, tobacco and other products, cooperation on environmental matters and cooperation in police and customs matters, as well as the agreement reached on 29 November 2018 to conclude a treaty on taxation and the protection of financial interests,

HAVE AGREED UPON the following provisions, which shall be annexed to the Withdrawal Agreement:

Article 1

Citizens' rights

1. The Kingdom of Spain ("Spain") and the United Kingdom in respect of Gibraltar shall closely cooperate with a view to preparing and underpinning the effective implementation of Part Two of the Withdrawal Agreement on citizens' rights, which fully applies, *inter alia*, to frontier workers residing in Gibraltar or in Spain, in particular in the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, and which, in Articles 24 and 25 provide for specific rights for frontier workers.

2. To that effect, the competent authorities shall exchange up-to-date information on a quarterly basis on persons covered by Part Two of the Withdrawal Agreement who reside in Gibraltar or in the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, including, in particular, frontier workers.

3. Spain and the United Kingdom shall establish a coordinating committee as a forum for regular discussion between the competent authorities to monitor matters relating to employment and labour conditions. That coordinating committee shall report to the Committee on issues related to the implementation of the Protocol on Gibraltar established by Article 165 of the Withdrawal Agreement ("Specialised Committee") on a regular basis.

Article 2

Air transport law

Union law on air transport which did not apply to the Gibraltar airport before the date of entry into force of the Withdrawal Agreement shall only become applicable to the Gibraltar airport from the date established by the Joint Committee. The Joint Committee shall adopt the decision thereon upon notification by the United Kingdom and Spain that they have reached a satisfactory agreement on the use of the Gibraltar airport.

Article 3

Fiscal matters and protection of financial interests

1. Spain and the United Kingdom in respect of Gibraltar shall establish the forms of cooperation necessary to achieve full transparency in tax matters and in respect of the protection of financial interests of all the parties concerned, in particular by establishing an enhanced system of administrative cooperation to fight against fraud, smuggling and money laundering, and to resolve tax residence conflicts.

2. The international standards of the Group of Twenty (G20) and of the Organisation for Economic Co-operation and Development (OECD) relating to good fiscal governance, transparency, exchanges of information and harmful tax practices and in particular the economic substance criteria established by the OECD Forum on Harmful Tax Practices shall be complied with in Gibraltar, with a view to Gibraltar's participation in the OECD Inclusive Framework on base erosion and profit shifting (BEPS).

3. The United Kingdom shall ensure that its ratification of the Framework Convention on Tobacco Control, adopted in Geneva on 21 May 2003, and the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted in Seoul on 12 November 2012, is extended to Gibraltar by 30 June 2020.

Without prejudice to the first subparagraph, the United Kingdom shall ensure that a system of traceability and security measures relating to tobacco products that is equivalent to the requirements and standards of Union law is in force in Gibraltar by 30 June 2020. That system shall ensure reciprocal access to the information on traceability of cigarettes in Spain and Gibraltar.

4. In order to prevent and deter the smuggling of products subject to excise duties or special taxes, the United Kingdom shall ensure that, in respect of alcohol and petrol, a tax system which aims at preventing fraudulent activities involving those products is in force in Gibraltar.

Article 4

Environment protection and fishing

Spain and the United Kingdom shall establish a coordinating committee as a forum for regular discussion between the competent authorities of issues concerning in particular waste management, air quality, scientific research and fishing. The Union shall be invited to participate in the meetings of that coordinating committee. That coordinating committee shall report to the Specialised Committee on a regular basis.

*Article 5***Cooperation in police and customs matters**

Spain and the United Kingdom shall establish a coordination committee as a forum for monitoring and for coordination between the competent authorities of any questions related to cooperation in police and customs matters. The Union shall be invited to participate in the meetings of that coordination committee. That coordinating committee shall report to the Specialised Committee on a regular basis.

*Article 6***Tasks of the Specialised Committee**

The Specialised Committee shall:

- (a) facilitate the implementation and application of this Protocol;
 - (b) discuss any point of relevance to this Protocol giving rise to a difficulty and raised by the Union or the United Kingdom;
 - (c) examine the reports from the coordination committees referred to in this Protocol; and
 - (d) make recommendations to the Joint Committee as regards the functioning of this Protocol.
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ANNEXES

ANNEX I

SOCIAL SECURITY COORDINATION

PART I

DECISIONS AND RECOMMENDATIONS OF THE ADMINISTRATIVE COMMISSION

Applicable legislation (A series):

- Decision A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provisions of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council; ⁽¹⁾
- Decision A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State; ⁽²⁾
- Decision A3 of 17 December 2009 concerning the aggregation of uninterrupted posting periods completed under the Council Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 of the European Parliament and of the Council. ⁽³⁾

Electronic Data Exchange (E series):

- Decision E2 of 3 March 2010 concerning the establishment of a change management procedure applying to details of the bodies defined in Article 1 of Regulation (EC) No 883/2004 of the European Parliament and of the Council which are listed in the electronic directory which is an inherent part of EESSI; ⁽⁴⁾
- Decision E4 of 13 March 2014 concerning the transitional period as defined in Article 95 of Regulation (EC) No 987/2009 of the European Parliament and of the Council; ⁽⁵⁾
- Decision E5 of 16 March 2017 concerning the practical arrangements for the transitional period for the data exchange via electronic means referred to in Article 4 of Regulation (EC) No 987/2009 of the European Parliament and of the Council. ⁽⁶⁾

Family benefits (F series):

- Decision F1 of 12 June 2009 concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 of the European Parliament and of the Council relating to priority rules in the event of overlapping of family benefits; ⁽⁷⁾
- Decision F2 of 23 June 2015 concerning the exchange of data between institutions for the purpose of granting family benefits. ⁽⁸⁾

Horizontal issues (H series):

- Decision H1 of 12 June 2009 concerning the framework for the transition from Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 to Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council and the application of Decisions and Recommendations of the Administrative Commission for the coordination of social security systems; ⁽⁹⁾
- Decision H3 of 15 October 2009 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council; ⁽¹⁰⁾
- Decision H4 of 22 December 2009 concerning the composition and working methods of the Audit Board of the Administrative Commission for the Coordination of Social Security Systems; ⁽¹¹⁾
- Decision H5 of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems; ⁽¹²⁾

⁽¹⁾ OJ C 106, 24.4.2010, p. 1.

⁽²⁾ OJ C 106, 24.4.2010, p. 5.

⁽³⁾ OJ C 149, 8.6.2010, p. 3.

⁽⁴⁾ OJ C 187, 10.7.2010, p. 5.

⁽⁵⁾ OJ C 152, 20.5.2014, p. 21.

⁽⁶⁾ OJ C 233, 19.7.2017, p. 3.

⁽⁷⁾ OJ C 106, 24.4.2010, p. 11.

⁽⁸⁾ OJ C 52, 11.2.2016, p. 11.

⁽⁹⁾ OJ C 106, 24.4.2010, p. 13.

⁽¹⁰⁾ OJ C 106, 24.4.2010, p. 56.

⁽¹¹⁾ OJ C 107, 27.4.2010, p. 3.

⁽¹²⁾ OJ C 149, 8.6.2010, p. 5.

- Decision H6 of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of Regulation (EC) No 883/2004 on the coordination of social security systems; ⁽¹³⁾
- Decision H7 of 25 June 2015 on the revision of Decision H3 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems; ⁽¹⁴⁾
- Decision H8 of 17 December 2015 (updated with minor technical clarifications on 9 March 2016) concerning the methods of operation and the composition of the Technical Commission for data processing of the Administrative Commission for the coordination of social security systems; ⁽¹⁵⁾
- Recommendation H1 of 19 June 2013 concerning the Gottardo judgment, according to which the advantages enjoyed by a State's own nationals under a bilateral convention on social security with a non-member country must also be granted to workers who are nationals of other Member States. ⁽¹⁶⁾

Pensions (P series):

- Decision P1 of 12 June 2009 on the interpretation of Articles 50(4), 58 and 87(5) of Regulation (EC) No 883/2004 of the European Parliament and of the Council for the award of invalidity, old-age and survivors' benefits. ⁽¹⁷⁾

Recovery (R series):

- Decision R1 of 20 June 2013 concerning the interpretation of Article 85 of Regulation (EC) No 987/2009. ⁽¹⁸⁾

Sickness (S series):

- Decision S1 of 12 June 2009 concerning the European Health Insurance Card; ⁽¹⁹⁾
- Decision S2 of 12 June 2009 concerning the technical specifications of the European Health Insurance Card; ⁽²⁰⁾
- Decision S3 of 12 June 2009 defining the benefits covered by Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council and Article 25(A)(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council; ⁽²¹⁾
- Decision S5 of 2 October 2009 on interpretation of the concept of "benefits in kind" as defined in Article 1(va) of Regulation (EC) No 883/2004 of the European Parliament and of the Council in the event of sickness or maternity pursuant to Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004 and on calculation of the amounts to be refunded under Articles 62, 63 and 64 of Regulation (EC) No 987/2009 of the European Parliament and of the Council; ⁽²²⁾
- Decision S6 of 22 December 2009 concerning the registration in the Member State of residence under Article 24 of Regulation (EC) No 987/2009 and the compilation of the inventories provided for in Article 64(4) of Regulation (EC) No 987/2009; ⁽²³⁾
- Decision S8 of 15 June 2011 concerning the granting of prostheses, major appliances and other substantial benefits in kind provided for in Article 33 of Regulation (EC) No 883/2004 on the coordination of social security systems; ⁽²⁴⁾
- Decision S9 of 20 June 2013 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004; ⁽²⁵⁾
- Decision S10 of 19 December 2013 concerning the transition from Regulations (EEC) Nos 1408/71 and 574/72 to Regulations (EC) Nos 883/2004 and 987/2009 and the application of reimbursement procedures; ⁽²⁶⁾

⁽¹³⁾ OJ C 45, 12.2.2011, p. 5.

⁽¹⁴⁾ OJ C 52, 11.2.2016, p. 13.

⁽¹⁵⁾ OJ C 263, 20.7.2016, p. 3.

⁽¹⁶⁾ OJ C 279, 27.9.2013, p. 13.

⁽¹⁷⁾ OJ C 106, 24.4.2010, p. 21.

⁽¹⁸⁾ OJ C 279, 27.9.2013, p. 11.

⁽¹⁹⁾ OJ C 106, 24.4.2010, p. 23.

⁽²⁰⁾ OJ C 106, 24.4.2010, p. 26.

⁽²¹⁾ OJ C 106, 24.4.2010, p. 40.

⁽²²⁾ OJ C 106, 24.4.2010, p. 54.

⁽²³⁾ OJ C 107, 27.4.2010, p. 6.

⁽²⁴⁾ OJ C 262, 6.9.2011, p. 6.

⁽²⁵⁾ OJ C 279, 27.9.2013, p. 8.

⁽²⁶⁾ OJ C 152, 20.5.2014, p. 16.

- Recommendation S1 of 15 March 2012 concerning financial aspects of cross-border living organ donations; ⁽²⁷⁾
- Recommendation S2 of 22 October 2013 concerning the entitlement to benefits in kind for insured persons and members of their family during a stay in a third country under a bilateral convention between the competent Member State and the third country. ⁽²⁸⁾

Unemployment (U series):

- Decision U1 of 12 June 2009 concerning Article 54(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council relating to increases in unemployment benefit for dependent members of the family; ⁽²⁹⁾
- Decision U2 of 12 June 2009 concerning the scope of Article 65(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the right to unemployment benefits of wholly unemployed persons other than frontier workers who were resident in the territory of a Member State other than the competent Member State during their last period of employment or self-employment; ⁽³⁰⁾
- Decision U3 of 12 June 2009 concerning the scope of the concept of "partial unemployment" applicable to the unemployed persons referred to in Article 65(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council; ⁽³¹⁾
- Decision U4 of 13 December 2011 concerning the reimbursement procedures under Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation (EC) No 987/2009; ⁽³²⁾
- Recommendation U1 of 12 June 2009 concerning the legislation applicable to unemployed persons engaging in part-time professional or trade activity in a Member State other than the State of residence; ⁽³³⁾
- Recommendation U2 of 12 June 2009 concerning the application of Article 64(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council to unemployed persons accompanying their spouses or partners pursuing a professional or trade activity in a Member State other than the competent State. ⁽³⁴⁾

PART II

ACTS REFERRED TO

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, ⁽³⁵⁾ as amended by:

- Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009; ⁽³⁶⁾
- Commission Regulation (EU) No 1244/2010 of 9 December 2010; ⁽³⁷⁾
- Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012; ⁽³⁸⁾
- Commission Regulation (EU) No 1224/2012 of 18 December 2012; ⁽³⁹⁾
- Council Regulation (EU) No 517/2013 of 13 May 2013; ⁽⁴⁰⁾
- Commission Regulation (EU) No 1372/2013 of 19 December 2013, ⁽⁴¹⁾ as amended by Commission Regulation (EU) No 1368/2014 of 17 December 2014; ⁽⁴²⁾
- Commission Regulation (EU) 2017/492 of 21 March 2017. ⁽⁴³⁾

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ⁽⁴⁴⁾, as amended by:

- Commission Regulation (EU) No 1244/2010 of 9 December 2010; ⁽⁴⁵⁾

⁽²⁷⁾ OJ C 240, 10.8.2012, p. 3.

⁽²⁸⁾ OJ C 46, 18.2.2014, p. 8.

⁽²⁹⁾ OJ C 106, 24.4.2010, p. 42.

⁽³⁰⁾ OJ C 106, 24.4.2010, p. 43.

⁽³¹⁾ OJ C 106, 24.4.2010, p. 45.

⁽³²⁾ OJ C 57, 25.2.2012, p. 4.

⁽³³⁾ OJ C 106, 24.4.2010, p. 49.

⁽³⁴⁾ OJ C 106, 24.4.2010, p. 51.

⁽³⁵⁾ OJ L 166, 30.4.2004, p. 1.

⁽³⁶⁾ OJ L 284, 30.10.2009, p. 43.

⁽³⁷⁾ OJ L 338, 22.12.2010, p. 35.

⁽³⁸⁾ OJ L 149, 8.6.2012, p. 4.

⁽³⁹⁾ OJ L 349, 19.12.2012, p. 45.

⁽⁴⁰⁾ OJ L 158, 10.6.2013, p. 1.

⁽⁴¹⁾ OJ L 346, 20.12.2013, p. 27.

⁽⁴²⁾ OJ L 366, 20.12.2014, p. 15.

⁽⁴³⁾ OJ L 76, 22.3.2017, p. 13.

⁽⁴⁴⁾ OJ L 284, 30.10.2009, p. 1.

⁽⁴⁵⁾ OJ L 338, 22.12.2010, p. 35.

- Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012; ⁽⁴⁶⁾
- Commission Regulation (EU) No 1224/2012 of 18 December 2012; ⁽⁴⁷⁾
- Commission Regulation (EU) No 1372/2013 of 19 December 2013; ⁽⁴⁸⁾
- Commission Regulation (EU) No 1368/2014 of 17 December 2014; ⁽⁴⁹⁾
- Commission Regulation (EU) 2017/492 of 21 March 2017. ⁽⁵⁰⁾

PART III

ADAPTATIONS TO REGULATION (EC) NO 883/2004 AND REGULATION (EC) NO 987/2009

The provisions of Regulation (EC) No 883/2004 shall, for the purposes of this Agreement, be adapted as follows:

- (a) the following shall be added to Annex II:

"UNITED KINGDOM-GERMANY

- (a) Article 7(5) and (6) of the Convention on social security of 20 April 1960 (legislation applicable to civilians serving in the military forces);
- (b) Article 5(5) and (6) of the Convention on unemployment insurance of 20 April 1960 (legislation applicable to civilians serving in the military forces).

UNITED KINGDOM-IRELAND

Article 19(2) of the Agreement of 14 December, 2004 on social security (concerning the transfer and reckoning of certain disability credits).";

- (b) the following shall be added to Annex III:

"UNITED KINGDOM";

- (c) the following shall be added to Annex VI:

"UNITED KINGDOM

Employment and Support Allowance (ESA)

- (a) For awards granted before 1 April 2016 ESA is a cash sickness benefit for the initial 91 days (Assessment Phase). From the 92nd day ESA (Main Phase) becomes an invalidity benefit.
- (b) For awards granted on or after 1 April 2016 ESA is a cash sickness benefit for the initial 365 days (Assessment Phase). From the 366th day ESA (Support Group) becomes an invalidity benefit.

Great Britain legislation: Part 1 of the Welfare Reform Act 2007.

Northern Ireland legislation: Part 1 of the Welfare Reform Act (Northern Ireland) 2007.";

- (d) the following shall be added to Part 1 of Annex VIII:

"UNITED KINGDOM

All applications for retirement pension, state pension pursuant to Part 1 of the Pensions Act 2014, widows' and bereavement benefits, with the exception of those for which during a tax year beginning on or after 6 April 1975:

- (i) the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and another Member State; and one (or more) of the tax years was not considered a qualifying year within the meaning of the legislation of the United Kingdom;
- (ii) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 52(1)(b) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State.

⁽⁴⁶⁾ OJ L 149, 8.6.2012, p. 4.

⁽⁴⁷⁾ OJ L 349, 19.12.2012, p. 45.

⁽⁴⁸⁾ OJ L 346, 20.12.2013, p. 27.

⁽⁴⁹⁾ OJ L 366, 20.12.2014, p. 15.

⁽⁵⁰⁾ OJ L 76, 22.3.2017, p. 13.

All applications for additional pension pursuant to the Social Security Contributions and Benefits Act 1992, section 44, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 44.”;

- (e) the following shall be added to Part 2 of Annex VIII:

“UNITED KINGDOM

Graduated retirement benefits paid pursuant to the National Insurance Act 1965, sections 36 and 37, and the National Insurance Act (Northern Ireland) 1966, sections 35 and 36.”;

- (f) the following shall be added to Annex X:

“UNITED KINGDOM

- (a) State Pension Credit (State Pension Credit Act 2002 and State Pension Credit Act (Northern Ireland) 2002);

- (b) Income-based allowances for jobseekers (Jobseekers Act 1995 and Jobseekers (Northern Ireland) Order 1995);

- (d) Disability Living Allowance mobility component (Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992);

- (e) Employment and Support Allowance Income-related (Welfare Reform Act 2007 and Welfare Reform Act (Northern Ireland) 2007).”;

- (g) the following shall be added to Annex XI:

“UNITED KINGDOM

1. Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if:

- (a) the contributions of a former spouse are taken into account as if they were that person's own contributions; or

- (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse, then provided, in each case, that the spouse or former spouse is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to “periods of insurance” shall be construed as references to periods of insurance completed by:

- (i) a spouse or former spouse where a claim is made by:

— a married woman, or

— a person whose marriage has terminated otherwise than by the death of the spouse; or

- (ii) a former spouse, where a claim is made by:

— a widower who immediately before pensionable age is not entitled to widowed parent's allowance, or

— a widow who immediately before pensionable age is not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose ‘age-related widow's pension’ means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance and disability living allowance, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account insofar as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.
3. For the purposes of Article 7 of this Regulation, in the case of invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, any beneficiary under United Kingdom legislation who is staying in the territory of another Member State shall, during that stay, be considered as if he resided in the territory of that other Member State.
4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:
 - (i) cash sickness benefits or wages or salary in lieu thereof; or
 - (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992.

In applying this provision, account shall only be taken of periods during which the person would have been incapable of work within the meaning of United Kingdom legislation.

5. (1) For the purpose of calculating an earnings factor in order to determine entitlement to benefits under United Kingdom legislation, for each week of activity as an employed person under the legislation of another Member State, and which commenced during the relevant income tax year within the meaning of United Kingdom legislation, the person concerned shall be deemed to have paid contributions as an employed earner, or have earnings on which contributions have been paid, on the basis of earnings equivalent to two-thirds of that year's upper earnings limit.
- (2) For the purposes of Article 52(1)(b)(ii) of this Regulation, where:
 - (a) in any income tax year starting on or after 6 April 1975, a person carrying out activity as an employed person has completed periods of insurance, employment or residence exclusively in a Member State other than the United Kingdom, and the application of point 5(1) above results in that year being counted as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, he shall be deemed to have been insured for 52 weeks in that year in that other Member State;
 - (b) any income tax year starting on or after 6 April 1975 does not count as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, any periods of insurance, employment or residence completed in that year shall be disregarded.
- (3) For the purpose of converting an earnings factor into periods of insurance, the earnings factor achieved in the relevant income tax year within the meaning of United Kingdom legislation shall be divided by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated shall be treated as representing the number of weeks of insurance completed under United Kingdom legislation during that year, provided that such figure shall not exceed the number of weeks during which in that year the person was subject to that legislation."

The provisions of Regulation (EC) No 987/2009 shall, for the purposes of this Agreement, be adapted as follows:

- (a) the following shall be added to Annex 1:

"UNITED KINGDOM-BELGIUM

- (a) The Exchange of Letters of 4 May and 14 June 1976 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)
- (b) The Exchange of Letters of 18 January and 14 March 1977 regarding Article 36(3) of Regulation (EEC) No 1408/71 (arrangement for reimbursement or waiving of reimbursement of the costs of benefits in kind provided under the terms of Chapter 1 of Title III of Regulation (EEC) No 1408/71) as amended by the Exchange of Letters of 4 May and 23 July 1982 (agreement for reimbursement of costs incurred under Article 22(1)(a) of Regulation (EEC) No 1408/71)

UNITED KINGDOM-DENMARK

The Exchange of Letters of 30 March and 19 April 1977 as modified by an Exchange of Letters of 8 November 1989 and of 10 January 1990 on agreement of waiving of reimbursement of the costs of benefits in kind and administrative checks and medical examinations

UNITED KINGDOM-ESTONIA

The Arrangement finalised on 29 March 2006 between the Competent Authorities of the Republic of Estonia and of the United Kingdom under Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 establishing other methods of reimbursement of the costs of benefits in kind provided under this Regulation by both countries with effect from 1 May 2004

UNITED KINGDOM-IRELAND

The Exchange of Letters of 9 July 1975 regarding Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 (arrangement for reimbursement or waiving of reimbursement of the costs of benefits in kind provided under the terms of Chapter 1 or 4 of Title III of Regulation (EEC) No 1408/71) and Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)

UNITED KINGDOM-SPAIN

The Agreement of 18 June 1999 on the reimbursement of costs for benefits in kind granted pursuant to the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72

UNITED KINGDOM-FRANCE

- (a) The Exchange of Letters of 25 March and 28 April 1997 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)
- (b) The Agreement of 8 December 1998 on the specific methods of determining the amounts to be reimbursed for benefits in kind pursuant to Regulations (EEC) No 1408/71 and (EEC) No 574/72

UNITED KINGDOM-ITALY

The Arrangement signed on 15 December 2005 between the Competent Authorities of the Italian Republic and of the United Kingdom under Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 establishing other methods of reimbursement of the costs of benefits in kind provided under this Regulation by both countries with effect from 1 January 2005

UNITED KINGDOM-LUXEMBOURG

The Exchange of Letters of 18 December 1975 and 20 January 1976 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs entailed in administrative checks and medical examinations referred to in Article 105 of Regulation (EEC) No 574/72)

UNITED KINGDOM-HUNGARY

The Arrangement finalised on 1 November 2005 between the Competent Authorities of the Republic of Hungary and of the United Kingdom under Articles 35(3) and 41(2) of Regulation (EEC) No 883/2004 establishing other methods of reimbursement of the costs of benefits in kind provided under that Regulation by both countries with effect from 1 May 2004

UNITED KINGDOM-MALTA

The Arrangement finalised on 17 January 2007 between the Competent Authorities of Malta and of the United Kingdom under Articles 35(3) and 41(2) of Regulation (EEC) No 883/2004 establishing other methods of reimbursement of the costs of benefits in kind provided under that Regulation by both countries with effect from 1 May 2004

UNITED KINGDOM-NETHERLANDS

The second sentence of Article 3 of the Administrative Arrangement of 12 June 1956 on the implementation of the Convention of 11 August 1954

UNITED KINGDOM-PORTUGAL

The Arrangement of 8 June 2004 establishing other methods of reimbursement of the costs of benefits in kind provided by both countries with effect from 1 January 2003

UNITED KINGDOM-FINLAND

The Exchange of Letters 1 and 20 June 1995 concerning Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 (reimbursement or waiving of reimbursement of the cost of benefits in kind) and Article 105(2) of Regulation (EEC) 574/72 (waiving of reimbursement of the cost of administrative checks and medical examinations)

UNITED KINGDOM-SWEDEN

The Arrangement of 15 April 1997 concerning Article 36(3) and Article 63(3) of Regulation (EEC) No 1408/71 (reimbursement or waiving of reimbursement of the cost of benefits in kind) and Article 105(2) of Regulation (EEC) No 574/72 (waiving of refunds of the costs of administrative checks and medical examinations);

- (b) the following shall be added to Annex 3:

"UNITED KINGDOM".

ANNEX II

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 41(4)

1. Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾.
2. Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals ⁽²⁾.
3. Chapter II of Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae ⁽³⁾.
4. Chapter II of Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽⁴⁾.
5. Chapter II of Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC ⁽⁵⁾.
6. Chapter II of Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species ⁽⁶⁾.
7. Chapter II of Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species ⁽⁷⁾.
8. Chapter II of Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species ⁽⁸⁾.
9. Chapter III of Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals ⁽⁹⁾.
10. Chapter II of Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 ⁽¹⁰⁾.

⁽¹⁾ OJ L 121, 29.7.1964, p. 1977.

⁽²⁾ OJ L 46, 19.2.1991, p. 19.

⁽³⁾ OJ L 192, 23.7.2010, p. 1.

⁽⁴⁾ OJ L 343, 22.12.2009, p. 74.

⁽⁵⁾ OJ L 268, 14.9.1992, p. 54.

⁽⁶⁾ OJ L 302, 19.10.1989, p. 1.

⁽⁷⁾ OJ L 194, 22.7.1988, p. 10.

⁽⁸⁾ OJ L 224, 18.8.1990, p. 62.

⁽⁹⁾ OJ L 328, 24.11.2006, p. 14.

⁽¹⁰⁾ OJ L 178, 28.6.2013, p. 1.

ANNEX III

TIME LIMITS FOR THE SITUATIONS OR CUSTOMS PROCEDURES REFERRED TO IN ARTICLE 49(1)

The time limits set out in this Annex are the relevant end dates for the application of Regulation (EU) No 952/2013.

| Situation / procedure | Time limit |
|--|--|
| 1. Temporary storage | 90 days , Article 149 of Regulation (EU) No 952/2013 |
| 2. Release for free circulation | 1 month + 10 days after acceptance of the declaration, Article 146(3) of Delegated Regulation (EU) 2015/2446 ⁽¹⁾ concerning the supplementary declaration; "reasonable period of time" as regards verification, Article 194 of Regulation (EU) No 952/2013 Maximum: 60 days |
| 3. Special procedures | |
| Period for discharge is obligatory for inward processing, outward processing, end-use and temporary admission (D.E. 4/17 in Annex A to Delegated Regulation (EU) 2015/2446). Discharge by placing under a subsequent customs procedure, taking out of the customs territory or being destroyed, Article 215(1) of Regulation (EU) No 952/2013. | |
| (a) Union transit | Maximum: 12 months after release |
| (b) Customs warehousing | Maximum: 12 months after the end of the transition period |
| (c) Free zones | At the end of the transition period |
| (d) Temporary admission | Maximum: 12 months after release |
| (e) End-use | Maximum: 12 months after release |
| (f) Inward processing | Maximum: 12 months after release |
| (g) Outward processing | Maximum: 12 months after release |
| 4. Export | 150 days after release |
| 5. Re-export | 150 days after release |

⁽¹⁾ 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 (OJ L 343, 29.12.2015, p. 1).

ANNEX IV

LIST OF NETWORKS, INFORMATION SYSTEMS AND DATABASES REFERRED IN ARTICLES 50, 53, 99 AND 100

1. Backwards compatibility for the United Kingdom and the Union shall be established to ensure that, for any changes that are made to the networks, information systems and databases, as well as for any changes to formats for exchanging information, the Member States and the United Kingdom can continue to accept each other's information in the current format, unless the Union and the United Kingdom agree otherwise.
2. The United Kingdom's access to any given network, information system or database shall be limited in time. The respective time period is indicated for each network, information system or database. Where exchanges of information between customs authorities would be required for the implementation of procedures in accordance with Article 49 once electronic data-processing is no longer possible in accordance with this Annex, alternative means for the exchange and storage of information shall be used.

Part I: Customs

| Customs IT system | Type of access | Time limit |
|--|--|------------------|
| ICS (Import Control System) | Lodgement of the pre-arrival declaration limited to: <ul style="list-style-type: none"> — Receiving and sending entry summary declaration (ENS) data on declarations lodged before the end of the transition period (in the case of subsequent ports or diversion); — Receiving and sending risk data on those declarations lodged before the end of the transition period. | 31 July 2021 |
| NCTS (New Computerised Transit System) | All functionalities applied to ongoing transit operations, i.e. movements released for transit before the end of the transition period. [No release of new transit operations after the end of the transition period.] | 31 January 2021 |
| ECS (Export Control System) | Confirmation of exit for ongoing export operations , i.e. goods released for export before the end of the transition period: <ul style="list-style-type: none"> — For operations with the customs offices of exit in the United Kingdom to confirm in ECS the exit of the goods; — For operations with the customs offices of exit in Member States, i.e. the customs offices of export in the United Kingdom to receive the confirmations of exit from the Member States' customs offices of exit. | 31 January 2021 |
| INF (Information Sheet) | <ul style="list-style-type: none"> — Read only access to INF Specific Trader Portal for United Kingdom traders; — Read/write access to active INFs in INF system for customs offices. | 31 December 2021 |

| Customs IT system | Type of access | Time limit |
|---|---|------------------|
| SURV-RECAP (Tariff Surveillance System – Receiving Application) | Transmission by the United Kingdom’s customs authorities of data elements for release for free circulation (RFC) or export procedures: <ul style="list-style-type: none"> — Surveillance Declaration Records (SDRs) not yet transmitted for RFC or export procedures under which the goods were placed before the end of the transition period; — SDRs elements for RFC ending or discharging an ongoing procedure or situation. | 28 February 2021 |
| EBTI3 (European Binding Tariff Information) | Input for the calculation of customs debt: Access to information pertaining to decisions related to BTI or any subsequent event which may affect the original application or decision [full access for consultation]. | 8 January 2021 |
| TARIC3 (Integrated Customs Tariff of the Community) | Input for the calculation of customs debt: Transmissions of daily updates to the United Kingdom after the end of the transition period, with the exception of confidential data (statistical surveillance data). | 31 December 2021 |
| QUOTA2 (System for Managing Tariff Quotas, Ceilings and other Surveillances) | Input for the calculation of customs debt: Management of quotas, cancellation of requests for quotas and returns of unused allocated quantities. | 6 January 2021 |
| SMS TRA, EXP (Specimen Management System) | Read-only access to the database with specimens of stamps, seals and certificates. | 31 January 2021 |
| SMS QUOTA (Specimen Management System) | Read-only access to the database with certificates of authenticity necessary in order to benefit from the quotas. | 6 January 2021 |
| OWNRES (Own Resources reporting of cases of fraud and irregularities involving traditional own resources (TOR) in excess of EUR 10 000, Article 5(1) of Regulation (EU, Euratom) No 608/2014) | Limited access restricted to cases involving the United Kingdom (no access to global analyses). | 20 February 2026 |
| WOMIS (Write-off management information system for TOR case-reports under Article 13(3) of Regulation (EU, Euratom) No 609/2014) | Full access, as by default already limited to national write-off reports (read-only access as from 1 July 2025 in the framework of the liquidation of the separate account by 31 December 2025). | 30 June 2025 |

| Supporting system | Type of access | Time limit |
|---|--|------------------|
| EOS/EORI (Economic Operators System – Economic Operators Registration and Identification) | Read-only access for the related systems. | 31 December 2021 |
| CDS (Customs Decisions System) | Read-only access for traders in the United Kingdom and for customs offices in the United Kingdom. | 31 January 2021 |
| CS/RD2 (Central Services/Reference Data) | Read-only access for Reference Data; Write access for customs offices of NA-UK only. | 31 December 2021 |
| CS/MIS (Central Services/Management Information System) | Write-only access for uploading unavailabilities and business statistics. | 31 July 2021 |
| GTP (Generic Trader Portal) | Access to the generic functions of the portal for traders in the United Kingdom until the last Specific Trader Portal is switched off for traders in the United Kingdom. | 31 December 2021 |

| Network and infrastructure | Type of access | Time limit |
|---|---|---|
| CCN (Common Communication Network) | Linked to the access for the related systems. | 31 December 2021 (or longer if required for excise or taxation) |
| UUM&DS (Uniform User Management and Digital Signatures) | Linked to the access for the related systems. | 31 December 2021 (or longer if required for excise or taxation) |
| CCN2 (Common Communication Network 2) | Linked to the access for the related systems. | 31 December 2021 (or longer if required for excise or taxation) |

Part II: Excise

| Excise IT system | Type of access | Time limit |
|---|---|------------------|
| EMCS Core (Excise Movement Control System) | Duty suspension: Transmissions to and from the United Kingdom of reports of receipt / reports of export (IE818). | 31 May 2021 |
| EMCS Admin Coop (Excise Movement Control System Administrative Cooperation) | — Transmissions to and from the United Kingdom of messages relating to open movements (event reports, control reports, administrative cooperation (enquiries on open EMCS movements); | 31 May 2021 |
| | — Member States and the United Kingdom shall keep EMCS Administrative Cooperation online to allow queries and audits on movements up to the end of the transition period. | 31 December 2024 |

| Supporting system | Type of access | Time limit |
|---|--|-------------|
| SEED (System for the Exchange of Excise Data) | Read only, with United Kingdom's economic operators invalidated. | 31 May 2021 |
| CS/MISE (Central Services/Management Information System for EMCS) | Filtered to restrict to movements involving the United Kingdom. | 31 May 2021 |

| Network and infrastructure | Type of access | Time limit |
|--|---|--|
| CCN (Common Communication Network) | Linked to the access for the related systems. | 31 May 2021 (or longer if required for excise or taxation) |

Part III: VAT

| VAT IT system | Type of access | Time limit |
|--|---|---------------------------------|
| VAT-VIES (VAT Information Exchange System) | Taxable persons registration information: Reciprocal access to the IT systems, by the United Kingdom and the Member States ⁽¹⁾ , to exchange, until 31 December 2024, historical registration information of the other party ⁽²⁾ (registration data entered in the system before the end of the transition period) as well as registration information of the other party updated after the transition period (e.g. ending of registration of a taxable person). | 31 December 2024 ⁽³⁾ |
| | Transactions - turnover information: Access to the IT systems, by the United Kingdom and the Member States with reciprocal access, to exchange information contained in recapitulative statements submitted to the other party for transactions that took place ⁽⁴⁾ before the end of the transition period and where taxable persons of the receiving party are involved; The United Kingdom and the Member States shall have no access to each other's turnover information related to transactions that take place after 31 December 2020. | 31 December 2024 |
| VAT Refund | Access to the IT system to: — Forward to the Member States the VAT refund applications submitted by taxable persons established in the United Kingdom in accordance with Directive 2008/9/EC and to receive from the Member States the VAT refund applications submitted by taxable persons established in a Member State; | 30 April 2021 |
| | — Handle ⁽⁵⁾ VAT refund applications received by the United Kingdom and submitted by taxable persons established in a Member State and VAT refund applications received by the Member States and submitted by taxable persons established in the United Kingdom. | 31 January 2022 |

| VAT IT system | Type of access | Time limit |
|-------------------------------------|---|------------------|
| MOSS (Mini-One-Stop-Shop) | Registration Information: Access to the IT systems, by the United Kingdom and the Member States with reciprocal access, to: | |
| | — Exchange the registration and historical registration information; | 31 December 2024 |
| | — Disseminate information relating to new MOSS registrations, for registrations, the effective date of registration of which is before or on 31 December 2020. | 20 February 2021 |
| | VAT Return: Access to the IT systems, by the United Kingdom and the Member States with reciprocal access, to: | |
| | — Exchange MOSS return information, for returns submitted before or on 31 January 2021; | 20 February 2021 |
| | — Exchange amendments relating to MOSS VAT returns submitted before or on 20 January 2021; | 20 January 2022 |
| | — Exchange VAT return information for transactions where the other party is involved; | 31 December 2024 |
| | — The United Kingdom and the Member States shall have no access to each other's VAT return information of transactions that take place after 31 December 2020. | |
| | Payment information: Access to the IT systems, by the United Kingdom and the Member States with reciprocal access, to: | |
| | — Exchange payment information relating to payments received from MOSS registered businesses before or on 31 January 2021; | 20 February 2021 |
| | — In respect of taxable transactions in the other party, exchange information relating to reimbursements or payments for amendments relating to MOSS VAT returns submitted before or on 31 December 2021. | 20 January 2022 |

(¹) For the purposes of this Annex, "reciprocal access" means that the United Kingdom must ensure that Member States have the same access to such data in the United Kingdom as the United Kingdom and the Member States have to such data in the Member States.

(²) For the purposes of this Annex, "other party" means, with respect to the United Kingdom, a Member State and, with respect to a Member State, the United Kingdom.

(³) The United Kingdom's data concerning the VAT identification numbers of its taxable persons must be updated until 31 December 2024.

(⁴) Including transactions covered by Article 51(1).

(⁵) For the purposes of this indent, "handle" means completing all actions in respect of a claim to allow it to be finalised, including notification of any disallowed amounts, along with details of how to appeal, and repayment of any allowable amounts, along with the exchange of any relevant messages with the VAT Refund system.

| Supporting system | Type of access | Time limit |
|---|--|------------------|
| CCN/eFCA Administrative cooperation VAT (Common Communications Network/ eForm Central Application) | Transmissions between the United Kingdom and the Member States of requests – and follow-up to these requests – with regard to administrative cooperation for VAT purposes. | 31 December 2024 |
| TIC VAT Refund preferences | Access by the United Kingdom in order to update the United Kingdom's VAT refund preferences | 31 March 2021 |

Part IV: Tax and duty recovery assistance

| Supporting system | Type of access | Time limit |
|---|--|------------------|
| CCN/eFCA Recovery assistance | Transmissions between the United Kingdom and the Member States of requests – and follow-up of these requests – with regard to recovery assistance. | 31 December 2025 |

ANNEX V

EURATOM

This annex sets out the categories of community equipment and other property related to the provision of safeguards located in the United Kingdom under the Euratom Treaty which shall become property of the United Kingdom at the end of the transition period.

At the end of the transition period, the European Commission shall transmit to the United Kingdom the final inventory of Euratom equipment and other property transferred.

In accordance with Article 84(1) and Article 148, the United Kingdom shall reimburse to the Union the value of that equipment and other property, calculated based on the value assigned to that equipment and other property in the consolidated accounts for the year 2020. The said value shall be communicated by European Commission to the United Kingdom upon its final regulatory approval.

The Euratom equipment is located at:

- **Sellafield** ⁽¹⁾, the UK nuclear fuel reprocessing site;
- **Dounreay** ⁽²⁾, the UK's former centre of fast reactor research and development;
- **Sizewell** ⁽³⁾, a site with two nuclear power stations, Sizewell A (not in operation) and Sizewell B, a pressurised water reactor still in operation;
- **Capenhurst** ⁽⁴⁾, a uranium enrichment plant;
- **Springfields** ⁽⁵⁾, a fuel fabrication plant;
- Other reactors, research, medical and other facilities, where safeguards equipment is being used.

The Euratom equipment comprises various elements consisting of fixed installations and related devices necessary for the use of these fixed installations and forming an inherent part of the whole system installed:

1. Seals:
 - Metal seals for single use;
 - Fibre optic seals for single and multiple use; and
 - Seal readers.
2. Surveillance equipment:
 - Digital and analogue single and multiple component safeguards surveillance systems.
3. Measurement equipment (non-destructive assay):
 - Various types of gamma detectors with pre-amplifiers and counting electronics for gamma measurements;
 - Various types of neutron detectors with pre-amplifiers and counting electronics for neutron measurements; as well as
 - Equipment for fresh and spent fuel assembly, Uranium drum and Plutonium can content measurements including rod and fuel assembly scanners, balances and load cells.
4. Laboratory equipment (forming part of the on-site laboratory at Sellafield):
 - Mass spectrometer (TIMS);
 - gamma and X-ray based measurement instruments (e.g. K-edge densitometry and XRF); and
 - Gloveboxes with analytical equipment including densitometer and analytical balances.

⁽¹⁾ Sellafield Ltd, SELLAFIELD CA20 1PG, UNITED KINGDOM

⁽²⁾ Dounreay Site Restoration Ltd, KW14 7TZ THURSO CAITHNESS, UNITED KINGDOM

⁽³⁾ EDF Energy Nuclear Generation Limited - Sizewell B Power Station, SUFFOLK, IP16 4UR LEISTON

⁽⁴⁾ Urenco UK Limited, Capenhurst Works, CHESTER CH1 6ER, UNITED KINGDOM

⁽⁵⁾ Westinghouse Springfields Fuels Ltd, SALWICK PRESTON PR4 OXJ, UNITED KINGDOM

To facilitate the most effective handover of this equipment, the United Kingdom and the Community shall make the necessary legal arrangements to release the Community from its obligations and liabilities under its agreement dated 25 March 1994 with British Nuclear Fuels PLC (now Sellafield Ltd).

5. Computer and related equipment (in offices and measurements systems):

- Personal computers as well as related equipment including remote data transmission infrastructure (battery packs and power supplies, hardware devices to allow to control multiple computers, network equipment including fibre optics, Ethernet cables and converters, switches, serial servers, virtual private network router, time and domain controller, cabinets); as well as
 - Related servers, screens and printers.
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ANNEX VI

LIST OF ADMINISTRATIVE COOPERATION PROCEDURES REFERRED TO IN ARTICLE 98

1. Administrative cooperation between the Member States related to supplier's declarations on the origin of goods, established for the purpose of preferential trade between the Union and certain countries (Articles 61 to 66 of Implementing Regulation (EU) 2015/2447).
 2. For the verification of proofs of origin issued by third country authorities or agencies authorised by them (special non-preferential import arrangements) (Article 59 of Implementing Regulation (EU) 2015/2447) and for the verification of proofs of origin issued or made out by third country authorities or exporters (preferential arrangements) (Articles 108 to 111 and 125 of Implementing Regulation (EU) 2015/2447, Article 32 of Annex II to Regulation (EU) 2016/1076 of the European Parliament and of the Council, Article 55 of Annex VI to Council Decision 2013/755/EU and the equivalent provisions in preferential agreements).
 3. Mutual assistance in the framework of the recovery of a customs debt (Articles 101(1) and Articles 102(1) of the Regulation (EU) No 952/2013, Article 165 of Implementing Regulation (EU) 2015/2447).
 4. Mutual assistance in the framework of transfer of the amount of customs debt by the Member State which has accepted a guarantee to the Member State where the customs debt is incurred (point (c) of Article 92(1) of Regulation (EU) No 952/2013, Article 153 of Implementing Regulation (EU) 2015/2447).
 5. Verification of proofs of Union status (and administrative assistance) (Article 153 of Regulation (EU) No 952/2013, Article 212 of Implementing Regulation (EU) 2015/2447).
 6. Communication between authorities relating to returned goods (Article 203 of Regulation (EU) No 952/2013, Article 256 of Implementing Regulation (EU) 2015/2447).
 7. Administrative cooperation in the framework of the recovery of other charges for goods placed under temporary admission according to the ATA Convention or the Istanbul Convention (point (c) of Article 226(3) of Regulation (EU) No 952/2013, Article 170 of Implementing Regulation (EU) 2015/2447).
 8. Mutual assistance for obtaining supplementary information in order to decide on an application for remission or repayment (Articles 22 and 116(1) of Regulation (EU) No 952/2013, Article 175 of Implementing Regulation (EU) 2015/2447).
 9. Verification and administrative assistance for post-release controls of the information related to the Union transit operation (Article 48 of Regulation (EU) No 952/2013, Article 292 of Implementing Regulation (EU) 2015/2447).
 10. Administrative cooperation in the framework of the recovery of other charges under transit procedures (points (a), (b) and (c) of Article 226(3) of Regulation (EU) No 952/2013, Articles 167 and 169 of Implementing Regulation (EU) 2015/2447).
 11. Notification of recovery of duties and other charges under the Union transit procedure or under transit according to the TIR Convention (points (a) and (b) of Article 226(3) of Regulation (EU) No 952/2013, Article 168 of Implementing Regulation (EU) 2015/2447).
 12. Direct cooperation and exchange of information between Member States concerning export controls on dual-use items (Article 19(2) of Council Regulation (EC) No 428/2009).
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ANNEX VII

LIST OF ACTS/PROVISIONS REFERRED TO IN ARTICLE 128(6)

1. Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (without prejudice to Article 96(1) of this Agreement). ⁽¹⁾
2. Titles III and IX of 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, ⁽²⁾ Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use, ⁽³⁾ Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products, ⁽⁴⁾ Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products ⁽⁵⁾, Titles III and VII of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, ⁽⁶⁾ Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, ⁽⁷⁾ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, ⁽⁸⁾ Commission Implementing Regulation (EU) No 520/2012 of 19 June 2012 on the performance of pharmacovigilance activities provided for in Regulation (EC) No 726/2004 of the European Parliament and of the Council and Directive 2001/83/EC of the European Parliament and of the Council, ⁽⁹⁾ and Commission Regulation (EC) No 1234/2008 of 24 November 2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products. ⁽¹⁰⁾
3. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency. ⁽¹¹⁾
4. Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures. ⁽¹²⁾
5. Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market, ⁽¹³⁾ and Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin. ⁽¹⁴⁾
6. Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products. ⁽¹⁵⁾
7. Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use. ⁽¹⁶⁾

⁽¹⁾ OJ L 227, 1.9.1994, p. 1.

⁽²⁾ OJ L 311, 28.11.2001, p. 67.

⁽³⁾ OJ L 378, 27.12.2006, p. 1.

⁽⁴⁾ OJ L 324, 10.12.2007, p. 121.

⁽⁵⁾ OJ L 18, 22.1.2000, p. 1.

⁽⁶⁾ OJ L 311, 28.11.2001, p. 1.

⁽⁷⁾ OJ L 152, 16.6.2009, p. 11.

⁽⁸⁾ OJ L 136, 30.4.2004, p. 1.

⁽⁹⁾ OJ L 159, 20.6.2012, p. 5.

⁽¹⁰⁾ OJ L 334, 12.12.2008, p. 7.

⁽¹¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽¹²⁾ OJ L 353, 31.12.2008, p. 1.

⁽¹³⁾ OJ L 309, 24.11.2009, p. 1.

⁽¹⁴⁾ OJ L 70, 16.3.2005, p. 1.

⁽¹⁵⁾ OJ L 167, 27.6.2012, p. 1.

⁽¹⁶⁾ OJ L 158, 27.5.2014, p. 1.

8. Article 16 of Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries. ⁽¹⁷⁾
 9. Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations. ⁽¹⁸⁾
 10. Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, ⁽¹⁹⁾ point (c) of Article 6(3) of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed. ⁽²⁰⁾
 11. Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. ⁽²¹⁾
 12. Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species. ⁽²²⁾
 13. Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed. ⁽²³⁾
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⁽¹⁷⁾ OJ L 334, 12.12.2008, p. 25.

⁽¹⁸⁾ OJ L 131, 28.5.2009, p. 11.

⁽¹⁹⁾ OJ L 106, 17.4.2001, p. 1.

⁽²⁰⁾ OJ L 268, 18.10.2003, p. 1.

⁽²¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²²⁾ OJ L 317, 4.11.2014, p. 35.

⁽²³⁾ OJ L 229, 1.9.2009, p. 1.

ANNEX VIII

RULES OF PROCEDURE OF THE JOINT COMMITTEE AND SPECIALISED COMMITTEES

*Rule 1***Chair**

1. The Joint Committee shall be co-chaired by a Member of the European Commission and a representative of the Government of the United Kingdom at ministerial level, or by high-level officials designated to act as their alternates. The European Union and the United Kingdom shall notify each other in writing of the designated co-chairs and their alternates.
2. The decisions of the co-chairs provided for by these Rules of Procedure shall be taken by mutual consent.
3. A co-chair who is unable to attend a meeting may be replaced for that meeting by a designee. The co-chair, or his or her designee, shall inform in writing the other co-chair and the Secretariat of the Joint Committee of the designation as early as possible.
4. The designee of the co-chair shall exercise the rights of that co-chair to the extent of the designation. 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 Joint Committee (the "Secretariat") shall be composed of an official of the European Commission and an official of the Government of United Kingdom. The Secretariat shall, under the authority of the co-chairs, perform the tasks conferred on it by these Rules of Procedure.

*Rule 3***Participation in meetings**

1. Before each meeting, the Union and the United Kingdom shall inform each other through the Secretariat of the intended composition of the delegations.
2. Where appropriate and by decision of the co-chairs, experts or other persons who are not members of delegations may be invited to attend meetings of the Joint Committee in order to provide information on a particular subject.

*Rule 4***Meetings**

1. The Joint Committee shall hold its meetings alternately in Brussels and London, unless the co-chairs decide otherwise.
2. By way of derogation from paragraph 1, the co-chairs may decide that a meeting of the Joint Committee be held by videoconference or teleconference.
3. Each meeting of the Joint Committee shall be convened by the Secretariat at a date and place decided by the co-chairs. Where either the Union or the United Kingdom has made a request for a meeting, the Joint Committee shall endeavour to meet within 30 days of such request. In cases of urgency it shall endeavour to meet sooner.

*Rule 5***Documents**

Written documents on which the deliberations of the Joint Committee are based shall be numbered and circulated to the Union and the United Kingdom by the Secretariat as documents of the Joint Committee.

*Rule 6***Correspondence**

1. The Union and the United Kingdom shall send their correspondence addressed to the Joint Committee to 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 Joint Committee is forwarded 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 15 days before the date of the meeting.
2. The provisional agenda shall include those items, the inclusion of which in the agenda has been requested by the Union or the United Kingdom. Any such request, together with any relevant document, shall be submitted to the Secretariat no later than 21 days before the beginning of the meeting.
3. No later than 10 days before the date of the meeting, the co-chairs shall decide on the provisional agenda for a meeting. They may decide to make that provisional agenda, or any part thereof, public before the beginning of the meeting.
4. The agenda shall be adopted by the Joint Committee at the beginning of each meeting. On request by the Union or the United Kingdom an item other than those included in the provisional agenda may be included in the agenda by decision of the Joint Committee.
5. In exceptional cases, the co-chairs may decide to derogate from the time limits specified in paragraphs 1 and 2.

*Rule 8***Minutes**

1. Draft minutes of each meeting shall be drawn up by the Secretariat, within 21 days from the end of the meeting, unless the co-chairs decide otherwise.
2. The minutes shall, as a rule, summarise each item on the agenda, specifying where applicable:
 - (a) the documents submitted to the Joint Committee;
 - (b) any statement that one of the co-chairs requested to be entered in the minutes; and
 - (c) the decisions adopted, recommendations made, joint statements decided upon and operational conclusions adopted on specific items.

3. The minutes shall include a list of the names, titles and capacity of all individuals who attended the meeting.
4. The minutes shall be approved in writing by the co-chairs within 28 days of the date of the meeting or by any other date decided by the co-chairs. Once approved, two authentic versions of the minutes shall be signed by the members of the Secretariat. The Union and the United Kingdom shall each receive one of these authentic versions. The co-chairs may decide that signing and exchanging electronic copies satisfies this requirement.
5. The Secretariat shall also prepare a summary of the minutes. After having approved the summary, the co-chairs may decide to make it public.

Rule 9

Decisions and Recommendations

1. In the period between meetings, the Joint Committee may adopt decisions or recommendations by written procedure, if the co-chairs decide to use this procedure. The written procedure shall consist of an exchange of notes between the co-chairs.
2. Where the Joint Committee 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 Joint Committee shall specify the date at which they take effect.
4. Decisions and recommendations adopted by the Joint Committee shall be signed by the co-chairs and shall be sent by the Secretariat to the parties immediately after the signature.

Rule 10

Publicity and Confidentiality

1. Unless otherwise decided by the co-chairs, the meetings of the Joint Committee shall be confidential.
2. Where the Union or the United Kingdom submits information considered as confidential or protected from disclosure under its laws and regulations to the Joint Committee or any specialised committee, the other party shall treat that information received as confidential.
3. Without prejudice to paragraph 2, the Union and the United Kingdom may each decide individually on whether to publish, the decisions and recommendations adopted by the Joint Committee in their respective official publication journals.

Rule 11

Languages

1. The official languages of the Joint Committee shall be the official languages of the Union and the United Kingdom.
2. The working language of the Joint Committee shall be English. Unless otherwise decided by the co-chairs, the Joint Committee shall base its deliberations on documents prepared in English.

*Rule 12***Expenses**

1. The Union and the United Kingdom shall each meet any expenses they incur as a result of participating in the meetings of the Joint Committee.
2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Union for meetings held in Brussels, and by the United Kingdom for meetings held in London.
3. Expenditure in connection with interpretation to and from the working language of the Joint Committee at meetings shall be borne by the party requesting such interpretation.

*Rule 13***Specialised committees**

1. Without prejudice to paragraphs 2 to 3 of this Rule, Rules 1 to 12 shall apply *mutatis mutandis* to the specialised committees unless decided otherwise by the Joint Committee.
2. The specialised committees shall be co-chaired by representatives designated by the European Commission and the Government of the United Kingdom. The European Union and the United Kingdom shall notify each other of the designated representatives.
3. All information and reports to be provided by a specialised committee pursuant to Article 165(4) of the Agreement shall be submitted to the Joint Committee without undue delay.

*Rule 14***Annual report**

For each calendar year, the annual report on the functioning of the Agreement provided for in Article 164(6) of the Agreement shall be drawn up by the Secretariat by 1 May of the following year. It shall be adopted and signed by the co-chairs.

ANNEX IX

RULES OF PROCEDURE

PART A

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

I. Definitions

1. For the purposes of these Rules of Procedure, the following definitions shall apply:

- (a) "Party" means the Union or the United Kingdom;
- (b) "complainant" means any Party that requests the establishment of an arbitration panel under Article 170 of the Agreement;
- (c) "respondent" means the Party that is alleged to be in violation of a provision of this Agreement;
- (d) "representative of a Party" means a servant of, or any person appointed by a Party who represents that Party for the purposes of a dispute under this Agreement;
- (e) "adviser" means a person designated by a Party to advise or assist that Party in connection with proceedings before an arbitration panel;
- (f) "assistant" means a person who, under the terms of his or her appointment, conducts research for or provides assistance to a member of an arbitration panel under the direction and control of that member.

II. Notifications

2. The following rules shall apply to notifications between the Parties and the arbitration panel:

- (a) the arbitration panel shall send all requests, notices, written submissions and other documents to both Parties at the same time;
- (b) where a Party addresses a request, notice, written submission or other document to the arbitration panel, it shall send a copy thereof to the other Party at the same time; and
- (c) where a Party addresses a request, notice, written submission or other document in relation to the dispute to the other Party, it shall send a copy thereof to the arbitration panel at the same time.

3. Any notification referred to in point 2 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 have been delivered on the date of its sending. All notifications shall be addressed to the Legal Service of the European Commission and to the Legal Adviser of the Foreign and Commonwealth Office of the United Kingdom, respectively.

4. The International Bureau of the Permanent Court of Arbitration shall, upon the written request of the Parties or the arbitration panel, act as a channel of communications between the Parties and the arbitration panel.

5. Minor errors of a clerical nature in any request, notice, written submission or other document related to the proceedings before the arbitration panel may be corrected by delivery of a new document clearly indicating the changes.

6. If the last day for delivery of a document falls on a weekend or legal holiday applicable to the European Commission or to the Foreign and Commonwealth Office of the United Kingdom, as the case may be, the document may be delivered on the next working day. No later than 30 September of each year, the Union and the United Kingdom shall inform each other as well as, in the case referred to in point 4, the International Bureau of the Permanent Court of Arbitration, of the legal holidays applicable to the European Commission and to the Foreign and Commonwealth Office of the United Kingdom, respectively.

III. Appointment and replacement of members of an arbitration panel

7. If, pursuant to Article 171(5) of the Agreement, one or more members of an arbitration panel are to be selected by lot, the International Bureau of the Permanent Court of Arbitration shall promptly inform the Parties of the date, time and venue of the selection. The Parties may choose to be present during the selection. However, the absence of one or both of the Parties shall not preclude the selection from being carried out.
8. The International Bureau of the Permanent Court of Arbitration shall notify, in writing, each person who has been selected to serve as a member of an arbitration panel of his or her appointment. Each person selected shall, within 5 days from that notification, confirm his or her availability to the International Bureau of the Permanent Court of Arbitration and to both Parties.
9. Where a Party considers that a member of the arbitration panel does not comply with the Code of Conduct set out in Part B and for that reason needs to be replaced, that Party shall notify the other Party within 15 days from the time at which it obtained sufficient evidence of that member's alleged non-compliance.
10. The Parties shall consult each other within 15 days from the notification referred to in point 9. They shall inform the member of the arbitration panel of the alleged non-compliance and may request that member to take steps to remedy the situation. They may also jointly decide to remove that member and to select a new member in accordance with Article 171 of the Agreement.

If the Parties fail to agree on whether to replace a member of the arbitration panel other than its chairperson, either Party may request that this matter be referred to the chairperson of that panel, whose decision shall be final.

If the chairperson of the arbitration panel finds that the member of the arbitration panel does not comply with the Code of Conduct, a new member of the arbitration panel shall be selected in accordance with Article 171 of the Agreement.

11. If the Parties fail to agree on whether to replace the chairperson, either Party may request that this matter be referred to one of the remaining persons who have been jointly proposed by the Union and the United Kingdom to act as chairperson in accordance with the third sentence of Article 171(1) of the Agreement (the "selected person"). The name of the selected person shall be drawn by lot by the Secretary-General of the Permanent Court of Arbitration.

If the selected person finds that the chairperson does not comply with the Code of Conduct, a new chairperson shall be selected in accordance with Article 171 of the Agreement from among the persons who have been jointly proposed by the Union and the United Kingdom to act as chairperson, with the exception of the selected person.

IV. Financial issues

12. The Parties shall share equally the expenses arising from the establishment and operation of an arbitration panel, including the remuneration and expenses to be paid to the members of that arbitration panel.
13. The Parties shall agree with the arbitration panel, within 7 days of its establishment, on:
 - (a) the remuneration and expenses to be paid to the members of the arbitration panel, which shall be reasonable and in accordance with WTO standards;
 - (b) the remuneration to be paid to assistants; for each member of the arbitration panel, the total amount of remuneration to be paid to assistants shall be reasonable and in any event shall not exceed one third of the remuneration of that member.

Such agreement may be reached by any means of communication.

V. Timetable and written submissions

14. The arbitration panel shall, after consulting the Parties, establish an indicative timetable of the proceedings within 7 days of its establishment.

15. The complainant shall address its written submission to the arbitration panel no later than 20 days after the date of establishment of the indicative timetable. The respondent shall address its written submission to the arbitration panel no later than 20 days after the date on which it has received a copy of the written submission of the complainant.

VI. Operation of the arbitration panel

16. The chairperson of the arbitration panel shall preside over all its meetings. The arbitration panel may delegate to the chairperson the authority to make administrative and procedural decisions.
17. Unless otherwise provided in this Agreement or in these Rules of Procedure, the arbitration panel may conduct its proceedings and deliberations by any means of communication.
18. Only members of the arbitration panel may take part in the deliberations of the arbitration panel, but the arbitration panel may permit the members' assistants to be present at its deliberations.
19. The drafting of any ruling or decision shall remain the exclusive responsibility of the members of the arbitration panel, and shall not be delegated to any other person.
20. The International Bureau of the Permanent Court of Arbitration shall provide secretariat services and other logistic support to the arbitration panel.
21. Where a procedural question arises that is not covered by this Agreement or by these Rules of Procedure, the arbitration panel may, after consulting the Parties, decide on the procedure to be followed, provided that the latter is compatible with this Agreement and with these Rules of Procedure.
22. If the arbitration panel considers that there is a need to change any of the time periods for the proceedings referred to in these Rules of Procedure or to make any other procedural or administrative adjustment, it shall inform the Parties in writing, after consulting the Parties, of the reasons for the change or adjustment and the time period or adjustment needed.

VII. Hearings

23. Based upon the indicative timetable established pursuant to point 14, after consulting the Parties and the other members of the arbitration panel, the chairperson shall notify the Parties of the date, time and venue of the hearing. That information shall be made publicly available, unless the hearing is closed to the public.
The arbitration panel may decide, in agreement with the Parties, not to hold a hearing.
24. Unless the Parties agree otherwise, the hearing shall be held in The Hague, in the premises of the Permanent Court of Arbitration.
25. The arbitration panel may convene additional hearings if the Parties so agree.
26. All members of the arbitration panel shall be present during the entirety of the hearing.
27. 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;
 - (d) interpreters, translators and court reporters of the arbitration panel; and
 - (e) experts, as decided by the arbitration panel.

28. No later than 5 days before the date of a hearing, each Party shall address to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and the names of other representatives and advisers who will be attending the hearing.
29. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complainant and the respondent are afforded equal time in both argument and reply:
 - (a) argument:
 - (i) argument of the complainant;
 - (ii) argument of the respondent;
 - (b) reply:
 - (i) reply of the complainant;
 - (ii) counter-reply of the respondent.
30. The arbitration panel may direct questions to either Party at any time during the hearing.
31. The arbitration panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the arbitration panel may consider those comments.
32. Each Party may address a supplementary written submission to the arbitration panel concerning any matter that arose during the hearing within 10 days after the date of the hearing.

VIII. Questions in writing

33. The arbitration panel may at any time during the proceedings submit questions in writing to one or both Parties.
34. Each Party shall have an opportunity to provide comments in writing on the other Party's responses to questions submitted by the arbitration panel within 5 days after the date on which it has received a copy of those responses.

IX. Confidentiality

35. Any information submitted by a Party to the arbitration panel which that Party has designated as confidential shall be treated as confidential by the other Party and by the panel. When a Party submits to the arbitration panel a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which shall be disclosed to the public.
36. Nothing in these Rules of Procedure shall preclude a Party from disclosing its own written submissions, responses to questions submitted by the arbitration panel or transcript of oral argument to the public, provided that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.
37. Hearings before the arbitration panel shall be open to the public except where the submission and arguments of a Party contain confidential information or where the Parties otherwise agree that the hearing shall be closed to the public. In such case the Parties shall maintain the confidentiality of the hearings of the arbitration panel.

X. Ex parte contacts

38. The arbitration panel shall not meet or otherwise orally communicate with a Party in the absence of the other Party.

XI. Urgent cases

39. In cases of urgency referred to in Article 173(2) of the Agreement, the arbitration panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure. The arbitration panel shall notify the Parties of those adjustments.

XII. Translation and interpretation

40. The language of proceedings before the arbitration panel shall be English. Decisions of the arbitration panel shall be issued in English.
41. Each Party shall bear its own costs of the translation of any documents submitted to the arbitration panel which are not originally drafted in English, as well as any costs relating to interpretation during the hearing related to its representatives or advisers.

PART B

CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS

Definitions

1. For the purposes of this Code of Conduct, the definition of "assistant" set out in the Rules of Procedure shall apply. In addition, "candidate" means a person whose name is on the list referred to in Article 171(1) of the Agreement and who is under consideration for selection as a member of an arbitration panel under that Article.

Responsibilities to the process

2. Every candidate and member of an arbitration panel shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement procedure is preserved. Former candidates or members of an arbitration panel shall comply with the obligations set out in points 8, 9 and 10.

Disclosure obligations

3. Prior to the confirmation of their selection as a member of an arbitration panel under this Agreement, candidates shall disclose to the Parties in writing any interest, relationship or matter of which they are aware that is likely to affect their independence or impartiality, or that might reasonably create an appearance of impropriety or bias in the proceedings before the arbitration panel.
4. Candidates and members of an arbitration panel shall communicate matters concerning actual or potential violations of this Code of Conduct only to the Joint Committee for consideration by the Union and the United Kingdom.
5. Members of an arbitration panel shall at any stage of the proceedings before the arbitration panel disclose to the Parties in writing any interests, relationships or matters of the nature referred to in point 3 of which they are or become aware.

Due diligence of members of an arbitration panel

6. Upon selection, members of an arbitration panel shall perform their duties thoroughly and expeditiously throughout the course of the proceedings before the arbitration panel, and with fairness and diligence. In particular, they shall:
 - (a) consider only those issues that were raised in the proceedings before the arbitration panel and are necessary for a ruling, and shall not delegate this duty to any other person;
 - (b) take all appropriate steps to ensure that their assistants are aware of, and comply with, points 2, 3, 4, 5, 9 and 10.

Independence and impartiality of members of an arbitration panel

7. Members of an arbitration panel:

- (a) shall be independent and impartial, and avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to the Union or the United Kingdom, or fear of criticism;
- (b) 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;
- (c) shall not use their position as a member of an arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence them;
- (d) shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgement;
- (e) 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;
- (f) shall not discuss any aspect of the subject matter or the conduct of the proceedings before the arbitration panel with one or both of the Parties in the absence of the other members of the arbitration panel.

Obligations of former members of an arbitration panel

8. All former members of an arbitration panel 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 panel.

Confidentiality

9. No member or former member of an arbitration panel shall at any time

- (a) disclose or use any non-public information concerning any proceedings before the arbitration panel or that was acquired during such proceedings, except for the purposes of those proceedings and in any case shall not disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others;
- (b) disclose the deliberations of the arbitration panel, or the views of any member of the panel.

10. No member of an arbitration panel shall disclose a ruling of the arbitration panel or parts thereof prior to its publication in accordance with this Agreement.
-



Reports of Cases

JUDGMENT OF THE COURT (Full Court)

16 February 2022 *

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* Language of the case: Hungarian.

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(Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the European Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU and of the principles of legal certainty, proportionality and equality of Member States before the Treaties)

In Case C-156/21,

ACTION for annulment under Article 263 TFEU, brought on 11 March 2021,

Hungary, represented by M.Z. Fehér and M.M. Tátrai, acting as Agents,

applicant,

supported by:

Republic of Poland, represented by B. Majczyna and S. Żyrek, acting as Agents,

intervener,

v

European Parliament, represented by F. Drexler, R. Crowe, U. Rösslein, T. Lukácsi and A. Pospíšilová Padowska, acting as Agents,

Council of the European Union, represented by A. de Gregorio Merino, E. Rebasti, A. Tamás and A. Sikora-Kaléda, acting as Agents,

defendants,

supported by:

Kingdom of Belgium, represented by C. Pochet, M. Jacobs and L. Van den Broeck, acting as Agents,

Kingdom of Denmark, represented initially by M. Søndahl Wolff and J. Nymann-Lindegren, and subsequently by M. Søndahl Wolff and V. Pasternak Jørgensen, acting as Agents,

Federal Republic of Germany, represented by J. Möller and R. Kanitz, acting as Agents,

Ireland, represented by M. Browne, J. Quaney and A. Joyce, acting as Agents, and by D. Fennelly, Barrister-at-Law,

Kingdom of Spain, represented initially by J. Rodríguez de la Rúa Puig and S. Centeno Huerta, and subsequently by J. Rodríguez de la Rúa Puig and A. Gavela Llopis, acting as Agents,

French Republic, represented by A.-L. Desjonquères, A.-C. Drouant and E. Leclerc, acting as Agents,

Grand Duchy of Luxembourg, represented initially by A. Germeaux and T. Uri, and subsequently by A. Germeaux, acting as Agents,

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents,

Republic of Finland, represented by H. Leppo and S. Hartikainen, acting as Agents,

Kingdom of Sweden, represented by O. Simonsson, J. Lundberg, C. Meyer-Seitz, A. Runeskjöld, H. Shev, M. Salborn Hodgson, H. Eklinder and R. Shahsavan Eriksson, acting as Agents,

European Commission, represented by D. Calleja Crespo, J.-P. Keppenne, J. Baquero Cruz and A. Tokár, acting as Agents,

interveners,

THE COURT (Full Court),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin, I. Jarukaitis, N. Jääskinen, I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, M. Safjan, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi, A. Kumin, N. Wahl, D. Gratsias, M.L. Arastey Sahún, M. Gavalec and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrars: M. Aleksejev, Head of Unit, and I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 11 and 12 October 2021,

after hearing the Opinion of the Advocate General at the sitting on 2 December 2021,

gives the following

Judgment

- 1 By its application, Hungary claims, principally, that the Court should annul Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1, and corrigendum OJ 2021 L 373, p. 94, ‘the contested regulation’), and, in the alternative, that the Court should annul Article 4(1) and (2)(h), Article 5(2), the penultimate and final sentences of Article 5(3), and Article 6(3) and (8) of that regulation.

I. Legal context

A. Regulation (EC) No 1049/2001

- 2 Article 2 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) states, in paragraph 1 thereof:

‘Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.’

- 3 As set out in Article 4 of that regulation:

‘ ...

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

...

– court proceedings and legal advice,

...

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

...

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. ...’

4 Article 5 of that regulation provides:

‘Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

The Member State may instead refer the request to the institution.’

B. The Council’s Rules of Procedure

5 On 1 December 2009, the Council of the European Union adopted Decision 2009/937/EU adopting the Council’s Rules of Procedure (OJ 2009 L 325, p. 35). Article 6 of those rules of procedure (‘the Council’s Rules of Procedure’), entitled ‘Professional secrecy and production of documents in legal proceedings’, provides in paragraph 2:

‘The Council or [the Committee of Permanent Representatives of the governments of the Member States (Coreper)] may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions on public access to documents.’

6 According to Article 10 of those rules of procedure, entitled ‘Public access to Council documents’:

‘The specific provisions regarding public access to Council documents are set out in Annex II.’

7 Annex II to those rules of procedure, entitled ‘Special provisions regarding public access to Council documents’, contains Article 5, relating to ‘referral of requests by Member States’, which provides:

‘When a Member State refers a request to the Council, it shall be handled in accordance with Articles 7 and 8 of [Regulation No 1049/2001] and the relevant provisions of this Annex. In the event of a total or partial refusal of access, the applicant shall be informed that any confirmatory application must be addressed directly to the Council.’

C. The Guidelines for the handling of documents internal to the Council

8 By Note 7695/18 of 10 April 2018, the Council adopted guidelines for the handling of documents internal to the Council. Paragraphs 1, 2, 20 and 21 of those guidelines are worded as follows:

- ‘1. This document contains guidelines on handling unclassified Council documents whose distribution is internal to the Council, its members, the Commission, the European External Action Service (EEAS) and, depending on the subject matter, certain other EU institutions (e.g. European Parliament, Court of Justice, European Central Bank) and bodies (e.g. Committee of the Regions, European Economic and Social Committee). The untimely public disclosure of such documents could adversely affect the Council’s decision-making processes.
2. The guidelines have a direct impact on the functioning of the Council and, as a consequence, are to be respected by Member States as members of the Council, in line with the principle of loyal cooperation which governs relations between the EU institutions and the Member States.

...

20. “LIMITE” documents must not be made public unless a decision to that effect has been taken by duly authorised Council officials, by the national administration of a Member State (see paragraph 21), or, where relevant, by the Council, in accordance with [Regulation No 1049/2001] and the Council’s Rules of Procedure.
21. Personnel in any EU institution or body other than the Council may not themselves decide to make “LIMITE” documents public without first consulting the General Secretariat of the Council (GSC). Personnel in the national administration of a Member State will consult the GSC before taking such a decision unless it is clear that the document can be made public, in line with Article 5 of [Regulation No 1049/2001].’

D. Regulation (EU, Euratom) No 883/2013

- 9 Article 2(1) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1) defines, for the purposes of that regulation, the ‘financial interests of the Union’ as being ‘revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them’.

E. The Financial Regulation

- 10 As set out in Article 2 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1, ‘the Financial Regulation’), entitled ‘Definitions’:

‘For the purposes of this Regulation the following definitions apply:

...

- (7) “budget implementation” means the carrying out of activities relating to the management, monitoring, control and auditing of budget appropriations in accordance with the methods provided for in Article 62;

...

- (42) “Member State organisation” means an entity established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission and provided with adequate financial guarantees from the Member State;

...

(59) “sound financial management” means implementation of the budget in accordance with the principles of economy, efficiency and effectiveness;

...’

11 Article 61 of that regulation, entitled ‘Conflict of interests’, provides:

‘1. Financial actors within the meaning of Chapter 4 of this Title and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.

2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law.

3. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.’

12 Article 62 of that regulation, entitled ‘Methods of budget implementation’, provides, in the first subparagraph of paragraph 1 thereof:

‘1. The Commission shall implement the budget in any of the following ways:

- (a) directly (“direct management”), as set out in Articles 125 to 153, by its departments, including its staff in the Union delegations under the authority of their respective Head of delegation, in accordance with Article 60(2), or through executive agencies as referred to in Article 69;
- (b) under shared management with Member States (“shared management”) as set out in Articles 63 and 125 to 129;
- (c) indirectly (“indirect management”) as set out in Articles 125 to 149 and 154 to 159, where this is provided for in the basic act or in the cases referred to in points (a) to (d) of Article 58(2), by entrusting budget implementation tasks:

...’

13 Article 63 of that regulation, entitled ‘Shared management with Member States’, provides in paragraphs 2 and 8:

‘2. When executing tasks relating to budget implementation, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the financial interests of the Union, namely by:

- (a) ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules;
- (b) designating bodies responsible for the management and control of Union funds in accordance with paragraph 3, and supervising such bodies;
- (c) preventing, detecting and correcting irregularities and fraud;
- (d) cooperating, in accordance with this Regulation and sector-specific rules, with the Commission, [the European Anti-Fraud Office (OLAF)], the [European] Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939 [of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (OJ 2017 L 283, p. 1)], with the European Public Prosecutor’s Office (EPPO).

In order to protect the financial interests of the Union, Member States shall, while respecting the principle of proportionality, and in compliance with this Article and the relevant sector-specific rules, carry out *ex ante* and *ex post* controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions. They shall also recover funds unduly paid and bring legal proceedings where necessary in that regard.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sector-specific rules or in specific provisions in national law.

As part of its risk assessment and in accordance with sector-specific rules, the Commission shall monitor the management and control systems established in Member States. The Commission shall, in its audit work, respect the principle of proportionality and shall take into account the level of risk assessed in accordance with sector-specific rules.

...

8. In order to ensure that Union funds are used in accordance with the applicable rules, the Commission shall:

- (a) apply procedures for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;
- (b) exclude from Union financing expenditure for which disbursements have been made in breach of applicable law;
- (c) interrupt payment deadlines or suspend payments where provided for in sector-specific rules.

The Commission shall end all or part of the interruption of payment deadlines or suspension of payments after a Member State has presented its observations and as soon as it has taken any necessary measures. The annual activity report referred to in Article 74(9) shall cover all the obligations under this paragraph.’

- 14 Article 129 of the Financial Regulation, entitled ‘Cooperation for protection of the financial interests of the Union’, provides:

‘1. Any person or entity receiving Union funds shall fully cooperate in the protection of the financial interests of the Union and shall, as a condition for receiving the funds, grant the necessary rights and access required for the authorising officer responsible, for EPPO in respect of those Member States participating in enhanced cooperation ..., for OLAF, for the Court of Auditors, and, where appropriate, for the relevant national authorities, to comprehensively exert their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, in accordance with [the Regulation on investigations conducted by OLAF].

2. Any person or entity receiving Union funds under direct and indirect management shall agree in writing to grant the necessary rights as referred to in paragraph 1 and shall ensure that any third parties involved in the implementation of Union funds grant equivalent rights.’

- 15 As set out in Article 131 of the Financial Regulation, entitled ‘Suspension, termination and reduction’:

‘1. Where an award procedure has been subject to irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of fraud.

...

3. The authorising officer responsible may suspend payments or the implementation of the legal commitment where:

...

- (b) it is necessary to verify whether presumed irregularities, fraud or breach of obligations have actually occurred;
- (c) irregularities, fraud or breach of obligations call into question the reliability or effectiveness of the internal control systems of a person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or the legality and regularity of the underlying transactions.

...’

- 16 Article 135 of that regulation, entitled ‘Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties’, provides:

‘1. In order to protect the financial interests of the Union, the Commission shall set up and operate an early detection and exclusion system.

The purpose of such a system shall be to facilitate:

- (a) the early detection of persons or entities referred to in paragraph 2, which pose a risk to the financial interests of the Union;

...

3. The decision to register information concerning an early detection of the risks referred to in point (a) of the second subparagraph of paragraph 1 of this Article, to exclude persons or entities referred to in paragraph 2 and/or to impose a financial penalty on a recipient shall be taken by the authorising officer responsible. Information related to such decisions shall be registered in the database referred to in Article 142(1). Where such decisions are taken on the basis of Article 136(4), the information registered in the database shall include the information concerning the persons referred to in that paragraph.

4. The decision to exclude persons or entities referred to in paragraph 2 of this Article or to impose financial penalties on a recipient shall be based on a final judgment or, in the exclusion situations referred to in Article 136(1), on a final administrative decision, or on a preliminary classification in law by the panel referred to in Article 143 in the situations referred to in Article 136(2) in order to ensure a centralised assessment of those situations. In the cases referred to in Article 141(1), the authorising officer responsible shall reject a participant from a given award procedure.

Without prejudice to Article 136(5), the authorising officer responsible may take a decision to exclude a participant or recipient and/or to impose a financial penalty on a recipient and a decision to publish the related information, on the basis of a preliminary classification as referred to in Article 136(2), only after having obtained a recommendation of the panel referred to in Article 143.’

II. The contested regulation

- 17 According to the preamble to the contested regulation, that regulation was adopted on the basis of the ‘[TFEU], and in particular point (a) of Article 322(1) thereof,’ and the ‘[EAEC] Treaty, and in particular Article 106a thereof’.

- 18 Recitals 2, 3, 5 to 10, 12 to 16, 18 to 20 and 26 of the contested regulation state:

‘(2) In its conclusions of 21 July 2020, the European Council stated that the financial interests of the Union are to be protected in accordance with the general principles embedded in the Treaties, in particular the values set out in Article 2 TEU. It also underlined the importance of the protection of the financial interests of the Union and the importance of respect for the rule of law.

- (3) The rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union (the “Charter”) and other applicable instruments, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality [(judgment of 29 April 2004, *Commission v CAS Succhi di Frutta*, C-496/99 P, EU:C:2004:236, paragraph 63)] implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty [(judgment of 12 November 1981, *Meridionale Industria Salumi and Others*, 212/80 to 217/80, EU:C:1981:270, paragraph 10)]; prohibition of arbitrariness of the executive powers [(judgment of 21 September 1989, *Hoechst v Commission*, 46/87 and 227/88, EU:C:1989:337, paragraph 19)]; effective judicial protection, including access to justice, by independent and impartial courts [(judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 31, 40 and 41, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 63 to 67)]; and separation of powers, [(judgments of 22 December 2010, *DEB*, C-279/09, EU:C:2010:811, paragraph 58; of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 35; and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 36)] be respected [(Communication from the Commission entitled “A new EU Framework to strengthen the Rule of Law”, COM(2014) 158 final, Annex I)].

...

- (5) Once a candidate country becomes a Member State, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the Union that implements them will be respected [(Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 168)]. The laws and practices of Member States should continue to comply with the common values on which the Union is founded.
- (6) While there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded, such as freedom, democracy, equality and respect for human rights. Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.
- (7) Whenever the Member States implement the Union budget, including resources allocated through the European Union Recovery Instrument established pursuant to Council Regulation (EU) 2020/2094 [of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ 2020 L 433 I, p. 23)], and through loans and other instruments guaranteed by the Union budget, and whatever method of implementation they use, respect for the rule of law is an essential precondition for compliance with the principles of sound financial management enshrined in Article 317 [TFEU].

- (8) Sound financial management can only be ensured by Member States if public authorities act in accordance with the law, if cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest or other breaches of the law are effectively pursued by investigative and prosecution services, and if arbitrary or unlawful decisions of public authorities, including law-enforcement authorities, can be subject to effective judicial review by independent courts and by the Court of Justice of the European Union.
- (9) The independence and impartiality of the judiciary should always be guaranteed, and investigation and prosecution services should be able to properly execute their functions. The judiciary, and investigation and prosecution services should be endowed with sufficient financial and human resources and procedures to act effectively and in a manner that fully respects the right to a fair trial, including respect for the rights of defence. Final judgments should be implemented effectively. Those conditions are required as a minimum guarantee against unlawful and arbitrary decisions of public authorities that could harm the financial interests of the Union.
- (10) The independence of the judiciary presupposes, in particular, that the judicial body concerned is able to exercise, both under the relevant rules and in practice, its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.
- ...
- (12) Article 19 TEU, which gives concrete expression to the value of the rule of law set out in Article 2 TEU, requires Member States to provide effective judicial protection in the fields covered by Union law, including those relating to the implementation of the Union budget. The very existence of effective judicial review designed to ensure compliance with Union law is the essence of the rule of law and requires independent courts [(judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 32 to 36)]. Maintaining the independence of the courts is essential, as confirmed by the second paragraph of Article 47 of the Charter [(judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 40 and 41)]. This is true, in particular, for the judicial review of the validity of measures, contracts or other instruments giving rise to public expenditure or debts, *inter alia*, in the context of public procurement procedures which may also be brought before the courts.
- (13) There is therefore a clear relationship between respect for the rule of law and the efficient implementation of the Union budget in accordance with the principles of sound financial management.

- (14) The Union has developed a variety of instruments and processes that promote the rule of law and its application, including financial support for civil society organisations, the European Rule of Law Mechanism and the EU Justice Scoreboard, and provide an effective response from Union institutions to breaches of the rule of law through infringement proceedings and the procedure provided for in Article 7 TEU. The mechanism provided for in this Regulation complements these instruments by protecting the Union budget against breaches of the principles of the rule of law affecting its sound financial management or the protection of the financial interests of the Union.
- (15) Breaches of the principles of the rule of law, in particular those that affect the proper functioning of public authorities and effective judicial review, can seriously harm the financial interests of the Union. This is the case for individual breaches of the principles of the rule of law and even more so for breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities.
- (16) The identification of breaches of the principles of the rule of law requires a thorough qualitative assessment by the Commission. That assessment should be objective, impartial and fair, and should take into account relevant information from available sources and recognised institutions, including judgments of the Court of Justice of the European Union, reports of the Court of Auditors, the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of [OLAF] and the [EPPO] as relevant, and conclusions and recommendations of relevant international organisations and networks, including Council of Europe bodies such as the Council of Europe Group of States against Corruption (GRECO) and the [European Commission for Democracy through Law (the Venice Commission)], in particular its rule-of-law checklist, and the European networks of supreme courts and councils for the judiciary. The Commission could consult the European Union Agency for Fundamental Rights and the Venice Commission if necessary for the purpose of preparing a thorough qualitative assessment.

...

- (18) The principle of proportionality should apply when determining the measures to be adopted, in particular taking into account the seriousness of the situation, the time which has elapsed since the relevant conduct started, the duration and recurrence of the conduct, the intention, the degree of cooperation of the Member State concerned in putting an end to the breaches of the principles of the rule of law, and the effects on the sound financial management of the Union budget or the financial interests of the Union.
- (19) It is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of breaches of the principles of the rule of law. When considering the adoption of measures, the Commission should take into account their potential impact on final recipients and beneficiaries. Taking into consideration that in shared management payments from the Commission to Member States are legally independent from payments by national authorities to beneficiaries, appropriate measures under this Regulation should not be considered to affect the availability of funding for payments towards beneficiaries according to the payment deadlines set out under the applicable sector-specific and financial rules. Decisions adopted under this Regulation and obligations towards final recipients or beneficiaries set out in this Regulation are part of applicable Union law with respect to implementing

funding in shared management. The Member States concerned by the measures should regularly report to the Commission on compliance with their obligations towards final recipients or beneficiaries. Reporting on compliance with payment obligations towards beneficiaries set out in the applicable sector-specific and financial rules should allow the Commission to verify that decisions under this Regulation do not impact in any way, directly or indirectly, payments to be made under the applicable sector-specific and financial rules.

To strengthen the protection of the final recipients or beneficiaries, the Commission should provide information and guidance via a website or internet portal, together with adequate tools to inform the Commission about any breach of the legal obligation of government entities and Member States to continue making payments after measures pursuant to this Regulation are adopted. The Commission should follow up on such information to verify whether the applicable rules have been respected, in particular Article 69, point (b) of Article 74(1) and Article 104 of Regulation (EU) 2021/1060 of the European Parliament and of the Council [of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ 2021 L 231, p. 159)]. Where necessary, in order to ensure that any amount due by government entities or Member States is effectively paid to final recipients or beneficiaries, the Commission should recover payments made, or, where appropriate, make a financial correction by reducing Union support to a programme in line with the applicable sector-specific and financial rules.

- (20) In order to ensure uniform conditions for the implementation of this Regulation and in view of the importance of the financial effects of measures adopted pursuant to this Regulation, implementing powers should be conferred on the Council, which should act on the basis of a Commission proposal.

...

- (26) The procedure for adopting and lifting the measures should respect the principles of objectivity, non-discrimination and equal treatment of Member States and should be conducted according to a non-partisan and evidence-based approach. If, exceptionally, the Member State concerned considers that there are serious breaches of those principles, it may request the President of the European Council to refer the matter to the next European Council. In such exceptional circumstances, no decision concerning the measures should be taken until the European Council has discussed the matter. This process shall, as a rule, not take longer than three months after the Commission has submitted its proposal to the Council.'

- 19 Article 1 of the contested regulation provides:

'This Regulation establishes the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States.'

20 As set out in Article 2 of that regulation:

‘For the purpose of this Regulation the following definitions shall apply:

- (a) “the rule of law” refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU;
- (b) “government entity” means a public authority at any level of government, including national, regional and local authorities, as well as Member State organisations within the meaning of point (42) of Article 2 of [the Financial Regulation].’

21 Article 3 of the contested regulation, entitled ‘Breaches of the principles of the rule of law’, provides:

‘For the purposes of this Regulation, the following may be indicative of breaches of the principles of the rule of law:

- (a) endangering the independence of the judiciary;
- (b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest;
- (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.’

22 Article 4 of that regulation, entitled ‘Conditions for the adoption of measures’, states:

‘1. Appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.

2. For the purposes of this Regulation, breaches of the principles of the rule of law shall concern one or more of the following:

- (a) the proper functioning of the authorities implementing the Union budget, including loans and other instruments guaranteed by the Union budget, in particular in the context of public procurement or grant procedures;
- (b) the proper functioning of the authorities carrying out financial control, monitoring and audit, and the proper functioning of effective and transparent financial management and accountability systems;

- (c) the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union;
- (d) the effective judicial review by independent courts of actions or omissions by the authorities referred to in points (a), (b) and (c);
- (e) the prevention and sanctioning of fraud, including tax fraud, corruption or other breaches of Union law relating to the implementation of the Union budget or to the protection of the financial interests of the Union, and the imposition of effective and dissuasive penalties on recipients by national courts or by administrative authorities;
- (f) the recovery of funds unduly paid;
- (g) effective and timely cooperation with OLAF and, subject to the participation of the Member State concerned, with EPPO in their investigations or prosecutions pursuant to the applicable Union acts in accordance with the principle of sincere cooperation;
- (h) other situations or conduct of authorities that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union.'

23 Article 5 of that regulation, entitled 'Measures for the protection of the Union budget', provides, in paragraphs 1 to 4 thereof:

'1. Provided that the conditions set out in Article 4 of this Regulation are fulfilled, one or more of the following appropriate measures may be adopted in accordance with the procedure set out in Article 6 of this Regulation:

- (a) where the Commission implements the Union budget in direct or indirect management pursuant to points (a) and (c) of Article 62(1) of the Financial Regulation, and where a government entity is the recipient:
 - (i) a suspension of payments or of the implementation of the legal commitment or a termination of the legal commitment pursuant to Article 131(3) of the Financial Regulation;
 - (ii) a prohibition on entering into new legal commitments;
 - (iii) a suspension of the disbursement of instalments in full or in part or an early repayment of loans guaranteed by the Union budget;
 - (iv) a suspension or reduction of the economic advantage under an instrument guaranteed by the Union budget;
 - (v) a prohibition on entering into new agreements on loans or other instruments guaranteed by the Union budget;
- (b) where the Commission implements the Union budget under shared management with Member States pursuant to point (b) of Article 62(1) of the Financial Regulation:
 - (i) a suspension of the approval of one or more programmes or an amendment thereof;
 - (ii) a suspension of commitments;
 - (iii) a reduction of commitments, including through financial corrections or transfers to other spending programmes;
 - (iv) a reduction of pre-financing;

- (v) an interruption of payment deadlines;
- (vi) a suspension of payments.

2. Unless the decision adopting the measures provides otherwise, the imposition of appropriate measures shall not affect the obligations of government entities referred to in point (a) of paragraph 1 or of Member States referred to in point (b) of paragraph 1 to implement the programme or fund affected by the measure, and in particular the obligations they have towards final recipients or beneficiaries, including the obligation to make payments under this Regulation and the applicable sector-specific or financial rules. When implementing Union funds under shared management, Member States concerned by measures adopted pursuant to this Regulation shall report to the Commission on their compliance with those obligations every three months from the adoption of those measures.

The Commission shall verify whether applicable law has been complied with and, where necessary, take all appropriate measures to protect the Union budget, in line with sector-specific and financial rules.

3. The measures taken shall be proportionate. They shall be determined in light of the actual or potential impact of the breaches of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union. The nature, duration, gravity and scope of the breaches of the principles of the rule of law shall be duly taken into account. The measures shall, insofar as possible, target the Union actions affected by the breaches.

4. The Commission shall provide information and guidance for the benefit of final recipients or beneficiaries on the obligations by Member States referred to in paragraph 2 via a website or an internet portal. The Commission shall also provide, on the same website or internet portal, adequate tools for final recipients or beneficiaries to inform the Commission about any breach of these obligations that, in the view of these final recipients or beneficiaries, directly affects them. This paragraph shall be applied in a manner that ensures the protection of persons reporting on breaches of Union law, in line with the principles set out in Directive (EU) 2019/1937 of the European Parliament and of the Council [of 23 October 2019 on the protection of persons who report breaches of Union law (OJ 2019 L 305, p. 17)]. Information provided by final recipients or beneficiaries in accordance with this paragraph shall be accompanied by proof that the concerned final recipient or beneficiary has lodged a formal complaint with the relevant authority of the Member State concerned.'

24 As set out in Article 6 of that regulation, entitled 'Procedure':

'1. Where the Commission finds that it has reasonable grounds to consider that the conditions set out in Article 4 are fulfilled, it shall, unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively, send a written notification to the Member State concerned, setting out the factual elements and specific grounds on which it based its findings. The Commission shall inform the European Parliament and the Council without delay of such notification and its contents.

2. In light of the information received pursuant to paragraph 1, the European Parliament may invite the Commission for a structured dialogue on its findings.

3. When assessing whether the conditions set out in Article 4 are fulfilled, the Commission shall take into account relevant information from available sources, including decisions, conclusions

and recommendations of Union institutions, other relevant international organisations and other recognised institutions.

4. The Commission may request any additional information it requires to carry out the assessment referred to in paragraph 3, both before and after having sent the written notification pursuant to paragraph 1.

5. The Member State concerned shall provide the required information and may make observations on the findings set out in the notification referred to in paragraph 1 within a time limit to be specified by the Commission, which shall be at least one month and not more than three months from the date of notification of the findings. In its observations, the Member State may propose the adoption of remedial measures to address the findings set out in the Commission's notification.

6. The Commission shall take into account the information received and any observations made by the Member State concerned, as well as the adequacy of any proposed remedial measures, when deciding whether to submit a proposal for an implementing decision on the appropriate measures. The Commission shall carry out its assessment within an indicative time limit of one month from the receipt of any information from the Member State concerned or of its observations, or, when no information or observations are received, from the expiry of the time limit set in accordance with paragraph 5, and in any event within a reasonable time frame.

7. Where the Commission intends to make a proposal pursuant to paragraph 9, it shall, before doing so, give the Member State the opportunity to submit its observations, in particular on the proportionality of the envisaged measures, within one month.

8. When assessing the proportionality of the measures to be imposed, the Commission shall take into account the information and guidance referred to in paragraph 3.

9. Where the Commission considers that the conditions of Article 4 are fulfilled and that the remedial measures, if any, proposed by the Member State under paragraph 5 do not adequately address the findings in the Commission's notification, it shall submit a proposal for an implementing decision on the appropriate measures to the Council within one month of receiving the Member State's observations or, in the event that no observations are made, without undue delay and in any case within one month of the deadline set in paragraph 7. The proposal shall set out the specific grounds and evidence on which the Commission based its findings.

10. The Council shall adopt the implementing decision referred to in paragraph 9 of this Article within one month of receiving the Commission's proposal. If exceptional circumstances arise, the period for the adoption of that implementing decision may be extended by a maximum of two months. With a view to ensuring a timely decision, the Commission shall make use of its rights under Article 237 TFEU, where it deems it appropriate.

11. The Council, acting by a qualified majority, may amend the Commission's proposal and adopt the amended text by means of an implementing decision.'

25 Article 7 of the contested regulation, entitled ‘Lifting of measures’, provides in paragraphs 1 and 2 thereof:

‘1. The Member State concerned may, at any time, adopt new remedial measures and submit to the Commission a written notification including evidence to show that the conditions of Article 4 are no longer fulfilled.

2. At the request of the Member State concerned, or on its own initiative and at the latest one year after the adoption of measures by the Council, the Commission shall reassess the situation in the Member State concerned, taking into account any evidence submitted by the Member State concerned, as well as the adequacy of any new remedial measures adopted by the Member State concerned.

Where the Commission considers that the conditions of Article 4 are no longer fulfilled, it shall submit to the Council a proposal for an implementing decision lifting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has been remedied in part, it shall submit to the Council a proposal for an implementing decision adapting the adopted measures.

Where the Commission considers that the situation leading to the adoption of measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.

When the Member State concerned submits a written notification pursuant to paragraph 1, the Commission shall submit its proposal or adopt its decision within one month of receiving that notification. This period may be extended in duly justified circumstances, in which case the Commission shall without delay inform the Member State concerned of the reasons for the extension.

The procedure set out in paragraphs 3, 4, 5, 6, 9, 10 and 11 of Article 6 shall apply by analogy as appropriate.’

III. Forms of order sought and procedure before the Court

26 Hungary claims that the Court should:

- principally, annul the contested regulation;
- in the alternative, annul Article 4(1) and (2)(h), Article 5(2), the penultimate and final sentences of Article 5(3), and Article 6(3) and (8) of that regulation; and
- order the Parliament and the Council to pay the costs.

27 In addition, Hungary requested, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court should rule on the present case sitting in a Grand Chamber.

- 28 The Parliament and the Council contend that the Court should dismiss the action and order Hungary to pay the costs.
- 29 By application of 12 May 2021, the Parliament requested that the present case be determined pursuant to the expedited procedure provided for in Article 133 of the Rules of Procedure of the Court of Justice. In support of that request, the Parliament submitted that the adoption of the contested regulation was an essential political condition for its approval of Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ 2020, L 433I, p. 11) and that, in view of the economic urgency, the funds available under the COVID-19 recovery plan entitled '*Next Generation EU*' will have to be made available to Member States within an extremely short period. In that regard, it stated, in particular, that, pursuant to Article 3(4) of Regulation 2020/2094, at least 60% of the legal commitments will have to be entered into by 31 December 2022 and that the totality of the legal commitments will have to be entered into by 31 December 2023. In addition, the Parliament stated that, following the entry into force of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ 2020 L 424, p. 1), the Commission will start borrowing funds on capital markets in summer 2022 in order to finance the abovementioned recovery plan. According to the Parliament, borrowing and making available extremely large sums of money within a very short period will inevitably entail risks for the Union budget that the contested regulation is intended to protect. Such protection is important because an inability effectively to protect the Union budget risks having negative repercussions, in particular for long-term solidarity within the Union.
- 30 Article 133(1) of the Rules of Procedure provides that, at the request of the applicant or the defendant, the President of the Court may, after hearing the other party, the Judge-Rapporteur and the Advocate General, decide that a case is to be decided pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.
- 31 In the present case, on 9 June 2021, the President of the Court decided, after hearing the other parties, the Judge-Rapporteur and the Advocate General, to grant the Parliament's request. That decision was based on the fundamental importance of the present case for the EU legal order, in particular in so far as it concerns the Union's powers to protect its budget and financial interests against effects that may result from breaches of the values contained in Article 2 TEU.
- 32 By decision of the President of the Court of 25 June 2021, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission were granted leave to intervene in support of the forms of order sought by the Parliament and the Council.
- 33 By decision of the President of the Court of the same date, the Republic of Poland was granted leave to intervene in support of the form of order sought by Hungary.
- 34 By application of 11 May 2021, the Council requested that the Court disregard the passages of Hungary's application and of the annexes thereto, in particular those of Annex A.3, that make reference to the opinion of the Council Legal Service No 13593/18 of 25 October 2018 concerning the Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018) 324 final), which led to the contested regulation ('Legal Opinion

No 13593/18'), or that reproduce the content or reasoning of that legal opinion. On 29 June 2021, the Court decided to reserve its decision on that application until it ruled on the substance of the case.

- 35 On 7 September 2021, considering that the present case is of exceptional importance, the Court decided, after hearing the Advocate General, to refer the case to the full Court, pursuant to the last paragraph of Article 16 of the Statute of the Court of Justice of the European Union.

IV. The request that certain passages of Hungary's application and Annex A.3 thereto be disregarded

A. Arguments of the parties

- 36 In support of its request that paragraphs 21, 22, 164 and 166 of Hungary's application and Annex A.3 thereto be disregarded in so far as they refer to Legal Opinion No 13593/18, by reproducing the content of that opinion or reflecting the analysis undertaken therein, the Council argues that that legal opinion is an unclassified internal document marked 'LIMITE'. Accordingly, the Council submits, it is covered by the obligation of professional secrecy and its production for use in legal proceedings is subject to the conditions laid down, inter alia, in Article 6(2) of the Council's Rules of Procedure and in paragraphs 20 and 21 of the Guidelines for the handling of documents internal to the Council.
- 37 Under Article 6(2) of those rules of procedure, only the Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions of EU law on public access to documents. Furthermore, pursuant to paragraphs 20 and 21 of those guidelines, a 'LIMITE' document is not to be made public unless a decision to that effect has been taken by duly authorised Council officials, by the national administration of a Member State, after consulting the GSC, or, where relevant, by the Council, in accordance with Regulation No 1049/2001 and the Council's Rules of Procedure.
- 38 In the present case, to date, the Council has made public, in accordance with Regulation No 1049/2001, only the first eight paragraphs of Legal Opinion No 13593/18 and, furthermore, has not authorised Hungary to produce it for use in the present judicial proceedings.
- 39 In accordance with settled case-law of the Court of Justice and the General Court, it would be contrary to the public interest, which requires that the institutions should be able to benefit from the advice of their legal service, given in full independence, to allow such internal documents to be produced in proceedings before the Court of Justice unless their production has been authorised by the institution concerned or ordered by the Court.
- 40 The Council states that the reason it has granted only partial access to Legal Opinion No 13593/18 following requests made pursuant to Regulation No 1049/2001 is in particular because of the risk that, in proceedings concerning the lawfulness of the contested regulation, an applicant might confront it with the arguments put forward by its own legal service in that legal opinion, in breach of the requirements of a fair hearing and equality of arms between the parties to judicial proceedings. Incidentally, that risk materialised when the present action was brought.

- 41 Moreover, according to the Council, Hungary has always voted, on the basis of those arguments, in favour of decisions refusing public access to Legal Opinion No 13593/18. If Hungary had wanted that legal opinion to be made public, it should have made a request to that effect under Regulation No 1049/2001 or sought authorisation under the Council's Rules of Procedure and the Guidelines for the handling of documents internal to the Council.
- 42 The Council submits that if Hungary were authorised to use Legal Opinion No 13593/18 in the present case, even though it did not follow the procedure laid down for that purpose and the issue has not first been subject to effective judicial review, the procedures laid down by Regulation No 1049/2001 and by the Council's Rules of Procedure would be circumvented. It refers in that regard to the settled case-law of the Court, which grants an institution's request to remove its internal documents from the file before the Court where it has not authorised the production of such documents for use in legal proceedings, and takes the view that, accordingly, Legal Opinion No 13593/18 cannot be used in the present case.
- 43 In addition, the Council submits that, if the production of Legal Opinion No 13593/18 were permitted in the present proceedings, it would be obliged to comment, before the EU judicature, on an opinion that was intended for internal use and given by its own legal service during the drafting of the contested regulation, which would be contrary to the requirements of a fair hearing and would affect the Council's ability to receive frank, objective and comprehensive advice.
- 44 Lastly, in accordance with the Court's case-law, the fact that Legal Opinion No 13593/18 was disclosed without the Council's authorisation on a media outlet's website and its content has thus been made public has no bearing on those considerations. Moreover, the harm caused to the Council and the EU institutions as a result of the unauthorised use of that legal opinion in the present proceedings would go far beyond that caused by the publication of that legal opinion in the media. Allowing Hungary to rely on that legal opinion would threaten the public interest in the institutions being able to benefit from the advice of their legal service in full independence and would deprive the procedures intended to protect that interest of all practical effect.
- 45 Hungary disputes the Council's arguments.

B. Findings of the Court

- 46 By its arguments, the Council submits, in essence, that Hungary has, by including, in paragraphs 21, 22, 164 and 166 of the application and Annex A.3 thereto, references to Legal Opinion No 13593/18 and analyses of the content of that opinion, first, infringed Article 6(2) of the Council's Rules of Procedure, secondly, infringed paragraphs 20 and 21 of the Guidelines for the handling of documents internal to the Council, thirdly, infringed Regulation No 1049/2001, fourthly, failed to have regard to the public interest in the Council being able to benefit from the advice of its legal service, given in full independence, and, fifthly, placed the Council in a situation where it might be required to take a position in the main proceedings on the analyses of its own legal service, thus breaching the principle of equality of arms.
- 47 As regards the alleged infringement of Article 6(2) of the Council's Rules of Procedure, it should be borne in mind that, as set out in that provision, 'the Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public'.

- 48 In that regard, it should be noted, first of all, that the application and Annex A.3 thereto make reference to paragraphs of Legal Opinion No 13593/18 other than the eight paragraphs that have been made public by the Council under Regulation No 1049/2001, next, that Hungary did not ask the Council for authorisation to produce a copy of or extracts from that legal opinion for use in legal proceedings and, lastly, that Hungary did not annex a copy of that legal opinion to its application.
- 49 Accordingly, it is necessary to determine whether, by referring to passages of Legal Opinion No 13593/18 in its application and Annex A.3 thereto, Hungary is to be regarded as having produced for use in legal proceedings extracts from that opinion, within the meaning of Article 6(2) of the Council's Rules of Procedure.
- 50 In that regard, it should be pointed out that paragraphs 22 and 164 of the application and the second to seventh and ninth paragraphs of Annex A.3 thereto contain Hungary's own arguments which Hungary claims reflect the analysis carried out in that legal opinion, while paragraphs 21 and 166 of the application contain, also in the context of Hungary's own arguments, mere references to that legal opinion. Such arguments accompanied by mere assertions of correlation with Legal Opinion No 13593/18 and references thereto – the accuracy of which, moreover, is disputed by the Council – cannot be regarded as constituting extracts from that legal opinion.
- 51 However, Annex A.3 to the application, in so far as its fourth paragraph contains a quotation from Legal Opinion No 13593/18, must be regarded as an 'extract' from that legal opinion, within the meaning of Article 6(2) of the Council's Rules of Procedure. Furthermore, producing such an extract in the annex to a procedural document constitutes 'production for use in legal proceedings', within the meaning of that provision.
- 52 Consequently, Hungary was in principle obliged, under Article 6(2) of the Council's Rules of Procedure, to obtain the Council's authorisation in order to produce before the Court the extract from Legal Opinion No 13593/18 contained in Annex A.3 to the application.
- 53 In that regard, it is indeed clear, as the Council states, from the Court's settled case-law that it would be contrary to the public interest, which requires that the institutions should be able to benefit from the advice of their legal service, given in full independence, to allow such internal documents to be produced in proceedings before the Court unless their production has been authorised by the institution concerned or ordered by the Court (order of 14 May 2019, *Hungary v Parliament*, C-650/18, not published, EU:C:2019:438, paragraph 8 and the case-law cited, and judgment of 31 January 2020, *Slovenia v Croatia*, C-457/18, EU:C:2020:65, paragraph 66).
- 54 As the Council submits, by producing such a legal opinion without authorisation, the applicant is confronting the institution concerned, in proceedings concerning the lawfulness of a contested measure, with an opinion issued by its own legal service during the drafting of that measure. In principle, to allow the applicant to put before the Court a legal opinion from an institution the disclosure of which has not been authorised by that institution would be contrary to the requirements of a fair hearing and would be tantamount to circumventing the procedure for requesting access to such a document introduced by Regulation No 1049/2001 (see, to that effect, order of 14 May 2019, *Hungary v Parliament*, C-650/18, not published, EU:C:2019:438, paragraph 14 and the case-law cited, and judgment of 31 January 2020, *Slovenia v Croatia*, C-457/18, EU:C:2020:65, paragraph 68).

- 55 Nevertheless, account should be taken of the principle of openness, laid down in the second paragraph of Article 1 and Article 10(3) TEU and Article 15(1) and Article 298(1) TFEU, which guarantees, inter alia, that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see, to that effect, order of 14 May 2019, *Hungary v Parliament*, C-650/18, not published, EU:C:2019:438, paragraph 13 and the case-law cited). By allowing divergences between various points of view to be openly debated, it also contributes to increasing those citizens' confidence in those institutions (judgment of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, EU:C:2018:660, paragraph 75 and the case-law cited).
- 56 Admittedly, it is only exceptionally that the principle of openness will be capable of justifying, in judicial proceedings, the disclosure of a document of an institution that has not been released to the public and which contains a legal opinion. For that reason, the Court has held that the retention, in the file of a particular case, of a document containing a legal opinion from an institution is not justified by any overriding public interest where, first, that legal opinion does not relate to a legislative procedure in respect of which increased openness is required and, secondly, the interest in the document's retention consists, for the Member State concerned, in the ability to rely on that legal opinion in the context of a dispute. According to the Court, the production of such a legal opinion appears to be guided by the applicant's own interest in supporting its arguments and not by any overriding public interest, such as the interest in making public the procedure which resulted in the contested measure (see, to that effect, order of 14 May 2019, *Hungary v Parliament*, C-650/18, not published, EU:C:2019:438, paragraph 18, and judgment of 31 January 2020, *Slovenia v Croatia*, C-457/18, EU:C:2020:65, paragraph 71).
- 57 In the present case, it must be noted that, contrary to the cases which gave rise to the case-law cited in the preceding paragraph, Legal Opinion No 13593/18 relates to a legislative procedure.
- 58 In that regard, the Court has held that the disclosure of documents containing the advice of an institution's legal service on legal issues arising when legislative initiatives are being debated increases the transparency and openness of the legislative process and strengthens the right of EU citizens to scrutinise the information which has formed the basis of a legislative measure. The Court has concluded that there is no general need for confidentiality as regards the opinions of the Council Legal Service relating to a legislative process and that Regulation No 1049/2001 imposes, in principle, an obligation to disclose them (see, to that effect, judgment of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraphs 67 and 68).
- 59 It is precisely openness in that regard which, by allowing divergences between various points of view to be openly debated, contributes to reducing doubts in the minds of citizens, not only as regards the lawfulness of an isolated legislative measure but also as regards the legitimacy of the legislative process as a whole (see, to that effect, judgment of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 59), and contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 TEU and in the Charter, as stated in recital 2 of Regulation No 1049/2001.
- 60 That openness does not, however, preclude a refusal, on account of the protection of legal advice, to disclose a specific legal opinion, issued in the context of a given legislative process, but being of a particularly sensitive nature or having a particularly wide scope that goes beyond the context of that legislative process, in which case it is incumbent on the institution concerned to give a detailed statement of reasons for such a refusal (judgment of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 69).

- 61 In the present case, as the Advocate General observed in points 70 to 72 of his Opinion, the Council has failed to show that Legal Opinion No 13593/18 is of a particularly sensitive nature or has a particularly wide scope that goes beyond the context of the legislative process to which it relates.
- 62 Accordingly, neither Article 6(2) of the Council's Rules of Procedure nor the case-law referred to in paragraph 53 above precluded Hungary from disclosing all or part of that legal opinion in its application.
- 63 That finding is not undermined by the fact that Hungary has a particular interest in the disputed passages of its application and of Annex A.3 thereto being taken into consideration by the Court. Since the consideration of those passages is also likely to contribute to reducing doubts in the minds of citizens, not only as regards the lawfulness of the contested regulation but also as regards the legitimacy of the legislative process as a whole, it serves in any event the overriding public interest referred to in paragraphs 58 and 59 above.
- 64 Consequently, and without it being necessary to rule separately on the pleas alleging infringement of paragraphs 20 and 21 of the Guidelines for the handling of documents internal to the Council, infringement of Regulation No 1049/2001 and breach of the principle of equality of arms, since those pleas cannot, in any event, succeed, in the light of the considerations set out in paragraphs 55 to 63 above, the Council's request that the passages of Hungary's application and of the annexes thereto, in particular those of Annex A.3, be disregarded in so far as they refer to Legal Opinion No 13593/18, by reproducing the content of that opinion or reflecting the analysis undertaken therein, must be refused as unfounded.

V. The action

- 65 By its action, Hungary, supported by the Republic of Poland, seeks, principally, the annulment of the contested regulation in its entirety and, in the alternative, the partial annulment of the contested regulation, namely of Article 4(1), Article 4(2)(h), Article 5(2), the third sentence of Article 5(3), the fourth sentence of Article 5(3), and Article 6(3) and (8) of that regulation.

A. The principal claim for annulment of the contested regulation in its entirety

- 66 In support of its principal claim for annulment of the contested regulation in its entirety, Hungary relies on three pleas in law. It is appropriate to examine, in the first place and together, the first and second pleas, alleging, in essence, that the European Union lacked competence to adopt the contested regulation.

1. The first and second pleas, alleging that the European Union lacked competence to adopt the contested regulation

(a) Arguments of the parties

- 67 By the first plea, Hungary, supported by the Republic of Poland, submits that there is no legal basis for the contested regulation. It states in that regard that Article 322(1)(a) and (b) TFEU authorises the EU legislature to adopt, respectively, 'the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and

auditing accounts’ and ‘rules providing for checks on the responsibility of financial actors, in particular authorising officers and accounting officers’. It adds that, in accordance with Article 322(2) TFEU, the Council is to determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union’s own resources are to be made available to the Commission, and is to determine the measures to be applied to meet cash requirements.

- 68 Those provisions have previously served, in whole or in part, as the legal basis for multiple legal measures related to the annual budget of the Union or its multiannual financial framework, such as the Financial Regulation, Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak (OJ 2020 L 130, p. 1), which allows an exceptional co-financing rate to be applied in the context of structural and investment funds, or Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) No 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (OJ 2020 L 437, p. 30), which sets out the implementing rules for fostering the repair of damage caused by the pandemic and provides, on an exceptional basis, additional resources to help social cohesion and economic recovery.
- 69 As regards the Financial Regulation, the first part of that regulation sets out, generally and comprehensively, the principles and procedures for establishing and implementing the Union budget and for the control of its funds. Those principles and procedures constitute ‘financial rules’ which determine the procedure to be adopted for establishing and implementing the budget, within the meaning of Article 322(1)(a) TFEU. The same is true of Regulations 2020/558 and 2020/2221, the rules of which are effectively and directly related to the Union budget, the multiannual financial framework and the aid provided from the various EU funds.
- 70 Conversely, the essential elements of the provisions of the contested regulation, such as the definition of the concept of ‘the rule of law’ or the ways in which the principles of the rule of law may be breached, cannot objectively be regarded as financial rules which determine the procedure to be adopted for implementing the budget, within the meaning of that provision. A comparison of the rules on conflicts of interests contained respectively in that regulation and in the Financial Regulation in particular makes clear that Article 322(1) TFEU is not the appropriate legal basis for the contested regulation.
- 71 In that regard, it follows from Article 61 of the Financial Regulation that the obligation to avoid a conflict of interests applies to all methods of implementing Union funds, including to Member State authorities involved in implementing those funds, with the result that Member States are required to adopt appropriate rules to that effect. The Financial Regulation contains, to that end, appropriate procedural rules to enable conflicts of interest to be resolved.
- 72 It is apparent from Article 3(b) of the contested regulation that failure to ensure the absence of conflicts of interest may be indicative of a breach of the principles of the rule of law, although that regulation does not lay down any procedural rules relating to the measures that could be adopted by the Member States to prevent or remedy such conflicts. That provision therefore allows measures to be taken against Member States for failure to meet unspecified expectations, going beyond the requirements set out in the Financial Regulation.

- 73 More generally, Hungary submits that the provisions of the contested regulation cannot be regarded as financial rules which determine the procedure to be adopted for implementing the Union budget. The purpose of that regulation, according to Article 1 thereof, is to establish the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States. To that end, Article 2 of that regulation defines the concept of ‘the rule of law’ and Article 3 of that regulation sets out cases which may be indicative of breaches of the principles of the rule of law. The essential elements of the contested regulation are therefore the definition of the concept of ‘the rule of law’ and the ways in which the rule of law may be breached.
- 74 Article 322(1)(a) TFEU does not authorise the Union to define the cases in which the rule of law will be breached or even to determine the constituent elements of the concept of ‘the rule of law’. Accordingly, that provision does not constitute a legal basis for examining or establishing breaches of the principles of the rule of law or for prescribing the legal consequences of such breaches, since such rules cannot objectively be regarded as financial rules which determine the procedure to be adopted for implementing the budget.
- 75 The mere fact that the substantive and procedural rules laid down in the contested regulation relate to the Union budget is not sufficient for them to be classified as ‘financial rules’, within the meaning of Article 322(1) TFEU. An interpretation of the concept of ‘financial rules’ so broad as to cover the provisions of the contested regulation would have the effect of extending that concept to virtually all EU law and to considerable parts of the legal systems of the Member States, since it would be difficult to find a provision in respect of which it is impossible to establish at least an indirect effect on an EU budgetary resource.
- 76 That the legal basis for the contested regulation is inappropriate also results from the fact that Article 5(2) of that regulation does not contain financial rules which determine the procedure to be adopted for implementing the Union budget. The obligation to continue to implement a given programme after irregularities, breaches or failures affecting the sound financial management of the Union budget or the protection of the financial interests of the Union have been identified does not come within the control and audit obligations incumbent on the Member States in the implementation of the budget pursuant to Article 317 TFEU, nor does it arise from the financial rules which determine the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts, provided for in Article 322 TFEU, in order to ensure compliance with budgetary principles and, in particular, the principles of sound financial management, openness and non-discrimination.
- 77 Those financial rules do not oblige the Member States to continue to implement a given programme after such irregularities, breaches or failures have been identified. On the contrary, Article 322(1)(a) TFEU permits the adoption of financial rules, such as the suspension of payments for a given programme, which are specifically intended to ensure that the Member State complies with the conditions laid down by the relevant financial rules in order to ensure the protection of the financial interests of the Union and the effective attainment of the objectives pursued under the programme in question.
- 78 It runs counter to the logic underlying those financial rules that the Union’s financial rules can require a Member State to continue to implement a programme even if the Commission has found irregularities in the implementation of that programme which affect the financial interests of the Union and the principle of sound financial management or which jeopardise the attainment of the objectives pursued.

- 79 It follows, according to Hungary, that the objective pursued by imposing such an obligation is not to ensure the protection of the financial interests of the Union, but to penalise a Member State in the event of a breach of the principles of the rule of law, which is incompatible with the legal basis relied on. In addition, the obligation on a Member State to finance entirely from its own budget programmes over the design of which it has only a limited influence would restrict its right to use its own budget and would introduce a requirement that places a burden not on the Union budget but on the budget of the Member State concerned.
- 80 By its second plea, Hungary claims that the contested regulation infringes, first, Article 7 TEU, secondly, Article 4(1) and Article 5(2) TEU and, thirdly, Article 13(2) TEU and Article 269 TFEU.
- 81 It submits, in the first place, that Article 7 TEU is the only article on the basis of which it may be determined that there is a risk of a serious breach by a Member State of the values contained in Article 2 TEU. The contested regulation establishes, in a specific area, a parallel procedure with the same purpose as the procedure laid down in Article 7 TEU, in breach of that article.
- 82 First, the Treaties do not provide that Article 7 TEU may be implemented by legislative measures relating to the finding of a breach of the values contained in Article 2 TEU and the determination of the legal consequences of such a breach.
- 83 Secondly, Hungary argues that the procedure laid down by the contested regulation means that the Court has jurisdiction to review decisions adopted by the Council on the basis of that regulation and, therefore, to assess whether a Member State has breached the principles of the rule of law, even where the national legislation or practice which gave rise to that breach falls outside the scope of EU law and the Court does not, therefore, have jurisdiction to examine them. The contested regulation thus extends, in breach of the Treaties and in particular by circumventing the limitations laid down in Article 269 TFEU, the powers not only of the Council and of the Commission, but also of the Court.
- 84 Thirdly, in the system of the Treaties, only Article 7 TEU grants the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the principles of the rule of law in a Member State.
- 85 In a manner similar to that provision, the contested regulation provides that the Commission is to decide on three elements before submitting its proposal for an implementing decision to the Council, and that the Council must then take a view on each of those elements by three successive decisions. First of all, the Commission is to determine, in accordance with Articles 3 and 4 of that regulation, that there has been a breach of the principles of the rule of law. Next, it is to be established, under Article 4(1) of that regulation, whether that breach has a sufficiently close link with the Union budget or the protection of the financial interests of the Union. Lastly, it is to be determined whether a decision should be adopted, under Article 5 of that regulation, determining the measures deemed necessary for the protection of the Union budget.
- 86 Of those three decisions, the first and third are covered by Article 7 TEU. The determination that there has been a breach of the principles of the rule of law, set out in Article 4(2) of the contested regulation, read in conjunction with Article 3 thereof, is identical in substance to the determination which it is for the Council and the European Council to make under Article 7(1) and (2) TEU, while the adoption of measures under Article 5 of that regulation is an option

parallel to that of suspending certain of the rights of the Member State in question, provided for in Article 7(3) TEU, since such a suspension may relate to the budgetary resources payable to the Member State concerned.

- 87 The fact that the measures that may be adopted under the contested regulation are linked to the breach of one of the values contained in Article 2 TEU is supported by Article 5(3) and Article 6(8) of that regulation, from which it follows that the nature, duration, gravity and scope of the breach of the principles of the rule of law and the relevant sources are to be duly taken into account when assessing the proportionality of the measures. Accordingly, both the Commission and the Council are required to carry out a thorough assessment of the existence and scope of such a breach, whereas that assessment can be carried out only on the basis of Article 7 TEU.
- 88 Hungary, supported by the Republic of Poland, adds that Article 7 TEU lays down a sanctions procedure of a constitutional nature against an individual Member State. Furthermore, the Member States, as the constituent power of the European Union, have set out that procedure exhaustively in the TEU because of the political dimension of the areas covered by that procedure, areas which do not necessarily fall within the scope of EU law, such as those relating to the functioning of the authorities and institutions of the Member States.
- 89 The exclusive nature of the procedure laid down in Article 7 TEU as regards breaches of the principles of the rule of law is confirmed by paragraphs 18 and 24 of the opinion of the Council Legal Service No 10296/14 of 27 May 2014 on the compatibility with the Treaties of the Commission's Communication entitled 'New EU framework to strengthen the rule of law'. While the contested regulation endeavours to link the examination of potential breaches of the principles of the rule of law to the implementation of the Union budget, its real objective, as is apparent from the explanatory memorandum to the Commission's proposal which led to the adoption of that regulation, is to examine whether the principles of the rule of law are respected and to impose penalties where it is determined that a Member State has failed to respect those principles.
- 90 In the second place, Hungary submits that the contested regulation is in breach of the principles of the division and conferral of powers, as guaranteed by Article 4(1) and Article 5(2) TEU, since it allows the EU institutions to examine national situations and institutions which fall outside the scope of EU law. It is not clear from that regulation that the examination of breaches of the principles of the rule of law is limited to areas which come within the European Union's competence and, moreover, some of the situations set out in Articles 3 and 4 thereof may relate to breaches which are not limited to those areas.
- 91 Under those principles of the division and conferral of powers, such an examination falling outside the scope of the European Union's competence is possible only for the purposes of, and in accordance with the procedure laid down by, a provision of primary law, such as Article 7 TEU. The contested regulation, however, does not have such a provision of primary law as its basis, with the result that that regulation must be regarded as establishing a derogation from the general rules on the division of powers between the European Union and the Member States as enshrined in the Treaties. In addition, whereas the procedure laid down in Article 7(1) and (2) TEU covers only situations showing a clear risk of a serious breach of the values contained in Article 2 TEU and a serious and persistent breach of those values, the procedure laid down by the contested regulation may apply even where the alleged breaches are neither serious nor persistent.

- 92 Lastly, Hungary, supported by the Republic of Poland, states that, although the examination carried out under the contested regulation may, in some respects, be linked to the sound financial management of the Union budget or the protection of the financial interests of the Union, that does not however mean that the situations examined must necessarily be regarded as coming within the scope of EU law merely by virtue of that relationship. It states that the existence of a breach of the rule of law is analysed during the first stage of the examination, whereas the relationship with the Union budget can be established only at the end of the second stage. The contested regulation therefore allows a determination that a Member State has breached the rule of law in situations which fall outside the scope of EU law.
- 93 In the third place, Hungary submits that the contested regulation undermines the institutional balance as established in Article 7 and Article 13(2) TEU and Article 269 TFEU, as well as the rights which the Member State concerned derives from the first of those provisions.
- 94 In that regard, contrary to Article 7 TEU, the contested regulation grants the Commission alone the right of initiative to determine that there has been a breach of the principles of the rule of law. For the Council's vote, it requires a different majority from that prescribed in Article 7 TEU. In addition, the contested regulation lays down an obligation only to inform the Parliament – whereas the Parliament is given a right of approval under Article 7(1) and (2) TEU – and does not grant any power to the European Council. Since a Council decision laying down measures under the contested regulation is adopted by a qualified majority, the procedural position of the Member State concerned is weakened, having regard in particular to the fact that, under Article 7(2) and (3) TEU, the adoption of measures pursuant to that provision requires a unanimous decision of the European Council.
- 95 The contested regulation thus responds to the EU legislature's intention, reflected in the explanatory memorandum to the Commission proposal which led to the adoption of that regulation, to provide an 'easier', 'more rapid' and 'more effective' means of establishing and penalising breaches of the principles of the rule of law. By doing so, the contested regulation, by way of derogation from Article 7 TEU, grants new powers to the Council, the Commission and the Court, allowing the Court in particular, in breach of Article 269 TFEU, to examine the merits of decisions determining that there have been breaches of the principles of the rule of law. That regulation therefore runs counter to the express intention of the Member States, as authors of the Treaties, to limit the Court's powers to procedural issues in respect of actions concerning a measure adopted by the European Council or by the Council under Article 7 TEU.
- 96 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute those arguments.

(b) Findings of the Court

- 97 By its first and second pleas, Hungary, supported by the Republic of Poland, submits, in essence, first, that neither Article 322(1)(a) TFEU nor any other provision of the TFEU can constitute an appropriate legal basis for the adoption of the contested regulation, in particular of Articles 2 to 4 and Article 5(2) of that regulation. It adds, secondly, that the procedure established by the contested regulation circumvents the procedure laid down in Article 7 TEU – which, it is submitted, is the exclusive procedure for the protection of the values contained in Article 2 TEU – and undermines the limitation on the Court's powers laid down in Article 269 TFEU.

(1) The legal basis for the contested regulation

- 98 As a preliminary point, it should be borne in mind that, under Article 322(1)(a) TFEU, the Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, are to adopt by means of regulations ‘the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts’.
- 99 Such rules are intended to regulate all aspects related to the implementation of the Union budget covered by Title II, entitled ‘Financial provisions’, of Part Six of the TFEU, relating to ‘institutional and financial provisions’ and, therefore, to regulate implementation in the broad sense.
- 100 Aside from the fact that Article 322 TFEU is found in Chapter 5, entitled ‘Common provisions’, of Title II, it should be noted that reference is made to that provision in Article 310(2) and (3) TFEU, which is found in the introduction to Title II, in the first and second paragraphs of Article 315 and in the first and second paragraphs of Article 316 TFEU, which are found in Chapter 3 of Title II, entitled ‘The Union’s annual budget’, and in Article 317 TFEU, which is found in Chapter 4 of that title, entitled ‘Implementation of the budget and discharge’.
- 101 Articles 310 and 315 to 317 TFEU all relate to the implementation of the Union budget.
- 102 Article 310 TFEU states, in paragraph 1, that all items of revenue and expenditure of the Union are to be included in estimates to be drawn up for each financial year and are to be shown in the budget; it provides, in paragraph 3, that the implementation of expenditure shown in the budget requires the prior adoption of a legally binding Union act providing a legal basis for Union action and for the implementation of the corresponding expenditure in accordance with the regulation referred to in Article 322 TFEU, except in cases for which that law provides. Lastly, Article 310 TFEU requires, in paragraph 5, that the budget be implemented in accordance with the principle of sound financial management and that Member States cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with that principle.
- 103 The first paragraph of Article 315 TFEU provides that if, at the beginning of a financial year, the budget has not yet been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget in accordance with the provisions of the regulations made pursuant to Article 322 TFEU; that sum is not, however, to exceed one twelfth of the appropriations provided for in the same chapter of the draft budget. Article 316 TFEU relates to the carrying forward to the next financial year of any appropriations that are unexpended at the end of the financial year.
- 104 Article 317 TFEU states, *inter alia*, that the Commission is to implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322 TFEU, on its own responsibility and within the limit of the appropriations, having regard to the principle of sound financial management. It also requires Member States to cooperate with the Commission to ensure that the appropriations are used in accordance with that principle and states that regulations made pursuant to Article 322 TFEU are to lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities.

- 105 It follows that the financial rules which determine ‘in particular the procedure to be adopted for’ implementing the budget and for presenting and auditing accounts, within the meaning of Article 322(1)(a) TFEU read in the light of the provisions referred to in paragraph 101 above, cover not only the rules which define how expenditure shown in the budget is to be implemented as such but also, in particular, the rules which determine the control and audit obligations on the Member States when the Commission implements the budget in cooperation with them, and the resulting responsibilities. In particular, it is clear that those financial rules are intended, inter alia, to ensure observance of the principle of sound financial management, including by the Member States, when implementing the Union budget.
- 106 It is in the light of the above considerations that it is necessary to examine, in the present case, whether Article 322(1)(a) TFEU is capable of constituting the appropriate legal basis for the adoption of the contested regulation.
- 107 In that regard, it is settled case-law that the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and content of that measure (judgments of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 31; of 8 December 2020, *Hungary v Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 38; and of 8 December 2020, *Poland v Parliament and Council*, C-626/18, EU:C:2020:1000, paragraph 43).
- 108 In addition, to determine the appropriate legal basis, the legal framework within which new rules are situated may be taken into account, in particular in so far as that framework is capable of shedding light on the purpose of those rules (judgments of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 32; of 8 December 2020, *Hungary v Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 39; and of 8 December 2020, *Poland v Parliament and Council*, C-626/18, EU:C:2020:1000, paragraph 44).
- 109 In the present case, as regards, in the first place, the question whether the contested regulation, in the light of its purpose, falls within the scope of the legal basis of Article 322(1)(a) TFEU, Hungary, supported by the Republic of Poland, submits that the ultimate objective of that regulation is to enable the Commission and the Council to examine whether the principles of the rule of law are respected by the Member States and, if breaches of those principles are found, to impose penalties through the Union budget, an objective which is also apparent from the explanatory memorandum accompanying the Commission proposal which led to the adoption of that regulation.
- 110 In that regard, first, Article 1 of the contested regulation states that that regulation establishes ‘the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States’. It is thus apparent from the wording of that provision that the contested regulation is intended to protect the Union budget from any effects that may result from breaches of the principles of the rule of law in the Member States.
- 111 Secondly, it follows from a combined reading of Article 4(1) and Article 6(1) of the contested regulation that the procedure laid down for the adoption of ‘appropriate measures’ for the protection of the Union budget can be initiated by the Commission only where it finds that there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.

- 112 In addition, under Article 5(1) and (3) of that regulation, those appropriate measures consist, essentially, in the suspension of payments, of the implementation of legal commitments, of the disbursement of instalments, of the economic advantage under a guaranteed instrument, of the approval of programmes, or of commitments; terminations of legal commitments; prohibitions on entering into new legal commitments or entering into new agreements; early repayments of guaranteed loans; reductions of the economic advantage under a guaranteed instrument, of commitments or of pre-financings; and interruption of payment deadlines, and those measures must be proportionate, that is to say, limited to what is strictly necessary in the light of the actual or potential impact of breaches of the principles of the rule of law on the financial management of the Union budget or the financial interests of the Union.
- 113 Furthermore, in accordance with the second subparagraph of Article 7(2) of the contested regulation, the Commission is to propose to the Council that the adopted measures be lifted where the conditions laid down Article 4 of that regulation are no longer fulfilled and, therefore, in particular where the sound financial management of the Union budget or the protection of the financial interests of the Union is no longer affected or at serious risk of being affected, with the result that, as the Advocate General observed in point 185 of his Opinion, those measures must be lifted where the impact on the implementation of the budget ceases, even though the breaches of the principles of the rule of law found may persist.
- 114 The types of measures which may be adopted, the criteria relating to the choice and scope of those measures and the conditions for the adoption and lifting of measures, in so far as they all relate to an effect or a serious risk of an effect on the sound financial management of the Union budget or the protection of the financial interests of the Union, support the finding that the purpose of the contested regulation is to protect the Union budget during its implementation.
- 115 Furthermore, it is apparent from the wording of Article 5(2) of the contested regulation, read in the light of Article 5(4) and recital 19 of that regulation, that that provision is intended not to penalise a Member State for a breach of a principle of the rule of law, as Hungary, supported by the Republic of Poland, submits, but to safeguard the legitimate interests of final recipients or beneficiaries when appropriate measures are adopted under that regulation against a Member State. That provision thus sets out the consequences of such measures with regard to third parties. Accordingly, that provision is not such as to support the claim that the contested regulation is intended to penalise breaches of the principles of the rule of law in a Member State rather than to protect the Union budget.
- 116 Thirdly, as the Advocate General stated in point 130 of his Opinion, the recitals of the contested regulation confirm the objective pursued by that regulation, consisting, as apparent from Article 1 thereof, in the protection of the Union budget. Recitals 2 and 7 through 9 of that regulation indicate, in particular, that the European Council has stated that the financial interests of the Union are to be protected in accordance with the values set out in Article 2 TEU, that, whenever Member States implement the Union budget, respect for the rule of law is an essential precondition for compliance with the principles of sound financial management enshrined in Article 317 TFEU, that Member States can only ensure sound financial management if public authorities act in accordance with the law, if breaches of the law are effectively pursued and if arbitrary or unlawful decisions of public authorities can be subject to effective judicial review, and that the independence and impartiality of the judiciary and investigation and prosecution services are required as a minimum guarantee against unlawful and arbitrary decisions of public authorities that could harm the financial interests of the Union. Recital 13 of the contested regulation states that, in that context, there is therefore ‘a clear relationship between respect for

the rule of law and the efficient implementation of the Union budget in accordance with the principles of sound financial management’, and recital 15 of that regulation specifies that ‘breaches of the principles of the rule of law, in particular those that affect the proper functioning of public authorities and effective judicial review, can seriously harm the financial interests of the Union’.

- 117 As regards recital 14 of the contested regulation, while that recital states that the mechanism provided for by that regulation ‘complements’ the instruments that promote the rule of law and its application, it specifies that that mechanism does so ‘by protecting the Union budget against breaches of the principles of the rule of law affecting its sound financial management or the protection of the financial interests of the Union’.
- 118 Fourthly, it is true that, in the explanatory memorandum accompanying its proposal which led to the adoption of the contested regulation, the Commission stated that wishes had been expressed in favour of the European Union’s taking action to protect the rule of law and, consequently, adopting measures to ensure that it is respected. Nevertheless, in that explanatory memorandum, the Commission justified its proposal by the need ‘to protect the Union’s financial interests from the risk of financial loss caused by generalised deficiencies as regards the rule of law in a Member State’.
- 119 In the light of the foregoing considerations, it must be found that, contrary to Hungary’s submission, supported by the Republic of Poland, the purpose of the contested regulation is to protect the Union budget from effects resulting from breaches of the principles of the rule of law in a Member State in a sufficiently direct way, and not to penalise those breaches as such.
- 120 That purpose is in line with the requirement that the Union budget be implemented in accordance with the principle of sound financial management, laid down in particular in Article 310(5) TFEU, that requirement being applicable to all the provisions of Title II of Part Six of the TFEU relating to the implementation of the Union budget and therefore, *inter alia*, to Article 322(1)(a) TFEU.
- 121 In the second place, as regards whether, in the light of its content, the contested regulation falls within the scope of the legal basis of Article 322(1)(a) TFEU, Hungary, supported by the Republic of Poland, submits, in essence, that that cannot be the case for, in particular, Articles 2 to 4 and Article 5(2) of that regulation. First, Article 322(1)(a) TFEU does not enable either the concept of ‘the rule of law’ or that of ‘breaches of the principles of the rule of law’ to be defined. Secondly, the relationship between breaches of the principles of the rule of law and the Union budget is too broad and would, if accepted, enable any area of EU law and significant aspects of the legal systems of the Member States to be linked to it. Thirdly, Article 5(2) does not concern the Union budget or its implementation, but relates to the budgets of the Member States. Fourthly, Articles 2 to 4 allow the EU institutions to examine national situations and institutions which fall outside the scope of EU law.
- 122 In that regard, first, the parties to the proceedings agree that a ‘conditionality mechanism’, which makes the receipt of financing from the Union budget subject to compliance with certain conditions, is capable of falling within the concept of ‘financial rules’, within the meaning of Article 322(1)(a) TFEU.
- 123 However, while Hungary, supported by the Republic of Poland, takes the view that such a condition must be closely linked either to one of the objectives of a programme or of a specific EU action, or to the sound financial management of the Union budget, the Parliament and the

Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, take the view that such a mechanism can also entail ‘horizontal conditionality’ in the sense that the condition in question can be linked to the value of the rule of law contained in Article 2 TEU, which must be respected in all areas of Union action.

- 124 In that regard, it should be pointed out that, under Article 2 TEU, the European Union is founded on values, such as the rule of law, which are common to the Member States and that, under Article 49 TEU, respect for those values is a prerequisite for the accession to the European Union of any European State applying to become a member of the European Union (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 160 and 161 and the case-law cited).
- 125 As stated in recital 5 of the contested regulation, once a candidate State becomes a Member State, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, the common values contained in Article 2 TEU, on which the European Union is founded. That premiss is based on the specific and essential characteristics of EU law, which stem from the very nature of EU law and the autonomy it enjoys in relation to the laws of the Member States and to international law. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the EU law that implements them will be respected (see, to that effect, Opinion 2/13 (*Accession of the Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraphs 166 to 168, and judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 30, and of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 62). That recital also states that the laws and practices of Member States should continue to comply with the common values on which the European Union is founded.
- 126 It follows that compliance by a Member State with the values contained in Article 2 TEU is a condition for the enjoyment of all the rights deriving from the application of the Treaties to that Member State (judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 63; of 18 May 2021, *Asociația ‘Forumul Judecătorilor din România’ and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 162; and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 162). Compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession.
- 127 The values contained in Article 2 TEU have been identified and are shared by the Member States. They define the very identity of the European Union as a common legal order. Thus, the European Union must be able to defend those values, within the limits of its powers as laid down by the Treaties.
- 128 It follows that, in accordance with the principle of conferral of powers enshrined in Article 5(2) TEU and the principle of consistency of the European Union’s policies laid down in Article 7 TFEU, the rule of law – a value common to the European Union and the Member States which forms part of the very foundations of the European Union and its legal order – is capable of constituting the basis of a conditionality mechanism covered by the concept of ‘financial rules’ within the meaning of Article 322(1)(a) TFEU.

- 129 In that regard, it should be noted, first, that the Union budget is one of the principal instruments for giving practical effect, in the Union's policies and activities, to the principle of solidarity, mentioned in Article 2 TEU, which is itself one of the fundamental principles of EU law (see, by analogy, judgment of 15 July 2021, *Germany v Poland*, C-848/19 P, EU:C:2021:598, paragraph 38), and, secondly, that the implementation of that principle, through the Union budget, is based on mutual trust between the Member States in the responsible use of the common resources included in that budget. That mutual trust is itself based, as stated in paragraph 125 above, on the commitment of each Member State to comply with its obligations under EU law and to continue to comply, as is moreover stated in recital 5 of the contested regulation, with the values contained in Article 2 TEU, which include the value of the rule of law.
- 130 In addition, as recital 13 of the contested regulation states, there is a clear relationship between, on the one hand, respect for the value of the rule of law and, on the other hand, the efficient implementation of the Union budget, in accordance with the principles of sound financial management, and the protection of the financial interests of the Union.
- 131 That sound financial management and those financial interests are liable to be seriously compromised by breaches of the principles of the rule of law committed in a Member State, since those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure.
- 132 In particular, compliance with those conditions and objectives, as elements of EU law, cannot be fully guaranteed in the absence of effective judicial review designed to ensure compliance with EU law; the existence of such review, both in the Member States and at EU level, by independent courts and tribunals, is of the essence of the rule of law (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 219 and 222).
- 133 It follows from the foregoing that, contrary to Hungary's submission, supported by the Republic of Poland, a conditionality mechanism may also fall within the scope of the concept of 'financial rules' referred to in Article 322(1)(a) TFEU where it makes the receipt of financing from the Union budget subject to horizontal conditionality which is linked to respect by a Member State for the value of the rule of law, contained in Article 2 TEU, and which relates to the implementation of the Union budget.
- 134 Article 4(1) of the contested regulation establishes such a horizontal conditionality mechanism, since it provides that appropriate measures are to be taken where it is established that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.
- 135 Article 5(1) of that regulation sets out, exhaustively, the 'appropriate measures' that may be adopted, which are summarised in paragraph 112 above and which in fact all relate to the implementation of the Union budget.
- 136 As regards the condition laid down in Article 4(1) of the contested regulation relating to the existence of 'breaches of the principles of the rule of law', Article 2(a) of the contested regulation states that the concept of 'the rule of law' is to be understood, for the purposes of that regulation, as the 'Union value enshrined in Article 2 TEU' and that that concept includes the principles of

legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection, separation of powers and non-discrimination and equality before the law. That provision states, however, that the concept of ‘the rule of law’, as defined for the purposes of the application of the contested regulation, ‘shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU’. It follows that respect for those values and principles – in so far as they form part of the very definition of the value of ‘the rule of law’ contained in Article 2 TEU or, as is apparent from the second sentence of that article, are closely linked to a society that respects the rule of law – may be required in the context of a horizontal conditionality mechanism such as that established by the contested regulation.

- 137 Furthermore, Article 3 of the contested regulation, which identifies cases which may be indicative of breaches of those principles, including a failure to ensure the absence of conflicts of interest, is intended, as the Advocate General stated in points 152 and 280 of his Opinion, to facilitate the application of that regulation.
- 138 As regards Article 4(2) of the contested regulation, it follows from that provision that, in order to come within the horizontal conditionality mechanism established in Article 4(1) thereof, breaches of the principles of the rule of law must concern the situations or the conduct of authorities listed in points (a) to (h) of Article 4(2), in so far as they are relevant to the sound financial management of the Union budget or to the protection of the financial interests of the Union.
- 139 It follows from the foregoing that Article 2(a), Article 3, Article 4(2) and Article 5(1) of the contested regulation are constituent elements of the horizontal conditionality mechanism established in Article 4(1) of that regulation, by laying down the definitions necessary for its implementation, by specifying its scope and by prescribing the measures to which it may lead. Those provisions thus form an integral part of that mechanism and therefore fall within the concept of ‘financial rules’, within the meaning of Article 322(1)(a) TFEU.
- 140 Secondly, that finding is not invalidated by Hungary’s argument, supported by the Republic of Poland, that Articles 2 to 4 of the contested regulation allow the EU institutions to examine situations in the Member States which fall outside the scope of EU law.
- 141 As stated in paragraph 111 above, it follows from a combined reading of Article 4(1) and Article 6(1) of the contested regulation that the procedure it lays down for the adoption of ‘appropriate measures’ for the protection of the Union budget can be initiated by the Commission only where it finds that there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.
- 142 Moreover, as noted in paragraph 138 above, it follows from Article 4(2) of the contested regulation that, in order to come within the horizontal conditionality mechanism laid down in Article 4(1), breaches of the principles of the rule of law must concern the situations or conduct of authorities listed in points (a) to (h) of Article 4(2), in so far as they are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union.
- 143 Such relevance can be presumed as regards the activities of the authorities implementing the Union budget and carrying out financial control, monitoring and audit, referred to in points (a) and (b) of Article 4(2) of the contested regulation. Regarding investigation and public prosecution

services, the proper functioning of those services is caught, under point (c) of that provision, only in so far as it relates to breaches of EU law concerning the implementation of the Union budget or the protection of the financial interests of the Union. The same applies to the prevention and sanctioning, by national courts or administrative authorities, of the breaches of EU law mentioned in point (e). As regards the judicial review referred to in point (d), it is caught only in so far as it concerns the conduct of the authorities referred to in points (a) to (c). The recovery of funds unduly paid, provided for in point (f), covers only funds from the Union budget, which is also the case for cooperation with OLAF and the EPPO, mentioned in point (g). Lastly, point (h) expressly refers to any other situations or conduct of authorities that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union.

- 144 It follows that, contrary to Hungary's submission, supported by the Republic of Poland, in the first place, the contested regulation allows the EU institutions to examine situations in the Member States only in so far as they are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union and, in the second place, appropriate measures can be adopted under that regulation only where it is established that such situations involve a breach of one of the principles of the rule of law which affects or seriously risks affecting that sound financial management or the protection of those financial interests of the Union in a sufficiently direct way.
- 145 Those situations, which are relevant to the implementation of the Union budget, not only fall within the scope of EU law, but, as found in paragraph 133 above, may also be caught by a financial rule, within the meaning of Article 322(1)(a) TFEU, in the form of a horizontal conditionality mechanism linked to respect by a Member State for the value of the rule of law.
- 146 Thirdly, contrary to Hungary's submission, supported by the Republic of Poland, the fact that a horizontal conditionality mechanism that meets the criteria identified in paragraph 133 above, relating to respect by a Member State for the value of the rule of law contained in Article 2 TEU and to the implementation of the Union budget, may come within the concept of 'financial rules which determine in particular the procedure to be adopted for ... implementing the budget', within the meaning of Article 322(1)(a) TFEU, does not extend the scope of that concept beyond what is necessary for the proper implementation of the Union budget.
- 147 Article 4 of the contested regulation limits, in paragraph 2, the scope of the conditionality mechanism established by that regulation to situations and conduct of authorities that are related to the implementation of the Union budget and requires, in paragraph 1, that the adoption of appropriate measures be subject to the existence of breaches of the principles of the rule of law which affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. The latter condition thus requires that a genuine link be established between those breaches and such an effect or serious risk of an effect.
- 148 It should be pointed out, in that regard, that the application of Article 4(1) and (2) of the contested regulation is subject to the procedural requirements laid down in Article 6(1) to (9) of that regulation, which mean that, as recital 26 of that regulation states, the Commission is under an obligation, when examining whether the adoption of appropriate measures is justified, to use an evidence-based approach and to respect the principles of objectivity, non-discrimination and equality of the Member States before the Treaties.

- 149 As regards, more specifically, the identification and assessment of breaches of the principles of the rule of law, recital 16 of the contested regulation states that that assessment should be objective, impartial and fair. Furthermore, compliance with all of those obligations is subject to comprehensive judicial review by the Court.
- 150 Fourthly, as regards the issue whether Article 5(2) of the contested regulation falls within the scope of the legal basis of Article 322(1)(a) TFEU, it has been pointed out in paragraph 115 above that the objective of Article 5(2) is to safeguard the legitimate interests of final recipients and beneficiaries where appropriate measures are adopted under that regulation against a Member State. It follows that that provision concerns the legal and financial effects of measures for the protection of the Union budget, within the meaning of Article 5 of the contested regulation, which themselves relate to the implementation of the Union budget, as stated in paragraphs 112 and 135 above.
- 151 Furthermore, as noted in paragraph 99 above, the financial rules which determine ‘in particular the procedure to be adopted for’ implementing the budget, within the meaning of Article 322(1)(a) TFEU, are intended to regulate all aspects relating to the implementation of the Union budget covered by Title II of Part Six of the TFEU and therefore to implementation in the broad sense.
- 152 A provision which, like Article 5(2) of the contested regulation, concerns the legal and financial effects of measures for the protection of the Union budget, within the meaning of Article 5 of that regulation, which are measures relating to the implementation of the Union budget, must be considered as itself relating to that implementation and can therefore be regarded as determining a procedure for implementing the Union budget.
- 153 In the light of all the foregoing considerations, Hungary’s claims, supported by the Republic of Poland, alleging that the contested regulation has no legal basis, since it does not lay down financial rules within the meaning of Article 322(1)(a) TFEU, must be rejected.
- 154 However, it is still necessary to ascertain whether, as argued, in essence, by Hungary, supported by the Republic of Poland, financial rules such as those laid down by the contested regulation cannot be adopted by the EU legislature because they circumvent Article 7 TEU and Article 269 TFEU.

(2) Circumvention of Article 7 TEU and Article 269 TFEU

- 155 In the first place, Hungary, supported by the Republic of Poland, argues, in essence, that only the procedure laid down in Article 7 TEU grants the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU in a Member State, since, in particular, that power covers areas which fall outside the scope of EU law, such as the functioning of the authorities and institutions of the Member States, and the Member States have, as the authors of the Treaties, regulated all aspects of that procedure in the TEU. As the Treaties do not provide for any delegation of legislative power under Article 7 TEU, neither that provision nor any other provision of the Treaties authorises the EU legislature to establish a procedure parallel to that laid down in Article 7 TEU relating to the finding of breaches of the values contained in Article 2 TEU and setting out the resulting legal consequences.

- 156 In that regard, first, it should be borne in mind that the founding values of the European Union, common to the Member States, contained in Article 2 TEU, include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which, inter alia, non-discrimination, justice, solidarity and equality between women and men prevail.
- 157 The preamble to the Charter states, inter alia, that the European Union is based on the principles of democracy and the rule of law and recognises the rights, freedoms and principles set out in the Charter. Articles 6, 10 to 13, 15, 16, 20, 21 and 23 of the Charter define the scope of the values of human dignity, freedom, equality, respect for human rights, non-discrimination and equality between women and men, contained in Article 2 TEU. Article 47 of the Charter and Article 19 TEU guarantee, inter alia, the right to an effective remedy and the right to an independent and impartial tribunal previously established by law, as regards the protection of the rights and freedoms guaranteed by EU law.
- 158 Furthermore, Articles 8 and 10, Article 19(1), Article 153(1)(i) and Article 157(1) TFEU define the scope of the values of equality, non-discrimination and equality between women and men and allow the EU legislature to adopt secondary legislation intended to implement those values.
- 159 It follows from the two preceding paragraphs that, contrary to Hungary's submission, supported by the Republic of Poland, in addition to the procedure laid down in Article 7 TEU, numerous provisions of the Treaties, frequently implemented by various acts of secondary legislation, grant the EU institutions the power to examine, determine the existence of and, where appropriate, to impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State.
- 160 As regards, in particular, the value of the rule of law, certain aspects of that value are protected by Article 19 TEU, as Hungary indeed acknowledges. The same is true of Articles 47 to 50 of the Charter, contained in Title VI, entitled 'Justice', which guarantee, respectively, the right to an effective remedy and the right to a fair trial, the presumption of innocence and rights of the defence, the principles of legality and proportionality of criminal offences and penalties and the right not to be tried or punished twice for the same criminal offence.
- 161 More specifically, the Court has ruled that Article 19 TEU, which gives concrete expression to the value of the rule of law contained in Article 2 TEU, requires Member States, in accordance with the second subparagraph of Article 19(1), to establish a system of legal remedies and procedures ensuring that the right of individuals to effective judicial protection is observed in the fields covered by EU law (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of Judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 108 and 109 and the case-law cited). Compliance with that requirement can be reviewed by the Court, inter alia in an action for failure to fulfil obligations brought by the Commission under Article 258 TFEU (see, to that effect, judgments of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraphs 58 and 59, and of 5 November 2019, *Commission v Poland (Independence of the ordinary courts)*, C-192/18, EU:C:2019:924, paragraphs 106 and 107).
- 162 The Court has also ruled that the second subparagraph of Article 19(1) TEU, interpreted in the light of Article 47 of the Charter, imposes on the Member States a clear and precise obligation as to the result to be achieved that is not subject to any condition as regards the independence which must characterise the courts called upon to interpret and apply EU law, with the result that it is for a national court to disapply any provision of national law which infringes the second subparagraph of Article 19(1) TEU, if necessary after obtaining from the Court an interpretation of that

provision in the context of a reference for a preliminary ruling (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of Judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 142 to 146).

- 163 It thus follows from the considerations in paragraphs 159 to 162 above that Hungary's line of argument to the effect that the value of the rule of law can be protected by the European Union only under the procedure laid down in Article 7 TEU must be rejected.
- 164 Secondly, as regards Hungary's claims, supported by the Republic of Poland, that only Article 7 TEU allows the EU institutions to review whether the Member States respect the rule of law in areas which fall outside the scope of EU law, including the functioning of the authorities and institutions of the Member States, it is sufficient to point out that the contested regulation authorises neither the Commission nor the Council to carry out such a review other than in respect of conduct of an authority of a Member State or a situation attributable to such an authority which relates to the implementation of the Union budget and which, therefore, falls within the scope of EU law.
- 165 As noted in paragraphs 141 to 145 above, first, the contested regulation allows the EU institutions to examine situations in the Member States only in so far as they are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union and, secondly, appropriate measures can be adopted under that regulation only where it is established that such situations involve a breach of one of the principles of the rule of law which affects or seriously risks affecting that sound financial management or the protection of those financial interests in a sufficiently direct way.
- 166 In the second place, as regards the claim that the contested regulation has the effect of circumventing the procedure laid down in Article 7 TEU and extending the powers of the Court laid down in Article 269 TFEU, Hungary, supported by the Republic of Poland, submits, in essence, that the procedure established by that regulation gives concrete form, in defined cases, to the procedure referred to in Article 7 TEU and therefore establishes a parallel procedure for determining, following a thorough analysis, the existence of breaches of the principles of the rule of law by the Member States. That regulation, it is claimed, enables legal consequences which are identical to those provided for in Article 7 TEU to be attached to such breaches, even though neither that provision nor any other provision of the Treaties authorises the EU legislature to do so. Thus, that regulation allegedly undermines the institutional balance as established in Article 7 TEU, Article 13(2) TEU and Article 269 TFEU by granting new powers to the Council, the Commission and the Court.
- 167 In that regard, first, it should be stated that the EU legislature cannot establish, without infringing Article 7 TEU, a procedure parallel to that laid down by that provision, having, in essence, the same subject matter, pursuing the same objective and allowing the adoption of identical measures, while providing for the involvement of different institutions or for different material and procedural conditions from those laid down by that provision.
- 168 However, it is permissible for the EU legislature, where it has a legal basis for doing so, to establish, in an act of secondary legislation, other procedures relating to the values contained in Article 2 TEU, which include the rule of law, provided that those procedures are different, in terms of both their aim and their subject matter, from the procedure laid down in Article 7 TEU (see, by analogy, judgment of 7 February 1979, *France v Commission*, 15/76 and 16/76, EU:C:1979:29,

paragraph 26; order of 11 July 1996, *An Taisce and WWF UK v Commission*, C-325/94 P, EU:C:1996:293, paragraph 25; and judgment of 11 January 2001, *Greece v Commission*, C-247/98, EU:C:2001:4, paragraph 13).

- 169 In the present case, as regards the respective purposes of the procedure laid down in Article 7 TEU and that provided for by the contested regulation, it follows from Article 7(2) to (4) TEU that the procedure laid down in that article allows the Council, where the European Council has determined the existence of serious and persistent breaches by a Member State of the values contained in Article 2 TEU, to suspend certain of the rights deriving from the application of the Treaties to that Member State, including the voting rights of the representative of the government of that Member State in the Council, and to decide subsequently to vary or revoke measures taken in response to changes in the situation which led to their being imposed.
- 170 The purpose of the procedure laid down in Article 7 TEU is therefore to allow the Council to penalise serious and persistent breaches of the values contained in Article 2 TEU, in particular with a view to compelling the Member State concerned to put an end to those breaches.
- 171 By contrast, as is apparent from paragraphs 110 to 120 above, it follows from the nature of the measures that may be adopted under the contested regulation and from the conditions for the adoption and lifting of those measures that the purpose of the procedure established by that regulation is to ensure, in accordance with the principle of sound financial management laid down in Article 310(5) and the first paragraph of Article 317 TFEU, the protection of the Union budget in the event of a breach of the principles of the rule of law in a Member State and not to penalise, through the Union budget, breaches of the principles of the rule of law.
- 172 It follows that the procedure laid down by the contested regulation pursues a different purpose from that of Article 7 TEU.
- 173 As regards the subject matter of each of those two procedures, it should be pointed out that the scope of the procedure laid down in Article 7 TEU covers all the values contained in Article 2 TEU, whereas the scope of the procedure established by the contested regulation covers only one of those values, namely the rule of law.
- 174 Furthermore, Article 7 TEU allows the assessment of all serious and persistent breaches of a value contained in Article 2 TEU, whereas the contested regulation authorises the examination of breaches of the principles of the rule of law mentioned in Article 2(a) of that regulation only in so far as there are reasonable grounds to consider that those breaches have budgetary implications.
- 175 As regards the conditions for initiating the two procedures, it should be noted that the procedure provided for in Article 7 TEU may be initiated, as set out in paragraph 1 of that article, where there is a clear risk of a serious breach by a Member State of the values contained in Article 2 TEU, on the initiative of one third of the Member States, the Parliament or the Commission, the threshold being, initially, that of a clear risk of a serious breach of those values and, subsequently – as regards the suspension, under Article 7(2) and (3) TEU, of certain of the rights deriving from the application of the Treaties to the Member State in question – that of a serious and persistent breach of those values by that Member State. Conversely, the procedure established by the contested regulation may be initiated by the Commission alone where there are reasonable grounds to consider not only that breaches of the principles of the rule of law have occurred in a

Member State, but also, and above all, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.

- 176 Moreover, the only substantive condition required for the adoption of measures under Article 7 TEU lies in the European Council's determining the existence of a serious and persistent breach by a Member State of the values contained in Article 2 TEU. By contrast, as noted in paragraph 147 above, under Article 4(1) and (2) of the contested regulation, measures under that regulation may be taken only where two conditions are satisfied. First, it must be established that a breach of the principles of the rule of law in a Member State concerns one or more of the situations or forms of conduct of authorities referred to in paragraph 2, in so far as it is relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union. Secondly, it must also be demonstrated that those breaches affect or seriously risk affecting that sound financial management or those financial interests in a sufficiently direct way; that condition thus requires that a genuine link be established between those breaches and such an effect or serious risk of an effect.
- 177 Regarding the nature of the measures that may be adopted under Article 7(3) TEU, those measures consist in the suspension of 'certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council' and may, therefore, relate to any right deriving from the application of the Treaties to the Member State in question. By contrast, the measures that may be adopted under the contested regulation are limited to those listed in Article 5(1) of that regulation and summarised in paragraph 112 above, which are all budgetary in nature.
- 178 Lastly, Article 7 TEU provides for the variation or revocation of measures adopted only in response to changes in the situation which led to their being imposed. By contrast, the second and third subparagraphs of Article 7(2) of the contested regulation make the lifting and variation of measures adopted subject to the conditions for the adoption of measures referred to in Article 4 of that regulation. Accordingly, those measures may be lifted or varied not only where breaches of the principles of the rule of law in the Member State in question have been remedied, at least in part, but in particular where those breaches, despite persisting, no longer have an impact on the Union budget. That may be the case, *inter alia*, where they no longer concern one or more of the situations or forms of conduct of authorities referred to in paragraph 2 of that article, where those situations or conduct are no longer relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union, where the breach no longer affects or seriously risks affecting that sound management or those financial interests, or where the link between the breach of a principle of the rule of law and such an effect or serious risk is no longer sufficiently direct.
- 179 In the light of the foregoing considerations, it is clear that the procedure laid down in Article 7 TEU and that established by the contested regulation pursue different aims and that each has a clearly distinct subject matter.
- 180 It follows that, contrary to Hungary's submission, supported by the Republic of Poland, the contested regulation cannot be regarded as establishing a parallel procedure which circumvents Article 7 TEU.

- 181 Secondly, as regards Hungary's line of argument, supported by the Republic of Poland, to the effect that the contested regulation undermines the institutional balance as established in Article 7 and Article 13(2) TEU, first, it has been held in the above two paragraphs that the procedure laid down in Article 7 TEU and that established by the contested regulation pursue different aims and each has a distinct subject matter, with the result that the contested regulation cannot be regarded as establishing a parallel procedure which circumvents that provision.
- 182 In those circumstances, Hungary, supported by the Republic of Poland, is not justified in maintaining that the contested regulation undermines the institutional balance established in Article 7 TEU.
- 183 Secondly, as regards the requirements of Article 13(2) TEU, under which 'each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out therein', it is apparent from Article 6 of the contested regulation that the Commission is to conduct that procedure and that, where appropriate, the Council is to adopt, on a proposal from the Commission, an implementing decision adopting appropriate measures; despite the reference in recital 26 of that regulation to the European Council, Article 6 does not confer any role on the European Council in the procedure established by that regulation.
- 184 In that regard, first of all, in accordance with the first paragraph of Article 317 TFEU, the Commission is to implement the Union budget in cooperation with the Member States on its own responsibility, having regard to the principle of sound financial management, with the result that its role in the procedure established by the contested regulation is consistent with the powers conferred on it by that provision.
- 185 Next, as the Council correctly contended, the Council is able to act on the basis of Article 322(1)(a) and Article 291(2) TFEU, with the result that its involvement is not in breach of the power granted to the Commission under the first paragraph of Article 317 TFEU.
- 186 First, as noted in paragraph 99 above, the financial rules which determine 'in particular the procedure to be adopted for implementing the budget', within the meaning of Article 322(1)(a) TFEU, are intended to regulate all aspects related to the implementation of the Union budget covered by Title II of Part Six of the TFEU and therefore to implementation in the broad sense.
- 187 Thus, the horizontal conditionality mechanism established by the contested regulation forms part of a conception of budget implementation that goes beyond that which – being defined in Article 2(7) of the Financial Regulation as the carrying out of activities relating to the management, monitoring, control and audit of budget appropriations – falls within the Commission's powers in cooperation with the Member States, in accordance with the first paragraph of Article 317 TFEU.
- 188 Secondly, Article 291(2) TFEU allows, in duly justified specific cases, implementing powers to be conferred on the Council where uniform conditions for implementing legally binding Union acts are required. In that regard, it is apparent from Article 6(9) to (11) of the contested regulation that the measures that may be adopted by the Council under that regulation are implementing decisions, and recital 20 of that regulation states that implementing powers are to be conferred on the Council in order to ensure uniform conditions for the implementation of that regulation, in view of the importance of the financial effects of those measures.

- 189 Those factors support the finding that the conferral on the Council of a power to adopt the appropriate measures referred to in Article 5(1) of the contested regulation is duly justified.
- 190 Lastly, the fact that no powers are conferred on the European Council in the procedure established by Article 6 of the contested regulation is consistent with the powers conferred on it by Article 15(1) TEU, under which the European Council is to provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof, but is not to exercise legislative functions.
- 191 While recital 26 of the contested regulation states that the European Council may, at the request of the Member State in respect of which the procedure conducted under Article 6 of that regulation has been initiated, discuss whether, during that procedure, the principles of objectivity, non-discrimination and equality of Member States before the Treaties have been respected, it is sufficient to note that such action by the European Council, taken on an exceptional basis, is not provided for in Article 6 or any other provision of that regulation. In those circumstances, in view of the fact that the preamble to an EU act has no binding legal force (see, to that effect, judgment of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraph 76 and the case-law cited), recital 26 cannot be relied on as a ground for derogating from the actual provisions of the contested regulation or for interpreting those provisions in a manner that is contrary to their wording.
- 192 Thirdly, in so far as Hungary, supported by the Republic of Poland, submits that the Court will be called upon to assess, in the context of the judicial review of a decision adopted by the Council under Article 6(10) of the contested regulation, the existence of breaches by a Member State of the principles of the rule of law, and argues that the power thus granted to it constitutes an infringement of Article 13(2) TEU and Article 269 TFEU, it should be pointed out that the wording of the latter article refers only to the review of the legality of an act adopted by the European Council or by the Council pursuant to Article 7 TEU.
- 193 In those circumstances, and having regard to the findings made in paragraphs 179 and 180 above, the review of legality which the Court may be called upon to carry out, in particular in an action for annulment brought under Article 263 TFEU, in respect of Council decisions taken under Article 6(10) of the contested regulation does not fall within the scope of Article 269 TFEU and is therefore not subject to the specific rules laid down by that article.
- 194 It follows that the contested regulation does not confer any new powers on the Court.
- 195 Lastly, it was noted in paragraph 165 above that the contested regulation allows the EU institutions to examine situations in the Member States only in so far as they are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union and, furthermore, that appropriate measures can be adopted under that regulation only where it is established that such situations involve a breach of one of the principles of the rule of law which affects or seriously risks affecting that sound financial management or the protection of those financial interests in a sufficiently direct way.
- 196 Since such situations relate to the implementation of the Union budget and therefore fall within the scope of EU law, Hungary, supported by the Republic of Poland, cannot maintain that the Court lacks jurisdiction to examine determinations made by the Council in decisions adopted under Article 6(10) of the contested regulation.

- 197 Accordingly, Hungary's claims, supported by the Republic of Poland, alleging circumvention of Article 7 TEU and Article 269 TFEU, must be rejected as unfounded.
- 198 It follows from the foregoing considerations that the first and second pleas must be rejected as unfounded.

2. The third plea, alleging breach of the principle of legal certainty

(a) Arguments of the parties

- 199 By the third plea, Hungary, supported by the Republic of Poland, submits that the contested regulation breaches the principles of legal certainty and legislative clarity, which are recognised as general principles of EU law, on the ground that the concepts in that regulation, on the basis of which a Member State may be found to have breached the principles of the rule of law, have no uniform definition in the Member States. It takes the view, in particular, that the concept of 'the rule of law', as defined in Article 2(a) of the contested regulation, reveals serious conceptual uncertainties and serious inconsistencies which could jeopardise the interpretation of EU values and lead to that regulation being applied in a way that is contrary to those values.
- 200 In the first place, Hungary states that the rule of law is an ideal or, at most, a guiding standard, which is never fully achieved and respect for the rule of law should therefore be assessed in relative terms, since no State can claim to adhere to it perfectly. That ideal, which characterises modern democracy, has developed in a complex way over the centuries, resulting, as is apparent from Study No 512/2009 of 28 March 2011 of the Venice Commission, entitled 'Report on the Rule of Law', in a complex concept which cannot be precisely defined and the substance of which is constantly evolving.
- 201 That conception of the rule of law is also apparent from Study No 711/2013 of 18 March 2016 of the Venice Commission adopting a 'Rule of law checklist', a study referred to in recital 16 of the contested regulation. According to paragraphs 12 and 18 of that study, the 'core elements' of the concept of 'the rule of law' do not define that concept and are themselves theoretical categories and principles which may in turn be subdivided into several other principles. In addition, it is apparent from paragraphs 29 and 30 of that study that the rule of law checklist which it sets out is not exhaustive and cannot be converted into rules.
- 202 In that regard, Hungary states that, according to Article 4(2) TEU, the European Union is to respect the national identity of the Member States, inherent in their fundamental structures, political and constitutional. However, the mechanism introduced by the contested regulation is not consistent with that fundamental guarantee, since the procedure that it establishes allows the legislation or practice of a Member State to be examined even where it falls outside the scope of EU law.
- 203 The conceptual uncertainties affecting the concept of 'the rule of law' are further exacerbated by the fact that the Commission's representatives stated on several occasions that the findings in the Commission's annual report on the rule of law would be used in the application of the contested regulation, even though that regulation makes no reference to that report. Furthermore, in that report the Commission examined the application of the requirements of the rule of law in areas

which correspond neither to the concepts employed in the contested regulation in relation to the principles of the rule of law nor to the rule of law checklist identified by the Venice Commission in its study referred to in paragraph 201 above.

- 204 Hungary takes the view that the Commission's perception of the constituent elements of the rule of law differs from that of the Venice Commission and from that on which the concepts in the contested regulation are based, with the result that the Commission's application of that regulation may become so unforeseeable as to be incompatible with the principle of legal certainty, which is itself one aspect of the rule of law.
- 205 In the second place, Hungary, supported by the Republic of Poland, submits that the EU legislature tried unsuccessfully, in Article 2(a) of the contested regulation, to elucidate the constituent elements of the concept of 'the rule of law'. That provision merely reproduces the parallel elements of Article 2 TEU, which are equally abstract, such as respect for fundamental rights, the prohibition of discrimination and the principle of effective judicial protection, which are also enshrined separately in the Treaties. That circumstance confirms the fact that the values of Article 2 TEU inspire political cooperation within the European Union, but do not have their own legal content. By defining the concept of 'the rule of law' in a sector-specific regulation and thereby allowing other instruments of secondary legislation to use a different conception of it, the EU legislature has undermined the interpretation of that concept as a common value of the European Union, as defined by the community of the Member States pursuant to Article 2 TEU.
- 206 Moreover, after defining, in Article 2(a), the concept of 'the rule of law', the contested regulation sets out, in Article 3, cases that may be indicative of 'breaches of the principles of the rule of law', which, in actual fact, have only a negligible connection with the definition of that concept. Similarly, the relationship between, on the one hand, Article 4(2) of that regulation, which specifies the situations and conduct which breaches of the principles of the rule of law are to concern, and, on the other hand, the concept of 'the rule of law' and that of the 'principles of the rule of law' cannot be clearly determined. Thus, it cannot be ruled out, from the joint examination of the cases that may be indicative of breaches of the principles of the rule of law, set out in Article 3 of the contested regulation, with the definition of the concept of 'the rule of law' in Article 2(a) of that regulation, that penalties may be imposed in respect of situations which are not linked to the sound management of the budgetary resources of the Union.
- 207 Hungary, supported by the Republic of Poland, submits that the constituent elements of the rule of law are satisfied when public authorities conduct themselves in a way which is based on law, free from arbitrariness and capable of being challenged before a court or tribunal. It takes the view, however, that 'failing to prevent ... withholding financial and human resources affecting [public authorities'] proper functioning', 'failing to ensure the absence of conflicts of interest' or 'failing to prevent ... unlawful decisions', referred to in Article 3(b) of the contested regulation, have only a remote and indirect link with the concept of 'the rule of law', severing the link between the purpose and content of that legislation. If the EU legislature had intended to penalise such failures, which are essentially administrative in nature, on the ground that they affect the Union budget, it could have penalised them without resorting to that concept.
- 208 In the third place, Hungary states that it is apparent from a study carried out by the Parliament in 2015, entitled 'The General Principles of EU Administrative Procedural Law', that the concept of 'the rule of law' is so general that its precise content can be established only by its constituent elements, including the principle of legal certainty, which requires that legal rules be clear, precise and foreseeable in their effects, so that the persons concerned can ascertain what their

rights and obligations are in legal situations and relationships within the EU legal order. Those requirements should therefore also be met where a penalty mechanism is introduced for failures to adhere to the rule of law.

- 209 Apart from the divergence between the concept of ‘the rule of law’ and the ‘principles of the rule of law’, the contested regulation refers, in Article 3 and Article 4(2), to expressions which are not defined sufficiently precisely for it to be possible to foresee the circumstances in which a breach of the principles of the rule of law may be found. The same applies to ‘the proper functioning of the authorities’, ‘the effective judicial review by independent courts of ... the authorities’, ‘the effective and timely cooperation with OLAF’ and ‘other situations or conduct of authorities that are relevant ...’. Thus, the Commission and the Council have been given such a broad discretion that it is incompatible with a procedure that may lead to penalties.
- 210 In accordance with settled case-law of the EU judicature, EU legislation must be certain and its application foreseeable by those subject to it, and that requirement must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which those rules impose on them. That requirement extends to the foreseeability of the means of proof and methods used in penalty procedures.
- 211 Hungary submits that the principle of legal certainty does not preclude the law from regulating an issue generally and in the abstract, in which case it falls to the courts, when applying that law, to interpret it. Nevertheless, it takes the view that, having regard to the obligation to ‘protect’ the national identity of the Member States, it must be possible for the rule of law and the principles of the rule of law to be assessed differently in each of the Member States, particularly as the EU institutions do not always assess different legal situations uniformly. Yet a fundamental element of the rule of law and legal certainty is that the law must be formulated in such a way that like situations are treated in the same way. Owing to the conceptual shortcomings of the contested regulation and the fact that it is impossible to define the concept of ‘the rule of law’ with precision, that regulation does not satisfy that basic condition for a uniform application of the law.
- 212 Hungary states, by way of example, that the Commission has not, in its annual reports on the rule of law, regarded as wrongful the fact that, in some Member States, public prosecution services may receive instructions from the executive, whereas the Court has expressed serious concerns in that regard in cases involving the execution of a European arrest warrant. It is therefore difficult to determine whether, in such a case, the requirement of the proper functioning of the prosecuting authorities is met. As regards the required degree of cooperation with OLAF, Hungary wonders, first of all, whether that could be measured by reference to prosecutions brought on the basis of OLAF’s recommendations, next, whether, in order to comply with the contested regulation, a percentage of prosecutions on the basis of those recommendations should be set and, lastly, whether, in order to reach that threshold, it should be possible to give instructions to public prosecution services in individual cases, even though the existence of such instructions may raise questions as to the impartiality and lawfulness of the prosecutions and the independence of the public prosecution services. Hungary also states that a threshold of convictions based on such recommendations casts doubt on the independence of the judiciary. In the light of those concerns, Hungary fears that a contradiction may arise between the conditions examined by the Commission in the context of the mechanism established by the contested regulation, on the one hand, and the fundamental requirements laid down by the Court and by national constitutional provisions, on the other.

- 213 In the fourth place, Hungary, supported by the Republic of Poland, submits that certain provisions of the contested regulation breach the principle of legal certainty, which should entail the annulment of that regulation in its entirety.
- 214 First, Article 4(1) of the contested regulation, in so far as it authorises the adoption of measures as soon as there is a ‘risk’ that the Union budget will be affected, permits the imposition of penalties in uncertain or unproven situations. If the Union budget has not in fact been affected, the application of penalties would be arbitrary and would breach the principle of legal certainty, since it would be impossible for the Commission to make an objective, technical and factual determination with regard to the conditions for adopting measures. In such a situation, the only objective criteria for justifying the adoption of measures would be the gravity and nature of the breach of the rule of law, which is, however, incompatible with the legal basis for the contested regulation.
- 215 Secondly, the fact that Article 4(2) of the contested regulation allows, in point (h), outside the cases referred to in points (a) to (g), the adoption of measures in respect of ‘other situations or conduct of the authorities’ – which are not defined – is contrary to the principle of legal certainty, according to which a rule allowing penalties to be adopted must list precisely and exhaustively the conduct that may give rise to penalties. The only specific feature of point (h), in relation to the content of Article 4(1) of the contested regulation, is the indication that the situation or conduct complained of must be attributable to ‘authorities’, but, unlike other provisions of that regulation, that point does not specify the nature of those ‘authorities’. That term could therefore cover any group of individuals with official responsibility for a given area because, in accordance with settled case-law, the term ‘authority’ is understood in a broad sense in the various acts of EU law.
- 216 Furthermore, it is not clear from a comparison of the English-, French- and German-language versions of the contested regulation whether, in the phrase ‘other situations or conduct of authorities’ (*autres situations ou comportements des autorités* and *andere Umstände oder Verhaltensweisen von Behörden*), the word ‘situations’ is linked to the word ‘authorities’. It is true that, at first sight, the phrase ‘situations of authorities’ (*situations des autorités* and *Umstände von Behörden*) does not seem to make sense, but the Hungarian-language version of that provision links the word ‘situation’ to ‘authorities’, with the result that that provision does not meet the requirement of legislative clarity.
- 217 Hungary concludes from this that Article 4(2)(h) of the contested regulation renders meaningless the list in points (a) to (g) of that provision by making it non-exhaustive, which is incompatible with the principle of legal certainty.
- 218 Thirdly, the third sentence of Article 5(3) of the contested regulation, in so far as it merely provides that the measures to be adopted must take into account the nature, duration, gravity and scope of the breaches of the principles of the rule of law, without defining the nature and scope of those measures precisely, also breaches the principle of legal certainty. That provision does not lay down any specific criterion for assessing whether a measure is justified, necessary or proportionate, nor does it specify the type of breach of the principles of the rule of law which serve as a basis for determining the nature and scope of a penalty.
- 219 Fourthly, Hungary submits that the last sentence of Article 5(3) of the contested regulation, in stating that the measures to be adopted must ‘insofar as possible’ target the Union actions affected by the breaches, does not ensure that there is a direct link between the breach of the

principles of the rule of law which has been determined and the adoption of measures for the protection of the Union budget. That provision thus makes it possible for measures to be adopted in relation to a Union programme with which the breach of the principles of the rule of law that has been determined has no real link, which breaches, in addition to the principle of proportionality, the principle of legal certainty. In addition, that breach confirms the fact that the contested regulation is not an instrument for protecting the Union budget, but for imposing penalties in respect of the rule of law, an instrument not covered by the legal basis of Article 322(1)(a) TFEU.

- 220 Fifthly, Article 6(3) and (8) of the contested regulation, in so far as that article allows the Commission to take into account, at the various stages of its assessment, ‘relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions’, does not define with sufficient precision the sources of information that are admissible in that context, since it does not reveal the basis on which the Commission is to examine and assess the existence or the risk of a breach of the principles of the rule of law.
- 221 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 222 By the third plea, Hungary, supported by the Republic of Poland, submits, in essence, in the first place, that the concept of ‘the rule of law’ does not lend itself to a precise definition and cannot be given a uniform interpretation, because of the obligation to respect the national identity of each of the Member States. Article 2(a) of the contested regulation includes values parallel to those contained in Article 2 TEU, which are equally abstract and which are also guaranteed separately in the Treaties, thus confirming that those values are political and not legal in nature. In addition, by defining the concept of ‘the rule of law’ in a sector-specific regulation, the EU legislature undermines the interpretation of that concept as a common value of the European Union. In the second place, the relationship between Article 2(a), Article 3 and Article 4(2) of the contested regulation cannot be clearly determined and their joint application does not rule out the possibility that penalties may be imposed in respect of situations which are not related to the sound financial management of the Union’s budgetary resources or the protection of its financial interests. Similarly, the wording used in Article 3(b) of that regulation has only a remote connection with the concept of ‘the rule of law’, which severs the link between the purpose and the content of that legislation. In the third place, that regulation contains, in Article 3 and Article 4(2) thereof, expressions which are too imprecise for it to be possible to foresee the conditions on the basis of which a breach of the principles of the rule of law may be established. As a result, the Commission and the Council have excessive discretion in a procedure which may lead to the imposition of penalties. In the fourth place, the concept of ‘risk’, used in Article 4(1) of that regulation, gives rise to the existence of a presumption which does not allow any link to be established, from a legal perspective, between the rule of law and an effect on the Union budget or the financial interests of the Union, and therefore makes it possible for penalties to be imposed in situations where no such effect has been demonstrated. Moreover, the wording of Article 4(2)(h) of the contested regulation is unclear and the list set out in paragraph 2 is not exhaustive, even though it serves as the basis for the adoption of penalties. In the fifth place, the third sentence of Article 5(3) of the contested regulation does not sufficiently define the nature

and scope of the measures that may be adopted. In the sixth place, the words ‘insofar as possible’, in the fourth sentence of Article 5(3) of the contested regulation, sever the connection between the breach established and the adoption of the protective measures. In the seventh place, Article 6(3) and (8) of that regulation does not define in a sufficiently precise manner the sources of information on which the Commission may rely.

- 223 According to the Court’s settled case-law, the principle of legal certainty requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences. That principle requires, inter alia, that legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (judgment of 29 April 2021, *Banco de Portugal and Others*, C-504/19, EU:C:2021:335, paragraph 51 and the case-law cited).
- 224 However, those requirements cannot be interpreted as precluding the EU legislature from having recourse, in a norm that it adopts, to an abstract legal notion, nor as requiring that such an abstract norm refer to the various specific hypotheses in which it applies, given that all those hypotheses could not be determined in advance by the legislature (see, by analogy, judgment of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraphs 39 and 40).
- 225 Consequently, the fact that a law confers a discretion on the authorities responsible for implementing it is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give adequate protection against arbitrary interference (see, to that effect, judgments of 17 June 2010, *Lafarge v Commission*, C-413/08 P, EU:C:2010:346, paragraph 94, and of 18 July 2013, *Schindler Holding and Others v Commission*, C-501/11 P, EU:C:2013:522, paragraph 57).
- 226 It is in the light of those considerations that the Court must examine the arguments put forward by Hungary, supported by the Republic of Poland, in support of its plea alleging infringement of the principle of legal certainty, by examining, in the first place, the arguments according to which the concept of ‘the rule of law’ cannot be precisely defined and cannot be given a uniform interpretation, because of the obligation to ‘protect’ the national identity of each of the Member States, the arguments according to which the concept of the rule of law, defined in Article 2(a) of the contested regulation includes other values contained in Article 2 TEU, all of which are political and not legal in nature, and the arguments according to which Article 2(a) of the contested regulation undermines the interpretation of the concept of ‘the rule of law’ as a common value of the European Union.
- 227 In that regard, first, Article 2(a) of the contested regulation is not intended to provide an exhaustive definition of that concept, but merely sets out, for the sole purposes of that regulation, a number of the principles which it covers and which are, according to the EU legislature, the most relevant in the light of the purpose of that regulation, which is to ensure the protection of the Union budget.
- 228 Secondly, as stated in paragraph 136 above, the concept of ‘the rule of law’ referred to in Article 2(a) of the contested regulation is to be understood as meaning ‘the Union value enshrined in Article 2 TEU’, and that concept includes the principles referred to in Article 2(a) of

the contested regulation. It follows that that provision does not have the effect of undermining the interpretation of the concept of ‘the rule of law’ as a common value of the European Union resulting from Article 2 TEU.

- 229 Thirdly, contrary to Hungary’s submission, supported by the Republic of Poland, the principles set out in Article 2(a) of the contested regulation do not go beyond the limits of the concept of ‘the rule of law’. In particular, the reference to the protection of fundamental rights is made only by way of illustration of the requirements of the principle of effective judicial protection, which is also guaranteed in Article 19 TEU and which Hungary itself acknowledges to be part of that concept. The same is true of the reference to the principle of non-discrimination. Although Article 2 TEU refers separately to the rule of law as a value common to the Member States and to the principle of non-discrimination, it is clear that a Member State whose society is characterised by discrimination cannot be regarded as ensuring respect for the rule of law, within the meaning of that common value.
- 230 That conclusion is supported by the fact that, in the study referred to in paragraph 201 above and referred to in recital 16 of the contested regulation, the Venice Commission stated, *inter alia*, that the concept of ‘the rule of law’ requires a system of certain and foreseeable law, where everyone has the right to be treated by all decision-makers with dignity, equality and rationality and in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures. Those characteristics are specifically reflected in Article 2(a) of the contested regulation.
- 231 Fourthly, the obligation relating to respect for the rule of law, the breach of which may fall within the scope of the horizontal conditionality mechanism established in Article 4(1) of the contested regulation, read in the light of the principles set out in Article 2(a) of that regulation, is a specific expression of the requirements resulting, for the Member States, from their membership of the European Union, pursuant to Article 2 TEU. That obligation constitutes an obligation as to the result to be achieved which, as noted in paragraphs 124 to 127 above, flows directly from the commitments undertaken by the Member States *vis-à-vis* each other and with regard to the European Union.
- 232 In that regard, it must be borne in mind that Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which, as noted in paragraph 127 above, are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States.
- 233 Even though, as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law, it in no way follows that that obligation as to the result to be achieved may vary from one Member State to another.
- 234 Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, the Member States adhere to a concept of ‘the rule of law’ which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times.

- 235 Accordingly, and notwithstanding the fact that the Commission and the Council must make their assessments taking due account of the specific circumstances and contexts of each procedure conducted under the contested regulation and, in particular, taking into account the particular features of the legal system of the Member State in question and the discretion which that Member State enjoys in implementing the principles of the rule of law, that requirement is in no way incompatible with the application of uniform assessment criteria.
- 236 Next, while it is true that Article 2(a) of the contested regulation does not set out in detail the principles of the rule of law that it mentions, nevertheless recital 3 of that regulation notes that the principles of legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection and separation of powers, referred to in that provision, have been the subject of extensive case-law of the Court. The same is true of the principles of equality before the law and non-discrimination, which are also mentioned, as is apparent in particular from paragraphs 94 and 98 of the judgment of 3 June 2021, *Hungary v Parliament* (C-650/18, EU:C:2021:426) and from paragraphs 57 and 58 of the judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* (C-930/19, EU:C:2021:657).
- 237 Those principles of the rule of law, as developed in the case-law of the Court on the basis of the EU Treaties, are thus recognised and specified in the legal order of the European Union and have their source in common values which are also recognised and applied by the Member States in their own legal systems.
- 238 In addition, recitals 8 to 10 and 12 of the contested regulation mention the principal requirements stemming from those principles. In particular, they shed light on the cases which may be indicative of breaches of the principles of the rule of law, set out in Article 3 of that regulation, and on the situations and conduct which those breaches must concern, described in Article 4(2) of that regulation, for the adoption of appropriate measures within the meaning of Article 4(1) of that regulation to be justified.
- 239 Lastly, the assessments of the Commission and the Council are subject to the procedural requirements specified in Article 6(1) to (9) of the contested regulation. Those requirements imply in particular, as stated in recital 26 of that regulation, that the Commission must follow an evidence-based approach and respect the principles of objectivity, non-discrimination and equal treatment of Member States before the Treaties when it conducts proceedings under that provision. As regards the identification and assessment of breaches of the principles of the rule of law, those requirements must be understood in the light of recital 16 of that regulation, according to which that assessment must be objective, impartial and fair.
- 240 In those circumstances, Hungary cannot maintain that the Member States are not in a position to determine with sufficient precision the essential content and the requirements flowing from each of the principles listed in Article 2(a) of the contested regulation nor that those principles are of a purely political nature and that an assessment of whether they have been respected cannot be the subject of a strictly legal analysis.
- 241 In the second place, Hungary, supported by the Republic of Poland, submits that the relationship between Article 2(a), Article 3 and Article 4(2) of the contested regulation cannot be clearly determined, that the joint application of those provisions does not rule out the possibility that situations which are not linked to the proper management of the resources of the Union budget may be penalised and that the concepts referred to in Article 3(b) of that regulation have only a remote link with the concept of ‘the rule of law’.

- 242 In that regard, first of all, it has been pointed out in paragraphs 136 to 138 and 147 above that Article 2(a) of the contested regulation defines that concept, solely for the purposes of that regulation, as including the principles of legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection, separation of powers, non-discrimination and equality before the law, that Article 3 of that regulation, by citing cases which may be indicative of breaches of those principles, is intended to facilitate the application of that regulation, by explaining the requirements inherent in those principles, and that Article 4 of that regulation sets out, in paragraph 2 thereof, the scope of the horizontal conditionality mechanism established in paragraph 1 thereof, which requires that the breaches of the principles of the rule of law must concern the situations or conduct of authorities listed in points (a) to (h) thereof, in so far as they are relevant to the sound financial management of the Union budget or to the protection of the financial interests of the Union.
- 243 It follows from the foregoing that Article 2(a), Article 3 and Article 4(2) of the contested regulation show sufficiently precise links between each other with regard to the principle of legal certainty.
- 244 Next, contrary to Hungary's submission, supported by the Republic of Poland, the joint application of those provisions in no way suggests that situations which are not linked to the sound management of the resources of the Union budget may be the subject of measures taken pursuant to Article 4 of the contested regulation. As noted in paragraph 147 above, that article limits, in paragraph 2 thereof, the scope of the horizontal conditionality mechanism solely to situations and conduct of authorities of the Member States which are relevant to the sound financial management of the Union budget or to the protection of the financial interests of the Union, and requires, in paragraph 1 thereof, that a genuine link be established, in all cases, between breaches of the principles of the rule of law, on the one hand, and effects or serious risks of effects on that sound financial management or on the protection of those financial interests, on the other hand.
- 245 Lastly, Hungary's claims, supported by the Republic of Poland, that the expressions 'failing to prevent ... withholding financial and human resources affecting [public authorities'] proper functioning', 'failing to ensure the absence of conflicts of interest' or 'failing to prevent ... unlawful decisions', contained in Article 3(b) of the contested regulation, have only a remote and indirect link with the concept of 'the rule of law' cannot be accepted. As can be seen from recitals 9 and 10 of that regulation, those situations may lead to a failure to observe the principle prohibiting the arbitrary exercise of power by the executive or the principle of effective judicial protection (see, to that effect, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 210 to 214, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 195 to 213).
- 246 In the third place, Hungary, supported by the Republic of Poland, submits that the contested regulation does not comply with the principle of legal certainty since it refers, in Article 3 and Article 4(2) thereof, to expressions – such as '[the] proper functioning [of the authorities]', 'effective judicial review by independent courts of ... the authorities', 'effective and timely cooperation with OLAF' and 'other situations or conduct of authorities that are relevant' – which are too imprecise for it to be possible to foresee the situations in which a breach of the principles of the rule of law may be found and since it grants the Commission and the Council an excessive discretion in that respect.

- 247 Hungary, supported by the Republic of Poland, also submits, with regard in particular to Article 4(2)(h) of the contested regulation, that that provision is contrary to the requirements of the principle of legal certainty. Whereas a provision imposing a penalty must define in a precise and exhaustive manner the conduct it is intended to penalise, that provision fails to have regard to that requirement since it provides that ‘other situations or conduct of authorities’ may justify the adoption of measures, without defining the situations or conduct in question. Furthermore, the wording of that provision does not make it possible to ascertain whether or not the term ‘situations’ is linked to that of ‘authorities’. Lastly, the lack of precision in the concept of ‘authorities’ gives rise to legal uncertainty.
- 248 In that regard, first, as regards the ‘proper functioning’ of public authorities, including law-enforcement authorities, authorities implementing the Union budget, authorities carrying out financial control, monitoring and audit, and the investigation and public prosecution services, referred to in Article 3(b) and Article 4(2)(a) to (c) of the contested regulation, it is clear from recitals 8 and 9 of that regulation that that expression refers to the ability of those authorities to fulfil properly, effectively and efficiently their functions relating to the sound financial management of the Union budget or the protection of the financial interests of the Union.
- 249 Secondly, the concept of ‘effective judicial review by independent courts’ of actions or omissions by authorities implementing the Union budget or authorities carrying out financial control, monitoring and audit or investigation and public prosecution services, referred to in Article 4(2)(d) of the contested regulation, is not only clarified in recitals 8 to 10 and 12 of that regulation, but has also been the subject, as pointed out in paragraphs 132, 161 and 162 above, of abundant case-law of the Court in the context of Article 19 TEU and Article 47 of the Charter.
- 250 Thirdly, as regards ‘effective and timely cooperation with OLAF’, it should be noted that the requirement of such cooperation is apparent from the EU financial rules. Article 63(2)(d) of the Financial Regulation requires Member States, when carrying out tasks related to budget implementation, to take all the necessary legislative, regulatory and administrative measures to protect the financial interests of the Union and, in particular, requires that they cooperate with OLAF, in accordance with that regulation and sector-specific rules.
- 251 That requirement of cooperation is specified, *inter alia*, in Article 129 of the Financial Regulation and includes the obligation to grant OLAF the rights and access necessary for it to comprehensively exert its competences, such as the right to carry out investigations, including on-the-spot checks and inspections, in accordance with Regulation No 883/2013. In addition, it follows from Article 131(1) of the Financial Regulation that, where a procedure for awarding a contract appears to have been subject to fraud, the competent person must immediately inform OLAF. Lastly, other details concerning the cooperation required may be inferred from Article 57, Article 91(2), Article 132(2), Article 187(3)(b)(ii) and Article 220(5)(c) of that regulation and from Regulation No 883/2013.
- 252 Fourthly, the expression ‘other situations or conduct of authorities’, which appears in Article 4(2)(h) of the contested regulation, must be interpreted in the light of Article 4(2)(a) to (g) and of Article 4(1) of that regulation.
- 253 In that regard, it follows from a combined reading of Article 4(1) and Article 4(2)(h) of the contested regulation that appropriate measures are to be taken where it is established that a breach of one of the principles listed in Article 2(a) of that regulation has been committed and concerns a situation attributable to an authority of a Member State or the conduct of such an

authority, in so far as that situation or conduct is relevant to the sound financial management of the Union budget or to the protection of the financial interests of the Union and that that breach affects or seriously risks affecting, in a sufficiently direct way, that sound financial management or those financial interests.

- 254 The application of Article 4(2)(h) of the contested regulation, read in conjunction with Article 4(1) of that regulation, is not only circumscribed by all the criteria referred to in the preceding paragraph, but is also subject to the procedural requirements referred to in paragraph 239 above.
- 255 It cannot therefore be considered that the ‘other situations or conduct of authorities’ referred to in Article 4(2)(h) of the contested regulation, because they are defined in abstract and general terms, mean that the list of breaches of the principles of the rule of law set out in Article 4(2) is not exhaustive.
- 256 Furthermore, Article 4(2) of the contested regulation, in so far as it refers, in points (a) to (g) thereof, to certain authorities, including the ‘authorities implementing the Union budget’, the ‘authorities carrying out financial control, monitoring and audit’ or the ‘administrative authorities’, provides details concerning the authorities referred to in point (h) thereof.
- 257 In addition, it may be inferred from the definition of the concept of ‘government entity’ in Article 2(b) of the contested regulation that it refers to public authorities at any level of government, including national, regional and local authorities, and bodies governed by public law, or even bodies governed by private law with a public service mission which are provided with adequate financial guarantees by the Member State. That finding is supported by recitals 3, 8, 9, 15 and 19 of that regulation and by Article 3(b) thereof, which refer exclusively to ‘public authorities’, ‘law-enforcement authorities’ and ‘national authorities’.
- 258 Lastly, as stated in paragraph 164 above, the term ‘situations’ refers to situations attributable to such an authority.
- 259 Thus, in the light of the foregoing considerations, Hungary cannot maintain that the criticised expressions in Article 3 and Article 4(2) of the contested regulation do not enable a Member State to determine with sufficient certainty their scope or meaning, so as to enable it to foresee the circumstances in which a breach of the principles of the rule of law within the meaning of that regulation may be found.
- 260 Fifthly, in the light of the foregoing considerations, according to which the expressions referred to in paragraph 246 above satisfy, as such, the requirements of the principle of legal certainty, and the grounds set out in paragraphs 171 and 239 above, Hungary’s objections, supported by the Republic of Poland, relating to an alleged excessive discretion granted to the Commission and the Council by those expressions, must be rejected as unfounded.
- 261 In the fourth place, Hungary, supported by the Republic of Poland, submits that the concept of ‘risk’ in Article 4(1) of the contested regulation infringes the principle of legal certainty in that it will allow arbitrary penalties to be imposed in uncertain or unproven situations. It argues that that concept gives rise to a presumption, since no link can be established, from a legal point of view, between the rule of law and an effect on the Union budget or the protection of the financial interests of the Union, and because it is impossible to carry out an objective, technical and factual determination of the conditions for the application of that provision.

- 262 In that regard, as the Advocate General observed in point 311 of his Opinion, it would be incompatible with the requirements of sound financial management of the Union budget and the protection of the financial interests of the Union to limit the adoption of appropriate measures to cases of proven effects on that sound financial management or those financial interests. That limitation would effectively preclude the adoption of appropriate measures in cases where the effects, although not yet proven, can nevertheless be reasonably foreseen, since there is a high probability that they will occur. That limitation would therefore be liable to compromise the purpose of the contested regulation, which consists, as noted in paragraph 119 above, in protecting the Union budget against effects liable to result from breaches of the principles of the rule of law in a Member State.
- 263 As regards the concepts of ‘sound financial management’ and ‘protection of the financial interests of the Union’, the former is also referred to in the first paragraph of Article 317 TFEU and is defined in Article 2(59) of the Financial Regulation as the implementation of the budget in accordance with the principles of economy, efficiency and effectiveness, while the latter also falls within Article 325 TFEU and, according to Article 63(2) of the Financial Regulation, covers all legislative, regulatory and administrative measures designed, inter alia, to prevent, detect and correct irregularities and fraud in the implementation of the budget.
- 264 It should also be noted that Article 2(1) of Regulation No 883/2013 defines the ‘financial interests of the Union’ as ‘revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them’. In addition, Article 135(1), (3) and (4) of the Financial Regulation provides that, in order to protect the financial interests of the Union, the Commission is to set up and operate an early detection and exclusion system.
- 265 The Court has also held that the concept of ‘financial interests of the Union’, within the meaning of Article 325(1) TFEU, encompasses not only revenue made available to the Union budget but also expenditure covered by that budget (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 183). That concept is therefore relevant not only in the context of the measures to combat irregularities and fraud referred to in that provision, but also to the sound financial management of that budget, since the protection of those financial interests also contributes to that sound management.
- 266 The prevention of effects such as those referred to in Article 4(1) of the contested regulation therefore supplements the correction of such effects, which is inherent both in the concept of ‘sound financial management’ and in that of ‘protection of the financial interests of the Union’ and must therefore be regarded as a permanent and horizontal requirement of EU financial legislation.
- 267 Lastly, that provision requires that the breaches of the principles of the rule of law which have been found must ‘seriously’ risk affecting the sound financial management of the Union budget or the financial interests of the Union and requires, therefore, that it be demonstrated that that risk has a high probability of occurring, in relation to the situations or to the conduct of authorities referred to in Article 4(2) of the contested regulation, and, moreover, appropriate measures may be adopted only on condition that a sufficiently direct link, namely a genuine link, is established between a breach of one of the principles of the rule of law and that serious risk. Furthermore, in adopting those measures, it is also necessary to comply with the procedural requirements referred to, most recently, in paragraph 239 above.

- 268 It follows that Hungary's argument, supported by the Republic of Poland, that the concept of 'risk' in Article 4(1) of the contested regulation allows arbitrary penalties to be imposed in uncertain or unproven situations, must be rejected as unfounded.
- 269 In the fifth place, as regards the argument that the third sentence of Article 5(3) of the contested regulation does not sufficiently define the nature and scope of the measures for the protection of the Union budget that may be adopted under Article 4(1) of that regulation, it must be borne in mind, first, that Article 5(1) of that regulation lists exhaustively the various protective measures that may be adopted, as noted in paragraph 135 above.
- 270 Secondly, that the adoption of one of those protective measures is necessary and justified follows from the fulfilment of the conditions set out in Article 4 of the contested regulation.
- 271 Thirdly, as regards the criteria to be applied in order to determine the measure(s) that must be adopted in a given situation, and their scope, the first to third sentences of Article 5(3) of that regulation provide that the measures taken are to be proportionate, that they are to be determined in light of the actual or potential impact of the breaches of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union and that the nature, duration, gravity and scope of the breaches of the principles of the rule of law are to be duly taken into account. It follows that the measures taken must be strictly proportionate to the impact of the breaches of the principles of the rule of law found on the Union budget or on the protection of the financial interests of the Union.
- 272 It follows from the foregoing that the argument that the third sentence of Article 5(3) of the contested regulation does not sufficiently define the nature and scope of the appropriate measures which may be adopted must be rejected as unfounded.
- 273 In the sixth place, as regards Hungary's arguments, supported by the Republic of Poland, that the expression 'insofar as possible', in the fourth sentence of Article 5(3) of the contested regulation, infringes the principle of legal certainty in that it severs the link between the breach found and the protective measures adopted, thus affecting the proportionality of those measures and conferring on them a punitive nature, it should be pointed out, first of all, that that expression does not authorise the alteration of the measures that may be adopted under Article 5(1) of that regulation in such a way that is not commensurate with the impact of the breach found on the Union budget or on the protection of the financial interests of the Union.
- 274 As noted in paragraph 271 above, it follows from the first to third sentences of Article 5(3) of that regulation that the measures taken must be strictly proportionate to the impact of the breaches of the principles of the rule of law found on the Union budget or on the protection of the financial interests of the Union, irrespective of whether or not the measures actually target the Union actions affected by those breaches.
- 275 Next, the expression 'insofar as possible' permits the adoption of measures relating to Union actions other than those affected by such a breach only where the latter actions cannot or can no longer be targeted, or can be targeted only inadequately, in order to achieve the objective of the contested regulation, which consists, as can be seen from Article 1 thereof, in ensuring the protection of the Union budget as a whole, with the result that those measures are necessary in order to achieve that objective.

- 276 It is therefore only in the alternative and, consequently, by way of derogation, in situations which the Commission must duly establish, that the measures taken may target Union actions other than those affected by those breaches.
- 277 Accordingly, the fourth sentence of Article 5(3) of the contested regulation grants the Commission and the Council discretion as to the choice of action targeted by the measure to be adopted only where that proves essential in order to ensure the protection of the Union budget as a whole. In addition, in accordance with Article 6(7) and (8) of that regulation, the Commission is required to assess, *inter alia*, the proportionality of the measures envisaged and to give the Member State concerned the opportunity to submit its observations on those measures and, in particular, on their proportionality, since those requirements must be understood in the light of recital 26 of that regulation, as noted in paragraph 239 above.
- 278 It follows that the expression ‘insofar as possible’, within the meaning of the fourth sentence of Article 5(3) of the contested regulation, does not sever the link between the breach of a principle of the rule of law which has been found and the resulting effect or serious risk of an effect on the Union budget or on the protection of the financial interests of the Union, since that expression makes it possible to target an EU action other than that affected by that breach only where the purpose of the contested regulation, which is to ensure the protection of the Union budget as a whole, cannot be otherwise achieved. It also follows that the contested regulation circumscribes that possibility with strict procedural requirements and that that expression does not release the Commission and the Council from their obligation strictly to respect the proportionality of the measures adopted, in the light of the impact of the breach found on the Union budget.
- 279 In those circumstances, that provision does not have the effect of conferring on the measures for the protection of the Union budget the character of penalties for breaches of the rule of law as such, with the result that it is necessary to reject as unfounded the argument that the expression ‘insofar as possible’ in the fourth sentence of Article 5(3) of the contested regulation severs the link between a breach found and the measures adopted, in breach of the principle of legal certainty.
- 280 In the seventh place, as regards the argument that Article 6(3) and (8) of the contested regulation does not define in a sufficiently precise manner the sources of information on which the Commission may rely, since it does not set out the basis on which the Commission must examine and assess whether there has been a breach of the principles of the rule of law, it should be noted that, under that provision, when assessing whether the conditions set out in Article 4 of that regulation are satisfied and assessing the proportionality of the measures to be imposed, the Commission is to take into account relevant information from available sources, including decisions, conclusions and recommendations of EU institutions, other relevant international organisations and other recognised institutions.
- 281 In that regard, in accordance with Article 4(1) of the contested regulation, it is for the Commission to establish that the conditions set out in Article 4 of that regulation are fulfilled.
- 282 In addition, under Article 6(1) of that regulation, the Commission is required to set out, in a written notification to the Member State concerned, the factual elements and specific grounds on which it based its findings that there are reasonable grounds to consider that those conditions are fulfilled.

- 283 It follows that the Commission is required to carry out a diligent assessment of the facts in the light of the conditions laid down in Article 4 of the contested regulation. The same is true, in accordance with Article 6(7) to (9) of that regulation, as regards the requirement of proportionality of the measures, laid down in Article 5(3) of that regulation.
- 284 Recitals 16 and 26 of that regulation state, moreover, that the Commission must conduct a thorough qualitative assessment, which should be objective, impartial and fair, should respect the principles of objectivity, non-discrimination and equality of Member States before the Treaties and should be conducted according to a non-partisan and evidence-based approach.
- 285 It follows that the Commission is required to ensure, subject to review by the EU judicature, that the information it uses is relevant and that the sources of that information are reliable. In particular, those provisions do not confer any specific or absolute probative value and do not attach specific legal effects to the sources of information to which they refer, nor to those indicated in recital 16 of the contested regulation, with the result that they do not relieve the Commission of its obligation to carry out a diligent assessment of the facts which fully satisfies the requirements set out in the preceding paragraph.
- 286 In that regard, recital 16 of the contested regulation explains that the relevant information from available sources and recognised institutions includes, *inter alia*, judgments of the Court of Justice, reports of the Court of Auditors, the Commission's annual Rule of Law Report and EU Justice Scoreboard, reports of OLAF, the European Public Prosecutor's Office and the European Union Agency for Fundamental Rights, and conclusions and recommendations of relevant international organisations and networks, including Council of Europe bodies such as GRECO and the Venice Commission, in particular its rule-of-law checklist, and the European networks of supreme courts and councils for the judiciary.
- 287 The Commission thus remains responsible for the information it uses and for the reliability of the sources of that information. Moreover, the Member State concerned has the option, in the course of the procedure provided for in Article 6(1) to (9) of the contested regulation, to submit observations on the information that the Commission intends to use in order to propose the adoption of appropriate measures. Accordingly, it may challenge the probative value of each piece of evidence relied on, and the merits of the Commission's assessments may, in any event, be subject to review by the EU judicature in the context of an action brought against a Council decision adopted under that regulation.
- 288 In particular, the Commission must specifically inform the Member State concerned, once the procedure under Article 6(1) of the contested regulation is initiated and periodically throughout that procedure, of the relevant information from available sources on which the Commission intends to base the proposal for an implementing decision on the appropriate measures which it will submit to the Council.
- 289 It follows that the third plea must be rejected as unfounded.
- 290 Having regard to all the foregoing considerations, the principal claim for annulment of the contested regulation must be dismissed in its entirety.

B. The claims, put forward in the alternative, for the partial annulment of the contested regulation

1. The claim for annulment of Article 4(1) of the contested regulation

(a) Arguments of the parties

- 291 By the fourth plea, raised in support of its alternative claim for annulment of Article 4(1) of the contested regulation, Hungary, supported by the Republic of Poland, submits, in essence, that that provision is disproportionate and breaches the principles of legal certainty and legislative clarity, as set out in the context of the third plea, since it permits the adoption of measures for the protection of the Union budget not only when that budget or the protection of the financial interests of the Union are affected in a sufficiently direct way, but also where there is only a serious risk of such an effect.
- 292 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, primarily claim that the fourth plea is inadmissible and, in the alternative, dispute the merits of those arguments.

(b) Findings of the Court

- 293 According to settled case-law, partial annulment of an act of EU law is possible only if the elements which it is sought to have annulled can be severed from the remainder of the measure. That requirement is not satisfied where the partial annulment of a measure would cause the substance of that measure to be altered, a point which must be determined on the basis of an objective criterion and not of a subjective criterion linked to the political intention of the authority which adopted the measure at issue (judgment of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 38 and the case-law cited).
- 294 In that regard, the Parliament and the Council correctly submit that the annulment of Article 4(1) of the contested regulation would cause the substance of that regulation to be altered, since that provision sets out the conditions for the adoption of the measures set out in Article 5(1) of that regulation and, in that respect, constitutes the very core of the horizontal conditionality mechanism established by that regulation. Without the provision in question, the contested regulation would no longer meet the objective set out in Article 1 thereof, namely to establish ‘the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States’.
- 295 It follows that the claim for annulment of Article 4(1) of the contested regulation must be rejected as inadmissible, with the result that there is no need to examine the merits of the fourth plea, raised in support of that claim.

2. The claim for annulment of Article 4(2)(h) of the contested regulation

(a) Arguments of the parties

- 296 By the fifth plea, raised in support of its alternative claim for annulment of Article 4(2)(h) of the contested regulation, Hungary, supported by the Republic of Poland, argues that that provision is contrary to the requirement that a rule imposing a penalty must define precisely the conduct and situations which it is intended to suppress. Thus, the absence of a precise and exhaustive list of the situations concerned by the horizontal conditionality mechanism established by the contested regulation infringes the principle of legal certainty and Article 7 TEU.
- 297 In the first place, Hungary submits that, in its Legal opinion No 13593/18, the Council Legal Service noted that a provision laying down a conditionality mechanism must indicate precisely the conditions to be met in order to receive financing, which must be sufficiently linked to the purpose of the financing, such that, if they are not met, the financing becomes incompatible with sound financial management. Accordingly, the contested regulation, by listing in a non-exhaustive manner the cases in which the conditionality mechanism which it establishes may be initiated, does not ensure the existence of a sufficiently direct link with the protection of the Union budget and the financial interests of the Union.
- 298 In the second place, Hungary submits that the ‘extremely general’ wording of Article 4(2)(h) of the contested regulation breaches the requirements of clarity, precision and foreseeability and, accordingly, the principle of legal certainty, since that provision does not list precisely and exhaustively the situations in which appropriate measures may be adopted under that regulation. It submits that that provision is, in the light, in particular, of its various language versions, vague, ambiguous, unlimited and incapable of uniform interpretation and application. That gives rise to a serious risk of breach of the principle of equality of the Member States before the Treaties.
- 299 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 300 In the first place, it follows from paragraphs 244 and 253 above that, contrary to Hungary’s submissions, Article 4(2)(h) of the contested regulation does not in any way derogate from the requirement that there must always be a sufficiently direct link between a breach of a principle of the rule of law and an effect or a serious risk of an effect on the sound financial management of the Union budget or the protection of the financial interests of the Union.
- 301 Moreover, it is apparent from paragraphs 255 and 259 above that that provision, first, does not confer a non-exhaustive character on the list of situations and conduct of authorities which the breaches of the principles of the rule of law set out in Article 4(2) of that regulation concern, and, secondly, is sufficiently precise to satisfy the principle of legal certainty.
- 302 In the second place, as regards the arguments relating to the purpose of the contested regulation and the alleged circumvention of the procedure laid down in Article 7 TEU, it is sufficient to refer to the analysis set out in paragraphs 98 to 196 above.

- 303 In the third place, as regards the allegations of a lack of precision and internal inconsistencies in Article 4(2)(h) of the contested regulation, it is sufficient to refer to the analysis carried out in paragraphs 252 to 258 above.
- 304 Consequently, the fifth plea must be rejected as unfounded and the claim for annulment of Article 4(2)(h) of the contested regulation must therefore be dismissed.

3. The claim for annulment of Article 5(2) of the contested regulation

(a) Arguments of the parties

- 305 By the sixth plea, raised in support of its alternative claim for annulment of Article 5(2) of the contested regulation, Hungary, supported by the Republic of Poland, argues that, in disregard of the legal basis of that regulation and the provisions of EU law relating to public deficits, that provision imposes constraints on the budgets of the Member States concerned, since it provides that, if appropriate measures are taken in respect of a Member State, that Member State is not released from its obligation to continue financing the final beneficiaries of the programmes concerned.
- 306 In that regard, Hungary notes that the EU aid provided for in the multiannual financial framework 2021-2027 laid down by Regulation 2020/2093 and in Regulation 2020/2094 is allocated under management programmes designed principally, if not exclusively, according to the priorities of the European Union. If measures adopted under the contested regulation were to suspend all or part of that aid, the Member State concerned would be required, under that provision, to fund those programmes in full.
- 307 In doing so, Article 5(2) of the contested regulation restricts the right of that Member State to use its own budget, makes it impossible to plan its economic policy in a predictable manner and is liable to compel it to infringe the provisions of EU law relating to public deficits. Those circumstances could lead to the imposition of additional penalties and to the structural indebtedness of the Member State concerned, in particular where that Member State has a modest budget, thereby infringing the principle of equality of the Member States before the Treaties.
- 308 In addition, Article 5(2) of the contested regulation calls into question the appropriateness of the legal basis chosen for that regulation, since that provision lays down requirements intended not for the Union budget but for the budget of the Member States concerned, which confirms that the measures for the protection of the Union budget which may be adopted under that regulation are intended to penalise those Member States for breaches of the rule of law.
- 309 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 310 By the sixth plea, Hungary, supported by the Republic of Poland, claims, in essence, that Article 5(2) of the contested regulation imposes constraints on the budgets of the Member States concerned, which, first, is incompatible with the legal basis of that regulation, secondly, infringes the provisions of EU law on public deficits and, thirdly, infringes the principle of equality of Member States before the Treaties.
- 311 In that regard, in the first place, as regards the complaint alleging that Article 5(2) of the contested regulation is incompatible with the legal basis of that regulation, it must be rejected for the reasons already set out in paragraphs 150 to 152 above.
- 312 In the second place, as regards the complaint alleging infringement of the provisions of EU law relating to public deficits, it should be noted that Article 5(2) of the contested regulation merely states that the adoption of measures under that regulation does not alter the pre-existing obligations of those government entities or of those Member States, arising, *inter alia*, from ‘the applicable sector-specific or financial rules’, and, in particular, those measures cannot constitute a ground enabling those government entities or those Member States to release themselves from those obligations. It follows that that provision does not impose any new obligation on the Member States.
- 313 As the Advocate General observed in points 324 and 325 of his Opinion, although Article 5(2) of the contested regulation has the consequence that the Member States must bear the costs arising from the measures imposed under that regulation, that consequence is without prejudice to their ability, within the limits of their obligations under EU law, to determine the means by which they achieve the public deficit targets set by the Treaties.
- 314 Thus, the effect that that provision may have on the budget of the Member States concerned is no different from that which may result from other obligations under EU law.
- 315 Furthermore, although the Member States may take into account, when drawing up their budgets, the financing from the Union budget which they may claim, provided that the conditions for obtaining that financing appear to be satisfied, the fact remains that, if it is subsequently found that those conditions were not satisfied or are no longer satisfied, with the result that the financing concerned is not paid or is the subject of a financial correction, a Member State cannot rely on its obligations relating to public deficits in order to circumvent those conditions. Accordingly, a Member State cannot claim that that application renders the planning of its economic policy unpredictable.
- 316 In the third place, as regards the alleged infringement of the principle of equality of Member States before the Treaties, it follows from Article 5(3) of the contested regulation that the appropriate measures taken under that regulation must be strictly proportionate to the impact of the breaches of the principles of the rule of law found on the sound financial management of the Union budget or on the protection of the financial interests of the Union, and that requirement of proportionality applies equally with regard to every Member State. In addition, in accordance with Article 6(7) and (8) of that regulation, the Commission is required to assess, *inter alia*, the proportionality of the measures to be imposed and to give every Member State concerned the opportunity to submit its observations on the proposed measures and, in particular, on their proportionality. Since that provision must be understood in the light of recital 26 of that

regulation, it follows that the Commission must conduct its assessment according to an evidence-based approach and respect the principles of objectivity, non-discrimination and equality of Member States before the Treaties.

- 317 Those various requirements thus entail an objective and diligent analysis of each situation which is the subject of a procedure under the contested regulation, as well as the appropriate measures necessitated, as the case may be, by that situation, in strict compliance with the principle of proportionality, in order to protect the Union budget and the financial interests of the Union effectively against the effects of breaches of the principles of the rule of law, while respecting the principle of equality of the Member States before the Treaties. In those circumstances, Hungary's argument that the application of Article 5(2) of the contested regulation entails an infringement of that principle is unfounded.
- 318 In the light of the foregoing considerations, the sixth plea must be rejected as unfounded and the claim for annulment of Article 5(2) of the contested regulation must therefore be dismissed.

4. The claim for annulment of the third sentence of Article 5(3) of the contested regulation

(a) Arguments of the parties

- 319 By the seventh plea, raised in support of its alternative claim for annulment of the third sentence of Article 5(3) of the contested regulation, Hungary, supported by the Republic of Poland, argues that the criteria for assessing the proportionality of the measures which may be adopted against a Member State, laid down in that provision, have no connection with the Union budget or the financial interests of the Union and are intended to penalise breaches of the principles of the rule of law.
- 320 In accordance with the very wording of that provision, the nature, duration, gravity and scope of the breaches of the principles of the rule of law are to be duly taken into account in determining the measures to be adopted. Recital 18 of the contested regulation states that the assessment of proportionality for that purpose must take into account the seriousness of the situation, the time which has elapsed since the relevant conduct started, the duration and recurrence of the conduct, the intention, the degree of cooperation of the Member State concerned in putting an end to the breaches of the principles of the rule of law, and the effects on the sound financial management of the Union budget or the financial interests of the Union.
- 321 Hungary submits that those criteria call into question, in disregard of the legal basis of the contested regulation and Article 7 TEU, the link between the established breach of the principles of the rule of law and the actual impact of that breach on the sound financial management of the Union budget or on the protection of the financial interests of the Union.
- 322 First, it is apparent from a reading of Article 5(3) of the contested regulation in conjunction with recital 18 thereof that the Commission and the Council are required to take into account the intention of the 'perpetrator of the breach'. In that regard, that regulation does not define the perpetrator of the breach of the principles of the rule of law, since the cases specified in Articles 3 and 4 of that regulation refer to situations and conduct which may be attributable either to the Member State concerned as a whole or to certain organs of that State. Hungary

submits that such entities lack the capacity to carry out an act of will, with the result that the manner in which account should be taken of the intention to ‘commit’ an act when determining the appropriate measures is unclear.

- 323 Furthermore, the consideration of such an intention would necessarily have an impact on the nature of the measure. If the proportionality of a measure is determined, even only in part, by the intention associated with the breach which gave rise to that measure, that confers a punitive character on that measure, which is thus not intended to correct any effect on the Union budget or to protect the financial interests of the Union. That consideration of intent is therefore a clear indication that the primary purpose and object of the contested regulation are not consistent with its legal basis.
- 324 Secondly, that assessment is supported by the taking into account of the duration and gravity of the breach of the principles of the rule of law and of the degree of cooperation of the Member State concerned in putting an end to it, since those criteria are also unrelated to the impact on the sound financial management of the Union budget or the protection of the financial interests of the Union.
- 325 Thirdly, it follows from a systematic interpretation of the contested regulation that, given that the obligation on the institutions to take account of the actual or potential impact of a breach of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union is already laid down in the second sentence of Article 5(3) of that regulation, the third sentence of that provision is intended to take account of other effects.
- 326 Hungary submits that it follows, first of all, that the third sentence of Article 5(3) of the contested regulation does not satisfy the requirement that there be a direct link between the measures taken and the protection of the Union budget or the financial interests of the Union. Next, the taking into account of the criteria set out in that provision requires a thorough assessment of the breach of the rule of law by the Commission and by the Council, which can be done only in the context of the procedure laid down in Article 7 TEU. Finally, the application of that provision would result in the measures taken having a punitive nature, even though penalties may be imposed on a Member State only on the basis of Article 7(3) TEU.
- 327 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 328 By the seventh plea, Hungary, supported by the Republic of Poland, submits, in essence, that the third sentence of Article 5(3) of the contested regulation, read in the light of recital 18 thereof, is incompatible with the legal basis of that regulation and infringes both Article 7 TEU and the principle of legal certainty, since the criteria mentioned in that sentence for the adoption of appropriate measures, relating to breaches of the principles of the rule of law, have no connection with the Union budget or the protection of the financial interests of the Union.

- 329 In that regard, as noted in paragraph 271 above, it follows from the first to third sentences of Article 5(3) of the contested regulation that the measures taken must be strictly proportionate to the impact of the breaches of the principles of the rule of law found on the Union budget or on the financial interests of the Union.
- 330 The first sentence of that provision states that the measures taken are to be ‘proportionate’, the second sentence states that they are to be ‘determined in light of the actual or potential impact’ of the breaches of the principles of the rule of law on the sound financial management of the Union budget or the financial interests of the Union while the third sentence states that the nature, duration, gravity and scope of the breaches of the principles of the rule of law are to be ‘duly taken into account’.
- 331 As the Advocate General noted in points 177 and 178 of his Opinion, it follows from the order of those sentences and from the terms used therein that the proportionality of the measures to be adopted is ensured, decisively, by the criterion of the ‘impact’ of breaches of the principles of the rule of law on the sound financial management of the Union budget or on the protection of the financial interests of the Union. As regards the criteria based on the nature, duration, gravity and scope of those breaches, they may be ‘duly taken into account’ only in order to determine the extent of that impact, which may vary depending on the characteristics of the breaches found, as illuminated by the application of those criteria.
- 332 It is true that recital 18 of the contested regulation, while referring to the same criteria as those set out in the second and third sentences of Article 5(3) of that regulation, refers to them in a different order. That recital cannot, however, lead to an interpretation of that provision that is incompatible with its wording and structure, since, according to settled case-law of the Court, cited in paragraph 191 above, the preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording. Furthermore, in referring also to ‘the intention ... of the Member State concerned’, that recital does not refer to the intention to breach the principles of the rule of law, but rather the intention to ‘[put] an end to the breaches’ found. That intention, like the ‘degree of cooperation’ of the Member State in that regard, also mentioned in that recital, may be relevant, *inter alia*, for the purpose of determining the duration and scope of a breach, within the meaning of the criteria referred to in the third sentence of Article 5(3) of that regulation and, consequently, in accordance with what has been set out in the preceding paragraph, for the purpose of measuring the impact of that breach on the sound financial management of the Union budget or the financial interests of the Union.
- 333 It follows that, contrary to Hungary’s submission, supported by the Republic of Poland, although the criteria referred to in the third sentence of Article 5(3) of the contested regulation presuppose an in-depth assessment by the Commission and by the Council of the characteristics of the breach of the principles of the rule of law in question, they are nevertheless linked to the sound financial management of the Union budget and the protection of the financial interests of the Union, with the result that they cannot be regarded as conferring on the appropriate measures adopted under that regulation the character of penalties for breaches of the rule of law as such.
- 334 In those circumstances, the seventh plea must be rejected as unfounded, with the result that the claim for annulment of the third sentence of Article 5(3) of the contested regulation must be dismissed.

5. The claim for annulment of the fourth sentence of Article 5(3) of the contested regulation

(a) Arguments of the parties

- 335 By the eighth plea, raised in support of its alternative claim for annulment of the fourth sentence of Article 5(3) of the contested regulation, Hungary, supported by the Republic of Poland, argues that that provision infringes the principles of proportionality and legal certainty in that it provides that it is only ‘insofar as possible’ that the measures adopted are to target the Union actions affected by the breaches.
- 336 It follows from the wording of that provision that those measures may target Union actions which are not affected by the breach of the principles of the rule of law, with the result that those measures could be adopted without a direct link being established between that breach and a specific Union action targeted by those measures. The principle of legal certainty strictly requires that the application of rules entailing financial consequences be certain and foreseeable, which is not the case where there is no actual link between breaches of the principles of the rule of law and measures adopted under the contested regulation.
- 337 The absence of any actual link also entails a breach of the principle of proportionality. Even if the objective of the contested regulation were to define the rules necessary for the protection of the Union budget in the event of a breach of the principles of the rule of law in a Member State, the fourth sentence of Article 5(3) of that regulation would go beyond what is necessary to achieve that objective, since it would authorise the adoption of measures in relation to EU programmes which are not affected by such a breach.
- 338 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 339 By the eighth plea, Hungary, supported by the Republic of Poland, argues that the fourth sentence of Article 5(3) of the contested regulation breaches the principles of proportionality and legal certainty in that makes it possible, by the use of the expression ‘insofar as possible’, to target actions and programmes which have no connection with an established breach of a principle of the rule of law.
- 340 In that regard, first, as regards the alleged infringement of the principle of proportionality, it should be recalled that, according to settled case-law of the Court, that principle, which is one of the general principles of EU law, requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 6 September 2017, *Slovakia and Hungary v Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 206 and the case-law cited).

- 341 In the present case, it is sufficient to note, as stated in paragraphs 274 to 279 above, that, first of all, the expression ‘insofar as possible’, in the fourth sentence of Article 5(3) of the contested regulation, does not authorise the alteration of the measures that may be adopted under Article 5(1) of that regulation in such a way that is not commensurate with the impact of the breach found on the Union budget, next, that that regulation is intended to protect the Union budget as a whole and, lastly, that that expression permits the targeting of Union actions other than those affected by such a breach only by way of derogation, where the latter actions cannot or can no longer be targeted, or can be targeted only inadequately, in order to achieve the objective of that regulation, namely to protect the Union budget as a whole, such that that step therefore proves essential in order to achieve that objective.
- 342 It follows that the argument according to which, by using the expression ‘insofar as possible’, the fourth sentence of Article 5(3) of the contested regulation goes beyond what is necessary in order to achieve that objective must be rejected as unfounded.
- 343 Second, as regards the alleged infringement of the principle of legal certainty, first of all, it follows from the findings made in paragraphs 269 to 272 above that the type of measures that may be adopted under the contested regulation is set out in Article 5(1) thereof and that the scope of the measures is determined strictly, in accordance with Article 5(3) of that regulation, according to the impact of the breach on the Union budget that has been found.
- 344 Next, it was noted in paragraphs 273 to 279 above that the expression ‘insofar as possible’ in the fourth sentence of Article 5(3) of the contested regulation does not sever the link between a breach of a principle of the rule of law and the effect or serious risk of an effect on the Union budget or the protection of the financial interests of the Union. Furthermore, the use of that expression makes it possible, by way of derogation and to the strict extent of what is essential, to apply measures for the protection of the Union budget to actions other than those affected by the breach of the principle of the rule of law, where the purpose of the contested regulation, which is to ensure the protection of that budget as a whole or of those interests, cannot be otherwise achieved. Moreover, Article 6 of that regulation circumscribes that possibility with strict procedural requirements and does not release the Commission and the Council from their obligation to comply strictly with the requirement that the measures adopted be proportionate to the impact of the breach found on the Union budget or on the protection of the financial interests of the Union.
- 345 Lastly, given that the contested regulation specifies the nature and scope of the measures that may be adopted, that it grants the Commission and the Council the power to target actions other than those that the breach of a principle of the rule of law affects only in so far as it is necessary to ensure the protection of the Union budget as a whole and the financial interests of the Union, and that that power is, moreover, strictly circumscribed, in particular by the principle of proportionality, it cannot be held that the fourth sentence of Article 5(3) of the contested regulation infringes the principles of proportionality and legal certainty.
- 346 Consequently, the eight plea must be rejected as unfounded and the claim for annulment of the fourth sentence of Article 5(3) of the contested regulation must therefore be dismissed.

6. The claim for annulment of Article 6(3) and (8) of the contested regulation

(a) Arguments of the parties

- 347 By the ninth plea, raised in support of its alternative claim for annulment of Article 6(3) and (8) of the contested regulation, Hungary, supported by the Republic of Poland, submits that Article 6(3) of the contested regulation infringes the principle of legal certainty in that it allows the Commission to take into account, when assessing whether the conditions set out in Article 4 of that regulation are fulfilled, ‘relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions’. The same is true of Article 6(8) of that regulation, which refers to Article 6(3) as regards the assessment of the proportionality of the measures to be imposed.
- 348 Article 6(3) and (8) of the contested regulation does not define in a sufficiently precise manner the relevant sources of information to which it refers, since it does not indicate the basis on which the Commission must assess the existence of a breach of the principles of the rule of law.
- 349 In particular, it is not precluded, in view of the expression ‘relevant information from available sources’ in Article 6(3) of the contested regulation, that the Commission might base its assessment on the individual opinion expressed by certain persons or organisations whose objectivity has not been established or that it may base its assessment on a failure to implement recommendations that are not legally binding and have been issued by international organisations outside the framework of the European Union. Such recommendations, of various kinds, cannot be regarded as reliable indicators of a generalised deficiency as regards the rule of law.
- 350 Article 6(3) and (8) of the contested regulation also does not indicate the manner in which the Commission must synthesise those sources. Given the broad discretion which those provisions grant to the Commission, any non-binding document relied on by the Commission could be used as a means of proving a breach, even if it were chosen arbitrarily.
- 351 The Parliament and the Council, supported by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden and the Commission, dispute that line of argument.

(b) Findings of the Court

- 352 By the ninth plea, Hungary, supported by the Republic of Poland, submits, first, that, in view of its imprecise wording, Article 6(3) and (8) of the contested regulation does not satisfy the requirement arising from the principle of legal certainty, secondly, that that provision permits the Commission to base its assessment on opinions the objectivity of which is not guaranteed and on non-binding recommendations issued outside the framework of the European Union and, lastly, that that provision does not specify how the Commission is to synthesise the chosen information nor how it should evaluate the relevance of that information with regard to the purpose of the contested regulation.

- 353 In that regard, in the first place, it should be borne in mind that, contrary to Hungary's assertions, the contested regulation is not intended to penalise breaches of the rule of law as such, but rather, as stated in paragraphs 98 to 152 above, to ensure the protection of the Union budget, with the result that the argument that the contested regulation must satisfy the requirements allegedly applicable to penalty measures cannot, in any event, succeed.
- 354 In the second place, as regards whether Article 6(3) and (8) of the contested regulation allows the Commission to base its assessment on opinions the objectivity of which could be regarded as doubtful and on non-binding recommendations issued outside the framework of the European Union, first of all, it should be noted that that provision does not refer to 'opinions', but to 'decisions, conclusions and recommendations' and to 'guidance'.
- 355 In any event, Hungary has not put forward any specific evidence capable of casting doubt on the objectivity of the bodies and institutions identified in recital 16 of that regulation, with the result that there is no reason to doubt the objectivity of the opinions they produce.
- 356 Next, Article 6(3) and (8) of the contested regulation requires the Commission to take into account – when assessing whether the conditions set out in Article 4 of the contested regulation are fulfilled and when assessing the proportionality of the appropriate measures to be adopted – relevant information for that purpose, which necessarily presupposes that that information relates to the principles referred to in Article 2(a) of that regulation, which form part of the value of the rule of law, common to the Member States, contained in Article 2 TEU.
- 357 Lastly, as regards the non-binding nature of the recommendations which may be taken into account by the Commission, it has been noted in paragraph 285 above that Article 6(3) and (8) of the contested regulation does not confer any specific or absolute probative value and does not attach specific legal effects to the sources of information it mentions, nor to those mentioned in recital 16 of that regulation, with the result that that provision does not relieve the Commission of its obligation to carry out a diligent assessment of the facts which fully satisfy the requirements set out in paragraph 284 above.
- 358 Furthermore, since, as noted in paragraph 287 above, the Commission must ensure that the information it uses is relevant and that the sources of that information are reliable, the Member State concerned may, during the procedure provided for in Article 6(1) to (9) of the contested regulation, submit its observations on that information and, accordingly, challenge the probative value of each piece of evidence relied on by the Commission, and the merits of the Commission's assessments may, if necessary, be reviewed by the EU judicature.
- 359 In the third place, as regards the arguments alleging that Article 6(3) and (8) of the contested regulation does not specify the manner in which the Commission is to synthesise the information used or the manner in which it is to assess, on the basis of that information, the gravity of a breach of the principle of the rule of law and its relationship with the protection of the sound financial management of the Union budget or of the financial interests of the Union, it was noted in paragraphs 357 and 358 above that the Commission is required to carry out a diligent assessment of the facts and to respect the requirement of proportionality of the measures taken under that regulation, guaranteed in Article 5(3) thereof, and the validity of a decision taken by the Council under that regulation may be reviewed by the EU judicature.
- 360 Consequently, the ninth plea must be rejected as unfounded and the claim for annulment of Article 6(3) and (8) of the contested regulation must therefore be dismissed.

361 In the light of all the foregoing considerations, the action must be dismissed in its entirety.

VI. Costs

362 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

363 Since the Parliament and the Council have applied for costs to be awarded against Hungary, and the latter has been unsuccessful, it must be ordered to pay the costs incurred by those parties.

364 In accordance with Article 140(1) of the Rules of Procedure, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Poland, the Republic of Finland, the Kingdom of Sweden and the Commission, as interveners, must bear their own costs.

On those grounds, the Court (Full Court) hereby:

- 1. Dismisses the action;**
- 2. Orders Hungary to bears its own costs and to pay the costs incurred by the European Parliament and the Council of the European Union;**
- 3. Orders the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Poland, the Republic of Finland, the Kingdom of Sweden and the European Commission to bear their own costs.**

[Signatures]



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 April 2016*

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal to execute — Charter of Fundamental Rights of the European Union — Article 4 — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State)

In Joined Cases C-404/15 and C-659/15 PPU,

REQUESTS for a preliminary ruling under Article 267 TFEU made by the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen, Germany), made by decisions of 23 July and 8 December 2015, received at the Court on 24 July and 9 December 2015 respectively, in proceedings relating to the execution of European arrest warrants issued in respect of

Pál Aranyosi (C-404/15)

Robert Căldăraru (C-659/15 PPU),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz and D. Šváby, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, M. Safjan (Rapporteur), M. Berger, A. Prechal, E. Jarašiūnas, M. Vilaras and E. Regan, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 February 2016,

after considering the observations submitted on behalf of:

- Mr Aranyosi, by R. Chekerov, Rechtsanwältin,
- Mr Căldăraru, by J. van Lengerich, Rechtsanwalt,
- the Generalstaatsanwaltschaft Bremen, by M. Glasbrenner, Oberstaatsanwalt,
- the German Government, by T. Henze, M. Hellmann and J. Kemper, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- Ireland, by E. Creedon, L. Williams, G. Mullan and A. Joyce, acting as Agents,

* Language of the case: German.

- the Spanish Government, by A. Sampol Pucurull, acting as Agent,
- the French Government, by F.-X. Bréchet, D. Colas and G. de Bergues, acting as Agents,
- the Lithuanian Government, by D. Kriauciūnas and J. Nasutavičienė, acting as Agents,
- the Hungarian Government, by M. Fehér, G. Koós and M. Bóra, acting as Agents,
- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Romanian Government, by R. Radu and M. Bejenar, acting as Agents,
- the United Kingdom Government, by V. Kaye, acting as Agent, and by J. Holmes, Barrister,
- the European Commission, by W. Bogensberger and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 March 2016,

gives the following

Judgment

- 1 The requests for a preliminary ruling concern the interpretation of Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24; ‘the Framework Decision’).
- 2 These requests have been made in the context of the execution, in Germany, of two European arrest warrants issued in respect of Mr Aranyosi on 4 November and 31 December 2014 respectively by the examining magistrate at the Miskolci járásbírószág (District Court of Miskolc, Hungary), and of a European arrest warrant issued in respect of Mr Căldăraru on 29 October 2015 by the Judecătoria Făgăraş (Court of first instance of Fagaras, Romania).

Legal context

ECHR

- 3 Under the heading ‘Prohibition of torture’, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (‘ECHR’), signed in Rome on 4 November 1950, provides:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’
- 4 Article 15 ECHR, headed ‘Derogation in time of emergency’, provides:

‘1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.’

2. No derogation from ... or from Articles 3 ... shall be made under this provision.

...'

- 5 Article 46(2) ECHR, that article being headed 'Binding force and execution of judgments', provides:

'The final judgment of the [European Court of Human Rights; 'EctHR'] shall be transmitted to the Committee of Ministers, which shall supervise its execution.'

EU law

The Charter

- 6 Article 1 of the Charter of Fundamental Rights of the European Union ('the Charter'), headed 'Human dignity', states:

'Human dignity is inviolable. It must be respected and protected.'

- 7 Article 4 of the Charter, headed 'Prohibition of torture and inhuman or degrading treatment or punishment', states:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

- 8 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17; 'the Explanations relating to the Charter') state that '[t]he right in Article 4 [of the Charter] is the right guaranteed by Article 3 of the ECHR which has the same wording ... By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article'.

- 9 Article 6 of the Charter, headed 'Right to liberty and security', provides:

'Everyone has the right to liberty and security of person.'

- 10 Article 48(1) of the Charter, that article being headed 'Presumption of innocence and rights of defence', provides:

'Everyone who has been charged shall be presumed innocent until proved guilty according to law.'

- 11 Article 51(1) of the Charter, that article being headed 'Field of application', provides:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. ...'

- 12 Article 52(1) of the Charter, that article being headed 'Scope and interpretation of rights and principles', provides:

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

The Framework Decision

13 Recitals 5 to 8, 10 and 12 in the preamble of the Framework Decision are worded as follows:

- ‘(5) ... the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...
- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.
- (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [EU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

...

- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU, now after amendment, Article 2 TEU], determined by the Council pursuant to Article 7(1) [EU, now after amendment, Article 7(2) TEU] with the consequences set out in Article [7(2) EU].

...

- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected by the Charter ..., in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced for any of these reasons.

...’

14 Article 1 of the Framework Decision, headed ‘Definition of the European arrest warrant and obligation to execute it’, provides:

- ‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].’

15 Articles 3, 4 and 4a of the Framework Decision set out the grounds for mandatory and optional non-execution of the European arrest warrant.

16 Article 5 of the Framework Decision, headed ‘Guarantees to be given by the issuing Member State in particular cases’, provides:

‘The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

...

(2) if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for 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, aiming at a non-execution of such penalty or measure;

(3) where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.’

17 Article 6 of the Framework Decision, headed ‘Determination of the competent judicial authorities’, provides:

‘1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.’

18 Article 7 of the Framework Decision, headed ‘Recourse to the central authority’, reads as follows:

‘1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State[s] wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.’

19 Article 12 of the Framework Decision, headed ‘Keeping the person in detention’, states:

‘When a person is arrested on the basis of a European 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. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.’

20 Article 15 of the Framework Decision, headed ‘Surrender decision’, provides:

‘1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

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

21 Article 17 of the Framework Decision, headed ‘Time limits and procedures for the decision to execute the European arrest warrant’, provides:

‘1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

...

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.’

22 Article 23 of the Framework Decision, headed ‘Time limits for surrender of the person’, provides:

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

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

...

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person’s life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.’

German law

23 The Framework Decision was transposed into the German legal system by Paragraphs 78 to 83k of the Law on international mutual legal assistance in criminal matters (Gesetz über die internationale Rechtshilfe in Strafsachen) of 23 December 1982, as amended by the Law on the European arrest warrant (Europäisches Haftbefehlsgesetz) of 20 July 2006 (BGBl. 2006 I, p. 1721; ‘the IRG’).

24 Under Paragraph 15 of the IRG, headed ‘Detention pending extradition’:

‘1. On receipt of the request for extradition, an order may be made for the individual sought to be detained pending extradition, where

(1) there is a risk that the individual will not cooperate with the extradition procedure or the enforcement of the extradition, or

(2) there is specific evidence to support a strong suspicion that the individual sought will hinder the determination of the facts in the foreign proceedings or in the extradition procedure.

2. Subparagraph (1) shall not apply where the extradition appears to be *prima facie* unlawful.’

25 Paragraph 24 of the IRG, headed ‘Suspension of execution of the arrest warrant issued for the purposes of extradition’, provides:

‘1. An arrest warrant issued for the purposes of extradition must be suspended forthwith when the conditions for provisional detention pending extradition are no longer met or the extradition has been declared to be unlawful.

2. An arrest warrant issued for the purposes of extradition must also be suspended at the request of the Public Prosecutor at the Higher Regional Court. When that request is made, the Public Prosecutor shall order the release of the individual sought.’

26 Under Paragraph 29(1) of the IRG, the Higher Regional Court is to give a ruling, at the request of the Public Prosecutor, on the legality of the extradition where the individual sought has not consented to extradition. The decision is to be made by order, in accordance with Paragraph 32 of the IRG.

27 Paragraph 73 of the IRG states:

‘In the absence of a request to that effect, mutual legal assistance and the transmission of information shall be unlawful if contrary to the essential principles of the German legal system. In the event of a request under Parts VIII, IX and X, mutual legal assistance shall be unlawful if contrary to the principles stated in Article 6 TEU.’

The main proceedings and the questions referred for a preliminary ruling

Case C-404/15

28 Mr Aranyosi is a Hungarian national born on 14 July 1996 in Szikszó (Hungary).

29 The examining magistrate at the Miskolci járásbíróság (Court of first instance, Miskolc) issued two European arrest warrants, on 4 November and 31 December 2014 respectively, with respect to Mr Aranyosi, seeking his surrender to the Hungarian judicial authorities for the purposes of prosecution.

30 According to the European arrest warrant of 4 November 2014, on 3 August 2014 Mr Aranyosi forced entry to a dwelling house in Sajohidveg (Hungary). Having done so, he stole, inter alia, EUR 2 500 and HUF 100 000 (Hungarian forints; approximately EUR 313) in cash, and various objects of value.

31 Further, according to the European arrest warrant of 31 December 2014, Mr Aranyosi was accused of entering by a window, on 19 January 2014, a school in Sajohidveg, and forcing open a number of doors within the building and stealing technical equipment and cash. The stated value of the theft was HUF 244 000 (approximately EUR 760) and the value of material damage was HUF 55 000 (approximately EUR 170).

32 Mr Aranyosi was temporarily arrested on 14 January 2015 in Bremen (Germany) as a result of an alert having been entered in the Schengen Information System. He was heard on the same day by the investigating magistrate of the Amtsgericht Bremen (District Court of Bremen, Germany).

33 Mr Aranyosi stated that he was a Hungarian national, that he lived in Bremerhaven (Germany) with his mother, that he was unmarried, that he had a girlfriend and an eight-month-old child. He denied the offences of which he was accused and declined to consent to the simplified surrender procedure.

34 The representative of the Public Prosecutor of Bremen ordered that Mr Aranyosi be released from custody because there was no apparent risk that he would not cooperate with the surrender procedure. On 14 January 2015 the Generalstaatsanwaltschaft Bremen (Office of the Public Prosecutor of Bremen), referring to detention conditions in a number of Hungarian prisons that did not satisfy minimum European standards, asked the Miskolci járásbíróság (District Court of Miskolc) to state in which prison Mr Aranyosi would be held in the event that he was surrendered.

35 By letter of 20 February 2015, received by fax on 15 April 2015 via the Hungarian Minister of Justice, the Public Prosecutor of the district of Miskolc stated that, in this case, it was not inevitable that there would be an enforcement measure of preventive detention in criminal proceedings and that a custodial sentence would be requested.

- 36 The Public Prosecutor stated that, under Hungarian criminal law, there are a number of enforcement measures that are less onerous than detention and that a number of penalties other than a custodial sentence come into consideration. What form of enforcement measure would be requested prior to the decision to indict and what penalty would be requested in that decision are exclusively within the discretion of the Public Prosecutor, who is independent.
- 37 Further, the Public Prosecutor of the district of Miskolc said that the determination of the offence and the choice of penalties to be imposed fall within the competence of the Hungarian judicial authorities. In that regard, Hungarian legislation provides, in criminal proceedings, equivalent safeguards based on European values.
- 38 On 21 April 2015 the Public Prosecutor of Bremen requested that the surrender of Mr Aranyosi to the issuing judicial authority for the purposes of criminal prosecution should be declared to be lawful. He stated, *inter alia*, that, while the Public Prosecutor of the district of Miskolc had not stated in which prison Mr Aranyosi would be held in the event of his being surrendered to Hungary, there was however no specific evidence that, if he were surrendered, Mr Aranyosi might be the victim of torture or other cruel, inhuman or degrading treatment.
- 39 Mr Aranyosi's lawyer claimed that the request of the Public Prosecutor of Bremen should be rejected on the ground that the Public Prosecutor of the district of Miskolc had not stated in which prison Mr Aranyosi would be held. It was therefore impossible to ascertain the conditions of detention.
- 40 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that the request submitted by Hungary satisfies the conditions to which requests for surrender are subject under the IRG.
- 41 In particular, what Mr Aranyosi is accused of constitutes a criminal offence both under Article 370(1) of the Hungarian Criminal Code and Paragraphs 242, 243(1) point 1, and 244(1) point 3, of the German Criminal Code. There is criminality in both Member States concerned and the penalty that can be imposed is a minimum of one year's imprisonment under Hungarian and German law.
- 42 Nonetheless, in the opinion of the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen), it would be necessary to declare the surrender to be unlawful if there were an impediment to surrender under Paragraph 73 of the IRG. Having regard to the information currently available, the referring court is satisfied that there is probative evidence that, in the event of surrender to the Hungarian judicial authority, Mr Aranyosi might be subject to conditions of detention that are in breach of Article 3 ECHR and the fundamental rights and general principles of law enshrined in Article 6 TEU.
- 43 The ECtHR has found Hungary to be in violation by reason of the overcrowding in its prisons (ECtHR, *Varga and Others v. Hungary*, Nos 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, of 10 March 2015). The ECtHR held that it was established that Hungary was in violation of Article 3 ECHR by imprisoning the applicants in cells that were too small and that were overcrowded. The ECtHR treated those proceedings as a pilot case after 450 similar cases against Hungary were brought before it with respect to inhuman conditions of detention.
- 44 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that specific evidence that the conditions of detention to which Mr Aranyosi would be subject, if he were surrendered to the Hungarian authorities, do not satisfy the minimum standards required by international law is also to be found in a report issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The findings in that report refer in particular to the significant prison overcrowding identified in the course of visits made between 2009 and 2013.

- 45 On the basis of that information, the referring court considers that it is not in a position to give a ruling on the lawfulness of the surrender of Mr Aranyosi to the Hungarian authorities, having regard to the restrictions imposed in Paragraph 73 of the IRG and Article 1(3) of the Framework Decision. The decision of the referring court will depend essentially on whether or not the impediment to surrender can still be overcome, in accordance with the Framework Decision, by means of assurances given by the issuing Member State. If that impediment cannot be removed by such assurances, the surrender would then be unlawful.
- 46 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is Article 1(3) of the Framework Decision to be interpreted as meaning that a request for surrender for the purposes of prosecution is inadmissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned and the fundamental legal principles as enshrined in Article 6 TEU, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the admissibility of the request for surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?
 2. Are Articles 5 and 6(1) of the Framework Decision to be interpreted as meaning that the issuing judicial authority is also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State?’

Case C-659/15 PPU

- 47 Mr Căldăraru is a Romanian national born on 7 December 1985 in Braşov (Romania).
- 48 By judgment of the Judecătoria Făgăraş (Court of First Instance of Făgăraş, Romania) of 16 April 2015, Mr Căldăraru was convicted and sentenced to an overall period of imprisonment of one year and eight months, for the offence of driving without a driving licence.
- 49 According to the grounds of that judgment, as set out by the referring court in its request for a preliminary ruling, that sentence included a period of imprisonment of one year, for the offence of driving without a driving licence, execution of which was suspended on 17 December 2013 by the Judecătoria Făgăraş (Court of First Instance of Făgăraş).
- 50 That conviction and sentence became final following a judgment of the Curtea de Apel Braşov (Court of Appeal of Braşov) of 15 October 2015.
- 51 On 29 October 2015 the Judecătoria Făgăraş (Court of First Instance of Făgăraş) issued a European arrest warrant in respect of Mr Căldăraru and entered in the Schengen Information System an alert concerning him.
- 52 Mr Căldăraru was arrested in Bremen on 8 November 2015.
- 53 On the same date the Amtsgericht Bremen (District Court of Bremen) issued an arrest warrant with respect to Mr Căldăraru. At his hearing before that court, Mr Căldăraru stated that he would not consent to the simplified surrender procedure.

- 54 On 9 November 2015 the Public Prosecutor of Bremen applied to the court for Mr Căldăraru to be detained pending extradition.
- 55 By decision of 11 November 2015 the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) granted that application. That court held that the fact of Mr Căldăraru being detained pending extradition did not appear to be ‘prima facie unlawful’ under Paragraph 15(2) of the IRG, and found that there was a risk that Mr Căldăraru would not cooperate with the procedure of surrender to the Romanian authorities, and that his being detained pending extradition, in accordance with Paragraph 15(1) of the IRG, was therefore justified.
- 56 On 20 November 2015 the Public Prosecutor of Bremen applied to the court for Mr Căldăraru’s surrender to the Romanian authorities to be declared to be lawful. In addition, that authority stated that the Judecătoria Făgăraş (Court of First Instance of Făgăraş) was unable to provide information as to the prison in which Mr Căldăraru would be held in Romania.
- 57 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that the application presented by Romania complies with the conditions in the IRG governing requests for surrender.
- 58 In particular, what Mr Căldăraru was convicted of constitutes a criminal offence under both Article 86 of the Romanian Law No 195 of 2002 and Paragraph 21 of the German Road Traffic law (Straßenverkehrsgesetz). There is criminality in both Member States concerned, the attached penalty being not less than four months imprisonment.
- 59 Nonetheless, in the opinion of the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen), it would be necessary to declare the surrender to be unlawful if there were an impediment to surrender under Paragraph 73 of the IRG. Having regard to the information currently available, the referring court states that there is probative evidence that, in the event of surrender to the Romanian judicial authority, Mr Căldăraru might be subject to conditions of detention that are in breach of Article 3 ECHR and the fundamental rights and general principles of law enshrined in Article 6 TEU.
- 60 In a number of judgments issued on 10 June 2014, the ECtHR found Romania to be in violation by reason of the overcrowding in its prisons (ECtHR, *Voicu v. Romania*, No 22015/10; *Bujorean v. Romania*, No 13054/12; *Mihai Laurenţiu Marin v. Romania*, No 79857/12, and *Constantin Aurelian Burlacu v. Romania*, No 51318/12). The ECtHR held it to be established that Romania was in violation of Article 3 ECHR by imprisoning the applicants in cells that were too small and overcrowded, that lacked adequate heating, that were dirty and lacking in hot water for showers.
- 61 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that specific evidence that the conditions of detention to which Mr Căldăraru would be subject, if he were to be surrendered to the Romanian authorities, do not satisfy the minimum standards required by international law is also to be found in a report issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The findings in that report refer in particular to the significant prison overcrowding identified in visits made between 5 and 17 June 2014.
- 62 On the basis of that information, the referring court considers that it is not in a position to give a ruling on the lawfulness of the surrender of Mr Căldăraru to the Romanian authorities, having regard to the restrictions imposed in Paragraph 73 of the IRG and Article 1(3) of the Framework Decision. The decision of the referring court will depend essentially on whether or not the impediment to surrender can still be overcome, in accordance with the Framework Decision, by means of assurances given by the issuing Member State. If that impediment cannot be removed by such assurances, the surrender would then be unlawful.

63 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘1. Is Article 1(3) of the Framework Decision to be interpreted as meaning that surrender for the purposes of execution of a criminal sentence is impermissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned and the fundamental legal principles as enshrined in Article 6 TEU, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the permissibility of surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?
2. Are Articles 5 and 6(1) of the Framework Decision to be interpreted as meaning that the issuing judicial authorities are also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State?’

Procedure before the Court

Case C-404/15

- 64 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court’s Rules of Procedure.
- 65 In support of its request, the referring court stated that Mr Aranyosi had been temporarily arrested on the basis of a European arrest warrant issued by the Hungarian authorities, but that he was not currently in custody, since the Public Prosecutor in Bremen had ordered that he be released, on the ground that there was at that time no risk that the accused would abscond, given his social ties.
- 66 On 31 July 2015 the Fourth Chamber of the Court, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided not to grant the request of the referring court that Case C-404/15 be dealt with under the urgent preliminary ruling procedure.
- 67 By decision of 4 August 2015, the President of the Court ordered that Case C-404/15 should be given priority over others.

Case C-659/15 PPU

- 68 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court’s Rules of Procedure.
- 69 In support of its request, the referring court stated that Mr Căldăraru had been temporarily arrested on the basis of a European arrest warrant issued by the Romanian authorities and that he was currently held in custody on the basis of that arrest warrant for the purposes of his surrender to those authorities. The referring court added that whether Mr Căldăraru’s detention was well founded depended on the answer of the Court to the questions referred by it for a preliminary ruling.
- 70 In that respect, it must be observed that the reference for a preliminary ruling in Case C-659/15 PPU concerns the interpretation of the Framework Decision, which is within the field covered by Part Three, Title V, of the FEU Treaty, relating to the area of freedom, security and justice. It may

therefore be dealt with under the urgent preliminary ruling procedure. Further, Mr Căldăraru is currently held in custody and whether his detention should continue depends on the answer of the Court to the questions referred to it by the national court.

- 71 In those circumstances, on 16 December 2015 the Third Chamber of the Court decided, on the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant the referring court's request that the reference for a preliminary ruling in Case C-659/15 PPU be dealt with under the urgent procedure.
- 72 It was also decided that Case C-659/15 PPU, and, because of the connection between the cases, Case C-404/15, should be referred to the Court for assignment to the Grand Chamber.
- 73 Given that connection, confirmed at the hearing of oral argument, the two cases C-404/15 and C-659/15 PPU are to be joined for the purposes of judgment.

Consideration of the questions referred for a preliminary ruling

- 74 By its questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 1(3) of the Framework Decision must be interpreted as meaning that, where there is solid evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, in particular with Article 4 of the Charter, the executing judicial authority may or must refuse to execute a European arrest warrant issued in respect of a person for the purposes of conducting a criminal prosecution or executing a custodial sentence, or whether it may or must make the surrender of that person conditional on there being obtained from the issuing Member State information enabling it to be satisfied that those detention conditions are compatible with fundamental rights. Further, the referring court seeks to ascertain whether Articles 5 and 6(1) of the Framework Decision must be interpreted as meaning that such information may be supplied by the judicial authority of the issuing Member State or whether the supply of that information is governed by the domestic rules of competence in that Member State.
- 75 It should be recalled, as a preliminary point, that the purpose of the Framework Decision, as is apparent in particular from Article 1(1) and (2) thereof and recitals 5 and 7 in the preamble thereto, is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, that system of surrender being based on the principle of mutual recognition (see judgments in *West*, C-192/12 PPU, EU:C:2012:404, paragraph 54; *Melloni*, C-399/11, EU:C:2013:107, paragraph 36; *F.*, C-168/13 PPU, EU:C:2013:358, paragraph 34; and *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 27).
- 76 The Framework Decision thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (see judgments in *Melloni*, C-399/11, EU:C:2013:107, paragraph 37; *F.*, C-168/13 PPU, EU:C:2013:358, paragraph 35; and *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 28).
- 77 The principle of mutual recognition on which the European arrest warrant system is based is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter (see, to that effect, judgment in *F.*, C-168/13 PPU, EU:C:2013:358, paragraph 50, and, by analogy, with respect to judicial cooperation in civil matters, the judgment in *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraph 70).

- 78 Both the principle of mutual trust between the Member States and the principle of mutual recognition are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).
- 79 In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the ‘cornerstone’ of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).
- 80 It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that Framework Decision (see, to that effect, judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).
- 81 It must, in that context, be noted that recital 10 of the Framework Decision states that the implementation of the mechanism of the European arrest warrant as such may be suspended only in the event of serious and persistent breach by one of the Member States of the principles referred to in Article 2 TEU, and in accordance with the procedure provided for in Article 7 TEU.
- 82 However, first, the Court has recognised that limitations of the principles of mutual recognition and mutual trust between Member States can be made ‘in exceptional circumstances’ (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).
- 83 Second, as is stated in Article 1(3) thereof, the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, inter alia, the Charter.
- 84 In that regard, it must be stated that compliance with Article 4 of the Charter, concerning the prohibition of inhuman or degrading treatment or punishment, is binding, as is stated in Article 51(1) of the Charter, on the Member States and, consequently, on their courts, where they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the Framework Decision (see, by analogy, judgments in *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 72, and *Peftiev and Others*, C-314/13, EU:C:2014:1645, paragraph 24).
- 85 As regards the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter (see, to that effect, judgment in *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 80).
- 86 That the right guaranteed by Article 4 of the Charter is absolute is confirmed by Article 3 ECHR, to which Article 4 of the Charter corresponds. As is stated in Article 15(2) ECHR, no derogation is possible from Article 3 ECHR.
- 87 Articles 1 and 4 of the Charter and Article 3 ECHR enshrine one of the fundamental values of the Union and its Member States. That is why, in any circumstances, including those of the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or

degrading treatment or punishment, irrespective of the conduct of the person concerned (see judgment of the ECtHR in *Bouyid v. Belgium*, No 23380/09 of 28 September 2015, § 81 and the case-law cited).

- 88 It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter (see, to that effect, judgment in *Melloni*, C-399/11, EU:C:2013:107, paragraphs 59 and 63, and Opinion 2/13, EU:C:2014:2454, paragraph 192), that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment.
- 89 To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.
- 90 In that regard, it follows from the case-law of the ECtHR that Article 3 ECHR imposes, on the authorities of the State on whose territory an individual is detained, a positive obligation to ensure that any prisoner is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the individual concerned distress or hardship of an intensity exceeding the unavoidable level of suffering that is inherent in detention and that, having regard to the practical requirements of imprisonment, the health and well-being of the prisoner are adequately protected (see judgment of the ECtHR in *Torreggiani and Others v. Italy*, Nos 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, and 37818/10, of 8 January 2013, § 65).
- 91 Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant.
- 92 Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.
- 93 The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State.
- 94 Consequently, in order to ensure respect for Article 4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4.

- 95 To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State.
- 96 That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons.
- 97 In accordance with Article 15(2) of the Framework Decision, the executing judicial authority may fix a time limit for the receipt of the supplementary information requested from the issuing judicial authority. That time limit must be adjusted to the particular case, so as to allow to that authority the time required to collect the information, if necessary by seeking assistance to that end from the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision. Under Article 15(2) of the Framework Decision, that time limit must however take into account the need to observe the time limits set in Article 17 of that Framework Decision. The issuing judicial authority is obliged to provide that information to the executing judicial authority.
- 98 If, in the light of the information provided pursuant to Article 15(2) of the Framework Decision, and of any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual who is the subject of the European arrest warrant, a real risk of inhuman or degrading treatment, as referred to in paragraph 94 of this judgment, the execution of that warrant must be postponed but it cannot be abandoned (see, by analogy, judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 38).
- 99 Where the executing authority decides on such a postponement, the executing Member State is to inform Eurojust, in accordance with Article 17(7) of the Framework Decision, giving the reasons for the delay. In addition, pursuant to that provision, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants for the reasons referred to in the preceding paragraph, is to inform the Council with a view to an evaluation, at Member State level, of the implementation of the Framework Decision.
- 100 Further, in accordance with Article 6 of the Charter, the executing judicial authority may decide to hold the person concerned in custody only in so far as the procedure for the execution of the European arrest warrant has been carried out in a sufficiently diligent manner and in so far as, consequently, the duration of the detention is not excessive (see, to that effect, judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraphs 58 to 60). The executing judicial authority must give due regard, with respect to individuals who are the subject of a European arrest warrant for the purposes of prosecution, to the principle of the presumption of innocence guaranteed by Article 48 of the Charter.
- 101 In that regard, the executing judicial authority must respect the requirement of proportionality, laid down in Article 52(1) of the Charter, with respect to the limitation of any right or freedom recognised by the Charter. The issue of a European arrest warrant cannot justify the individual concerned remaining in custody without any limit in time.
- 102 In any event, if the executing judicial authority concludes, following the review referred to in paragraphs 100 and 101 of this judgment, that it is required to bring the requested person's detention to an end, it is then required, pursuant to Articles 12 and 17(5) of the Framework Decision, to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken (see judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 61).

- ¹⁰³ In the event that the information received by the executing judicial authority from the issuing judicial authority is such as to permit it to discount the existence of a real risk that the individual concerned will be subject to inhuman and degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time limits prescribed by the Framework Decision, its decision on the execution of the European arrest warrant, without prejudice to the opportunity of the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, where appropriate, the lawfulness of the conditions of his detention in a prison of that Member State (see, to that effect, judgment in *F.*, C-168/13 PPU, EU:C:2013:358, paragraph 50).
- ¹⁰⁴ It follows from all the foregoing that the answer to the questions referred is that Article 1(3), Article 5 and Article 6(1) of the Framework Decision must be interpreted as meaning that where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

Costs

- ¹⁰⁵ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing

Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

[Signatures]



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

25 July 2018*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 1(3) — Surrender procedures between Member States — Conditions for execution — Charter of Fundamental Rights of the European Union — Article 47 — Right of access to an independent and impartial tribunal)

In Case C-216/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 23 March 2018, received at the Court on 27 March 2018, in proceedings relating to the execution of European arrest warrants issued against

LM,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta (Rapporteur), M. Ilešič, J.L. da Cruz Vilaça, J. Malenovský, E. Levits and C.G. Fernlund, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, A. Arabadjiev, S. Rodin, F. Biltgen, C. Lycourgos and E. Regan, Judges,

Advocate General: E. Tanchev,

Registrar: L. Hewlett, Principal Administrator,

having regard to the referring court's request of 23 March 2018, received at the Court on 27 March 2018, that the reference for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the decision of 12 April 2018 of the First Chamber granting that request,

having regard to the written procedure and further to the hearing on 1 June 2018,

after considering the observations submitted on behalf of:

- the Minister for Justice and Equality, by M. Browne, acting as Agent, S. Ní Chúlacháin, Barrister-at-Law, R. Farrell, Senior Counsel and K. Colmcille, Barrister-at-Law,
- LM, by C. Ó Maolchallann, Solicitor, M. Lynam, Barrister-at-Law, S. Guerin, Senior Counsel, and D. Stuart, Barrister-at-Law,
- the Spanish Government, by M.A. Sampol Pucurull, acting as Agent,

* Language of the case: English.

- the Hungarian Government, by M.Z. Fehér, acting as Agent,
- the Netherlands Government, by M.K. Bulterman, acting as Agent,
- the Polish Government, by Ł. Piebiak, B. Majczyna and J. Sawicka, acting as Agents,
- the European Commission, by J. Tomkin, H. Krämer, B. Martenczuk, R. Troosters and K. Banks, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 June 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').
- 2 The request has been made in connection with the execution, in Ireland, of European arrest warrants issued by Polish courts against LM ('the person concerned').

Legal context

The EU Treaty

- 3 Article 7 TEU provides:

'1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

...'

The Charter

- 4 Title VI of the Charter of Fundamental Rights of the European Union ('the Charter'), headed 'Justice', includes Article 47, entitled 'Right to an effective remedy and to a fair trial', which states:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

...'

- 5 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) point out that the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').
- 6 Article 48 of the Charter, entitled 'Presumption of innocence and rights of defence', states:
- '1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

Framework Decision 2002/584

- 7 Recitals 5 to 8, 10 and 12 of Framework Decision 2002/584 are worded as follows:
- '(5) ... the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...
- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.
- (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [EU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU, now, after amendment, Article 2 TEU], determined by the [European] Council pursuant to Article 7(1) [EU, now, after amendment, Article 7(2) TEU,] with the consequences set out in Article 7(2) thereof [now, after amendment, Article 7(3) TEU].

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected in the [Charter], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

...'

8 Article 1 of Framework Decision 2002/584, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].'

9 Articles 3, 4 and 4a of Framework Decision 2002/584 set out the grounds for mandatory or optional non-execution of a European arrest warrant.

10 Article 7 of Framework Decision 2002/584, entitled 'Recourse to the central authority', provides:

'1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.'

11 Article 15 of Framework Decision 2002/584, entitled 'Surrender decision', states:

'1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

...'

Irish law

12 Framework Decision 2002/584 was transposed into Irish law by the European Arrest Warrant Act 2003.

13 Section 37(1) of the European Arrest Warrant Act 2003 provides:

‘A person shall not be surrendered under this Act if—

(a) his or her surrender would be incompatible with the State’s obligations under—

- (i) the [ECHR], or
- (ii) the Protocols to the [ECHR],

(b) his or her surrender would constitute a contravention of any provision of the Constitution ...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 On 1 February 2012, 4 June 2012 and 26 September 2013, Polish courts issued three European arrest warrants (‘the EAWs’) against the person concerned, in order for him to be arrested and surrendered to those courts for the purpose of conducting criminal prosecutions, inter alia for trafficking in narcotic drugs and psychotropic substances.

15 On 5 May 2017 the person concerned was arrested in Ireland on the basis of those EAWs and brought before the referring court, the High Court (Ireland). He informed that court that he did not consent to his surrender to the Polish judicial authorities and was placed in custody pending a decision on his surrender to them.

16 In support of his opposition to being surrendered, the person concerned submits, inter alia, that his surrender would expose him to a real risk of a flagrant denial of justice in contravention of Article 6 of the ECHR. In this connection, he contends, in particular, that the recent legislative reforms of the system of justice in the Republic of Poland deny him his right to a fair trial. In his submission, those changes fundamentally undermine the basis of the mutual trust between the authority issuing the European arrest warrant and the executing authority, calling the operation of the European arrest warrant mechanism into question.

17 The person concerned relies, in particular, on the Commission’s reasoned proposal of 20 December 2017 submitted in accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland (COM(2017) 835 final) (‘the reasoned proposal’) and on the documents to which the reasoned proposal refers.

18 In the reasoned proposal, the Commission, first of all, sets out in detail the context and history of the legislative reforms, next, addresses two particular issues of concern — namely (i) the lack of an independent and legitimate constitutional review and (ii) the threats to the independence of the

ordinary judiciary — and, finally, invites the Council to determine that there is a clear risk of a serious breach by the Republic of Poland of the values referred to in Article 2 TEU and to address to that Member State the necessary recommendations in that regard.

- 19 The reasoned proposal also sets out the findings of the Commission for Democracy through Law of the Council of Europe relating to the situation in the Republic of Poland and to the effects of the recent legislative reforms on its system of justice.
- 20 Finally, the reasoned proposal notes the serious concerns expressed in that regard, during the period preceding the reasoned proposal's adoption, by a number of international and European institutions and bodies, such as the United Nations Human Rights Committee, the European Council, the European Parliament and the European Network of Councils for the Judiciary, and, at national level, by the Sąd Najwyższy (Supreme Court, Poland), the Trybunał Konstytucyjny (Constitutional Tribunal, Poland), the Rzecznik Praw Obywatelskich (Ombudsman, Poland), the Krajowa Rada Sądownictwa (National Council for the Judiciary, Poland) and associations of judges and lawyers.
- 21 On the basis of the information in the reasoned proposal and of the findings of the Commission for Democracy through Law of the Council of Europe relating to the situation in the Republic of Poland and to the effects of the recent legislative reforms on its system of justice, the referring court concludes that, as a result of the cumulative impact of the legislative changes that have taken place in the Republic of Poland since 2015 concerning, in particular, the Trybunał Konstytucyjny (Constitutional Court), the Sąd Najwyższy (Supreme Court), the National Council for the Judiciary, the organisation of the ordinary courts, the National School of Judiciary and the Public Prosecutor's Office, the rule of law has been breached in that Member State. The referring court bases that conclusion on changes found by it to be particularly significant, such as:
- the changes to the constitutional role of the National Council for the Judiciary in safeguarding independence of the judiciary, in combination with the Polish Government's invalid appointments to the Trybunał Konstytucyjny (Constitutional Tribunal) and its refusal to publish certain judgments;
 - the fact that the Minister for Justice is now the Public Prosecutor, that he is entitled to play an active role in prosecutions and that he has a disciplinary role in respect of presidents of courts, which has the potential for a chilling effect on those presidents, with consequential impact on the administration of justice;
 - the fact that the Sąd Najwyższy (Supreme Court) is affected by compulsory retirement and future appointments, and that the new composition of the National Council for the Judiciary will be largely dominated by political appointees; and
 - the fact that the integrity and effectiveness of the Trybunał Konstytucyjny (Constitutional Court) have been greatly interfered with in that there is no guarantee that laws in Poland will comply with the Polish Constitution, which is sufficient in itself to have effects throughout the criminal justice system.
- 22 That being so, the referring court considers, on the ground that the 'wide and unchecked powers' of the system of justice in the Republic of Poland are inconsistent with those granted in a democratic State subject to the rule of law, that there is a real risk of the person concerned being subjected to arbitrariness in the course of his trial in the issuing Member State. Thus, surrender of the person concerned would result in breach of his rights laid down in Article 6 of the ECHR and should, accordingly, be refused, in accordance with Irish law and with Article 1(3) of Framework Decision 2002/584 read in conjunction with recital 10 thereof.

- 23 In this connection, the referring court observes that, in the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), the Court of Justice held, in the context of a surrender liable to result in a breach of Article 3 of the ECHR, that, if a finding of general or systemic deficiencies in the protections in the issuing Member State is made by the executing judicial authority, that authority must make an assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to a real risk of being subject in that Member State to inhuman or degrading treatment. It states that in that judgment the Court also established a two-step procedure to be applied by an executing judicial authority in such circumstances. That authority must, first of all, make a finding of general or systemic deficiencies in the protections provided in the issuing Member State and, then, seek all necessary supplementary information from the issuing Member State's judicial authority as to the protections for the individual concerned.
- 24 The referring court is uncertain whether, where the executing judicial authority has found that the common value of the rule of law enshrined in Article 2 TEU has been breached by the issuing Member State and that that systemic breach of the rule of law constitutes, by its nature, a fundamental defect in the system of justice, the requirement to assess, specifically and precisely, in accordance with the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), whether there are substantial grounds to believe that the individual concerned will be exposed to a risk of breach of his right to a fair trial, as enshrined in Article 6 of the ECHR, is still applicable, or whether, in such circumstances, the view may readily be taken that no specific guarantee as to a fair trial for that individual could ever be given by an issuing authority, given the systemic nature of the breach of the rule of law, so that the executing judicial authority cannot be required to establish that such grounds exist.
- 25 In those circumstances, the High Court decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Notwithstanding the conclusions of the Court of Justice in [the judgment of 5 April 2016,] *Aranyosi and Căldăraru* [(C-404/15 and C-659/15 PPU, EU:C:2016:198)], where a national court determines there is cogent evidence that conditions in the issuing Member State are incompatible with the fundamental right to a fair trial because the system of justice itself in the issuing Member State is no longer operating under the rule of law, is it necessary for the executing judicial authority to make any further assessment, specific and precise, as to the exposure of the individual concerned to the risk of unfair trial where his trial will take place within a system no longer operating within the rule of law?
- (2) If the test to be applied requires a specific assessment of the requested person's real risk of a flagrant denial of justice and where the national court has concluded that there is a systemic breach of the rule of law, is the national court as executing judicial authority obliged to revert to the issuing judicial authority for any further necessary information that could enable the national court discount the existence of the risk to an unfair trial and if so, what guarantees as to fair trial would be required?’

The urgent procedure

- 26 The referring court requested that the present reference be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.
- 27 In support of that request, the referring court relied, in particular, on the fact that the person concerned is currently deprived of his liberty, pending the decision on his surrender to the Polish authorities, and that the answer to the questions referred will be decisive for adopting that decision.

- 28 It must be stated, first, that the present reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which falls within the fields covered by Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Consequently, the reference can be dealt with under the urgent preliminary ruling procedure.
- 29 Second, as regards the criterion relating to urgency, it is necessary, in accordance with the settled case-law of the Court, to take into account the fact that the person concerned is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. In addition, the situation of the person concerned must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the urgent procedure (judgment of 10 August 2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 72 and the case-law cited).
- 30 In the present instance, it is not in dispute that, at that time, the person concerned was in custody. Also, his continued detention depends on the outcome of the main proceedings, the detention measure against him having been ordered, according to the explanations provided by the referring court, in the context of the execution of the EAWs.
- 31 In those circumstances, on 12 April 2018 the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference be dealt with under the urgent preliminary ruling procedure.
- 32 It was also decided to remit the present case to the Court for it to be assigned to the Grand Chamber.

Consideration of the questions referred

- 33 First of all, it is apparent from the grounds of the order for reference and from the express mention of the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), in the first question, that the questions asked by the referring court relate to the circumstances in which the executing judicial authority may, on the basis of Article 1(3) of Framework Decision 2002/584, refrain from giving effect to a European arrest warrant on account of the risk of breach, if the requested person is surrendered to the issuing judicial authority, of the fundamental right to a fair trial before an independent tribunal, as enshrined in Article 6(1) of the ECHR, a provision which, as is clear from paragraph 5 of the present judgment, corresponds to the second paragraph of Article 47 of the Charter.
- 34 Thus, by its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, that authority must determine, specifically and precisely, whether there are substantial grounds for believing that the individual concerned will run such a risk if he is surrendered to that State. If the answer is in the affirmative, the referring court asks the Court of Justice to specify the conditions which such a check must satisfy.
- 35 In order to answer the questions referred, it should be recalled that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member

States that those values will be recognised, and therefore that the EU law that implements them will be respected (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 34 and the case-law cited).

- 36 Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter (see, to that effect, judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 49 and the case-law cited), are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 26 and the case-law cited).
- 37 Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 192).
- 38 It is apparent from recital 6 of Framework Decision 2002/584 that the European arrest warrant provided for in that framework decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition.
- 39 The purpose of Framework Decision 2002/584, as is apparent in particular from Article 1(1) and (2) and recitals 5 and 7 thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 25 and the case-law cited).
- 40 Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 25 and the case-law cited).
- 41 In the field governed by Framework Decision 2002/584, the principle of mutual recognition, which, as is apparent in particular from recital 6 of that framework decision, constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is applied in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision. Executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by the framework decision and execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (see, to that effect, judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraphs 49 and 50 and the case-law cited).

- 42 Thus, Framework Decision 2002/584 explicitly states the grounds for mandatory non-execution (Article 3) and optional non-execution (Articles 4 and 4a) of a European arrest warrant, as well as the guarantees to be given by the issuing Member State in particular cases (Article 5) (see judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 51).
- 43 Nonetheless, the Court has recognised that limitations may be placed on the principles of mutual recognition and mutual trust between Member States ‘in exceptional circumstances’ (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 82 and the case-law cited).
- 44 In that context, the Court has acknowledged that, subject to certain conditions, the executing judicial authority has the power to bring the surrender procedure established by Framework Decision 2002/584 to an end where surrender may result in the requested person being subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 104).
- 45 For that purpose, the Court has relied, first, on Article 1(3) of Framework Decision 2002/584, which provides that the framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 TEU and, second, on the absolute nature of the fundamental right guaranteed by Article 4 of the Charter (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 83 and 85).
- 46 In the present instance, the person concerned, relying upon the reasoned proposal and the documents to which it refers, has opposed his surrender to the Polish judicial authorities, submitting, in particular, that his surrender would expose him to a real risk of a flagrant denial of justice on account of the lack of independence of the courts of the issuing Member State resulting from implementation of the recent legislative reforms of the system of justice in that Member State.
- 47 It should thus, first of all, be determined whether, like a real risk of breach of Article 4 of the Charter, a real risk of breach of the fundamental right of the individual concerned to an independent tribunal and, therefore, of his fundamental right to a fair trial as laid down in the second paragraph of Article 47 of the Charter is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to a European arrest warrant, on the basis of Article 1(3) of Framework Decision 2002/584.
- 48 In that regard, it must be pointed out that the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded.
- 49 Indeed, the European Union is a union based on the rule of law in which individuals have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 31 and the case-law cited).
- 50 In accordance with Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, it is for the national courts and tribunals and the Court of Justice to ensure the full application of EU law in all Member States and judicial protection of the rights of individuals under that law (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 32 and the case-law cited, and of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 36 and the case-law cited).

- 51 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 36 and the case-law cited).
- 52 It follows that every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 37).
- 53 In order for that protection to be ensured, maintaining the independence of those bodies is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an ‘independent’ tribunal as one of the requirements linked to the fundamental right to an effective remedy (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 41).
- 54 The independence of national courts and tribunals is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that, in accordance with the Court’s settled case-law, that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 43).
- 55 Since, as stated in paragraph 40 of the present judgment, Framework Decision 2002/584 is intended to establish a simplified system of direct surrender between ‘judicial authorities’ for the purpose of ensuring in the area of freedom, security and justice the free movement of judicial decisions in criminal matters, maintaining the independence of such authorities is also essential in the context of the European arrest warrant mechanism.
- 56 Framework Decision 2002/584 is founded on the principle that decisions relating to European arrest warrants are attended by all the guarantees appropriate for judicial decisions, inter alia those resulting from the fundamental rights and fundamental legal principles referred to in Article 1(3) of the framework decision. This means that not only the decision on executing a European arrest warrant, but also the decision on issuing such a warrant, must be taken by a judicial authority that meets the requirements inherent in effective judicial protection — including the guarantee of independence — so that the entire surrender procedure between Member States provided for by the framework decision is carried out under judicial supervision (see, to that effect, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 37 and the case-law cited).
- 57 Furthermore, in criminal procedures for the purpose of prosecution, or of enforcement of a custodial sentence or detention order, or indeed in substantive criminal proceedings, which lie outside the scope of Framework Decision 2002/584 and of EU law, the Member States are still obliged to observe fundamental rights enshrined in the ECHR or laid down by their national law, including the right to a fair trial and the guarantees deriving from it (see, to that effect, judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 48).
- 58 The high level of trust between Member States on which the European arrest warrant mechanism is based is thus founded on the premiss that the criminal courts of the other Member States — which, following execution of a European arrest warrant, will have to conduct the criminal procedure for the purpose of prosecution, or of enforcement of a custodial sentence or detention order, and the substantive criminal proceedings — meet the requirements of effective judicial protection, which include, in particular, the independence and impartiality of those courts.

- 59 It must, accordingly, be held that the existence of a real risk that the person in respect of whom a European arrest warrant has been issued will, if surrendered to the issuing judicial authority, suffer a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, a right guaranteed by the second paragraph of Article 47 of the Charter, is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to that European arrest warrant, on the basis of Article 1(3) of Framework Decision 2002/584.
- 60 Thus, where, as in the main proceedings, the person in respect of whom a European arrest warrant has been issued, pleads, in order to oppose his surrender to the issuing judicial authority, that there are systemic deficiencies, or, at all events, generalised deficiencies, which, according to him, are liable to affect the independence of the judiciary in the issuing Member State and thus to compromise the essence of his fundamental right to a fair trial, the executing judicial authority is required to assess whether there is a real risk that the individual concerned will suffer a breach of that fundamental right, when it is called upon to decide on his surrender to the authorities of the issuing Member State (see, by analogy, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).
- 61 To that end, the executing judicial authority must, as a first step, assess, on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89), whether there is a real risk, connected with a lack of independence of the courts of that Member State on account of systemic or generalised deficiencies there, of the fundamental right to a fair trial being breached. Information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant for the purposes of that assessment.
- 62 Such an assessment must be carried out having regard to the standard of protection of the fundamental right that is guaranteed by the second paragraph of Article 47 of the Charter (see, by analogy, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88 and the case-law cited).
- 63 As regards the requirement that courts be independent which forms part of the essence of that right, it should be pointed out that that requirement is inherent in the task of adjudication and has two aspects. The first aspect, which is external in nature, presupposes that the court concerned exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (see, to that effect, judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 44 and the case-law cited).
- 64 That essential freedom from such external factors requires certain guarantees appropriate for protecting the person of those who have the task of adjudicating in a dispute, such as guarantees against removal from office (judgment of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 51 and the case-law cited). Their receipt of a level of remuneration commensurate with the importance of the functions that they carry out also constitutes a guarantee essential to judicial independence (judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 45).
- 65 The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of

any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 52 and the case-law cited).

- ⁶⁶ Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it. In order to consider the condition regarding the independence of the body concerned as met, the case-law requires, inter alia, that dismissals of its members should be determined by express legislative provisions (judgment of 9 October 2014, *TDC*, C-222/13, EU:C:2014:2265, paragraph 32 and the case-law cited).
- ⁶⁷ The requirement of independence also means that the disciplinary regime governing those who have the task of adjudicating in a dispute must display the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions. Rules which define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable, which provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence, and which lay down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions constitute a set of guarantees that are essential for safeguarding the independence of the judiciary.
- ⁶⁸ If, having regard to the requirements noted in paragraphs 62 to 67 of the present judgment, the executing judicial authority finds that there is, in the issuing Member State, a real risk of breach of the essence of the fundamental right to a fair trial on account of systemic or generalised deficiencies concerning the judiciary of that Member State, such as to compromise the independence of that State's courts, that authority must, as a second step, assess specifically and precisely whether, in the particular circumstances of the case, there are substantial grounds for believing that, following his surrender to the issuing Member State, the requested person will run that risk (see, by analogy, in the context of Article 4 of the Charter, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 92 and 94).
- ⁶⁹ That specific assessment is also necessary where, as in the present instance, (i) the issuing Member State has been the subject of a reasoned proposal adopted by the Commission pursuant to Article 7(1) TEU in order for the Council to determine that there is a clear risk of a serious breach by that Member State of the values referred to in Article 2 TEU, such as that of the rule of law, on account, in particular, of actions impairing the independence of the national courts, and (ii) the executing judicial authority considers that it possesses, on the basis, in particular, of such a proposal, material showing that there are systemic deficiencies, in the light of those values, at the level of that Member State's judiciary.
- ⁷⁰ It is apparent from recital 10 of Framework Decision 2002/584 that implementation of the European arrest warrant mechanism may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 2 TEU, determined by the European Council pursuant to Article 7(2) TEU, with the consequences set out in Article 7(3) TEU.
- ⁷¹ It thus follows from the very wording of that recital that it is for the European Council to determine a breach in the issuing Member State of the principles set out in Article 2 TEU, including the principle of the rule of law, with a view to application of the European arrest warrant mechanism being suspended in respect of that Member State.

- 72 Therefore, it is only if the European Council were to adopt a decision determining, as provided for in Article 7(2) TEU, that there is a serious and persistent breach in the issuing Member State of the principles set out in Article 2 TEU, such as those inherent in the rule of law, and the Council were then to suspend Framework Decision 2002/584 in respect of that Member State that the executing judicial authority would be required to refuse automatically to execute any European arrest warrant issued by it, without having to carry out any specific assessment of whether the individual concerned runs a real risk that the essence of his fundamental right to a fair trial will be affected.
- 73 Accordingly, as long as such a decision has not been adopted by the European Council, the executing judicial authority may refrain, on the basis of Article 1(3) of Framework Decision 2002/584, to give effect to a European arrest warrant issued by a Member State which is the subject of a reasoned proposal as referred to in Article 7(1) TEU only in exceptional circumstances where that authority finds, after carrying out a specific and precise assessment of the particular case, that there are substantial grounds for believing that the person in respect of whom that European arrest warrant has been issued will, following his surrender to the issuing judicial authority, run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial.
- 74 In the course of such an assessment, the executing judicial authority must, in particular, examine to what extent the systemic or generalised deficiencies, as regards the independence of the issuing Member State's courts, to which the material available to it attests are liable to have an impact at the level of that State's courts with jurisdiction over the proceedings to which the requested person will be subject.
- 75 If that examination shows that those deficiencies are liable to affect those courts, the executing judicial authority must also assess, in the light of the specific concerns expressed by the individual concerned and any information provided by him, whether there are substantial grounds for believing that he will run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant.
- 76 Furthermore, the executing judicial authority must, pursuant to Article 15(2) of Framework Decision 2002/584, request from the issuing judicial authority any supplementary information that it considers necessary for assessing whether there is such a risk.
- 77 In the course of such a dialogue between the executing judicial authority and the issuing judicial authority, the latter may, where appropriate, provide the executing judicial authority with any objective material on any changes concerning the conditions for protecting the guarantee of judicial independence in the issuing Member State, material which may rule out the existence of that risk for the individual concerned.
- 78 If the information which the issuing judicial authority, after having, if need be, sought assistance from the central authority or one of the central authorities of the issuing Member State, as referred to in Article 7 of Framework Decision 2002/584 (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 97), has sent to the executing judicial authority does not lead the latter to discount the existence of a real risk that the individual concerned will suffer in the issuing Member State a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, the executing judicial authority must refrain from giving effect to the European arrest warrant relating to him.

- 79 In the light of the foregoing considerations, the answer to the questions referred is that Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, that authority must determine, specifically and precisely, whether, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State pursuant to Article 15(2) of the framework decision, there are substantial grounds for believing that that person will run such a risk if he is surrendered to that State.

Costs

- 80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the European Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, that authority must determine, specifically and precisely, whether, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State pursuant to Article 15(2) of Framework Decision 2002/584, as amended, there are substantial grounds for believing that that person will run such a risk if he is surrendered to that State.

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| Lenaerts | Tizzano | Silva de Lapuerta |
| Ilešić | Da Cruz Vilaça | Malenovský |
| Levits | Fernlund | Borg Barthet |
| Bonichot | Arabadjiev | Rodin |
| Biltgen | Lycourgos | Regan |

Delivered in open court in Luxembourg on 25 July 2018.

A. Calot Escobar
Registrar

K. Lenaerts
President