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ANNEX 1

ANNEX

DECLARATION OF COMPETENCES BY THE EUROPEAN UNION IN RESPECT OF MATTERS COVERED BY THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS (PURSUANT TO ARTICLE 44 OF THE PROTOCOL)

to the

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, in so far as the provisions of the Protocol which fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned

The European Union (EU) submits, in accordance with Article 44 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ("FCTC Protocol"), the following Declaration of Competences specifying the categories and policy areas in respect of which the Member States of the EU have conferred competences upon the EU in the areas covered by the FCTC Protocol.

1. GENERAL PRINCIPLES

The categories and areas of Union competence are set out in Articles 2 to 6 TFEU. When the Treaties confer on the EU exclusive competence in a specific area, only the EU may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the EU or for the implementation of EU acts. When the Treaties confer on the EU a competence shared with the Member States in a specific area, the EU and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the EU has not exercised its competence. The Member States shall again exercise their competence to the extent that the EU has decided to cease exercising its competence.

As regards the conclusion of international agreements, for the policy areas listed in Article 3(1) TFEU, only the EU has the competence to act. For the policy areas listed in Article 4(2) TFEU the EU and its Member States share competence, but only the EU has the competence to act when the envisaged action is necessary to enable the Union to exercise its internal competence, or insofar as the provisions in the agreement may affect common rules or alter their scope within the meaning of Article 3(2) TFEU; insofar as this is not the case (i.e. the conditions of Article 3(2) TFEU are not met), Member States may exercise their competence to act in these policy areas.

Competences not attributed to the EU by the Treaties fall within the competences of the Member States of the EU.

The EU will duly notify any substantial modification of the extent of its competences, in accordance with Article 44 of the Protocol, without this constituting a prerequisite for the exercise of its competence in matters covered by the FCTC Protocol.

2. COMPETENCES OF THE EU

2.1 Only the EU has the competence to act with respect to the matters covered by the FCTC Protocol in policy areas listed in Article 3(1) TFEU, namely the common commercial policy.

2.2 In addition, in certain other policy areas only the EU has the competence to conclude an international agreement. This is so when the envisaged action is necessary to enable the Union to exercise its internal competence, or insofar as the provisions in the FCTC Protocol may affect common rules already adopted by the EU in the relevant area or alter their scope within the meaning of Article 3(2) TFEU. These policy areas are notably the internal market, including measures with the aim of establishing or ensuring the functioning of the internal market (Article 26(1) TFEU), the approximation of laws, in particular money laundering (Articles 114 to 118 TFEU), free movement of goods (Article 28 TFEU) and customs cooperation (Article 33 TFEU).

3. COMPETENCES OF THE EU AND ITS MEMBER STATES

In all other policy areas not mentioned in sections 2.1 and 2.2, the EU only has shared competence, and both the EU and its Member States have competences to act

with respect to matters covered by the FCTC Protocol. The Member States shall exercise their competence to the extent that the Union has not exercised its competence.