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ANNEX

**ANNEX**

*to the*

**Recommendation for a Council Decision**

**authorising the opening of negotiations for an agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, in respect of Gibraltar**

## ANNEX

### **DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN RESPECT OF GIBRALTAR**

#### **I. GENERAL CONTEXT**

1. On 1 February 2020, the United Kingdom withdrew from the European Union and from the European Atomic Energy Community (Euratom).

2. The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement')<sup>1</sup>, including a Protocol on the specific arrangements in respect of the British Overseas Territory of Gibraltar (hereafter "Gibraltar"). The Withdrawal Agreement entered into force on 1 February 2020 and provided for a transition period during which Union law<sup>2</sup> applied to and in the United Kingdom in accordance with that Agreement. This period ended on 31 December 2020. The transitional arrangements were applicable to Gibraltar according to Article 3. 1 b) of the Withdrawal Agreement.

3. During the transition period, the European Union and Euratom, on the one part, and the United Kingdom, of the other part, negotiated a Trade and Cooperation Agreement (TCA), which was provisionally applied from on 1 January 2021<sup>3</sup> and which was concluded by the Union on the basis of Council Decision (EU) 2021/689<sup>4</sup>. It entered into force on 1 May 2021. In line with the statement to the minutes of the European Council meeting of 25 November 2018 on the territorial scope of agreements to be concluded between the Union and the United Kingdom<sup>5</sup> Article 774(3) of the TCA provides that the TCA neither applies to

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<sup>1</sup> OJ L 29, 31.1.2020, p. 7.

<sup>2</sup> As defined in Article 2 of the Withdrawal Agreement.

<sup>3</sup> Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 444, 31.12.2020, p. 2).

<sup>4</sup> Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.04.2021, p.2).

<sup>5</sup> "After the United Kingdom leaves the Union, Gibraltar will not be included in the territorial scope of the agreements to be concluded between the Union and the United Kingdom. However, this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar. Without prejudice to the competences of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain."

nor has any effects in Gibraltar. Also in line with the said statement, the envisaged agreement “will require a prior agreement of the Kingdom of Spain”.

4. Euratom and the United Kingdom concluded the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, which was provisionally applicable as of 1 January 2021 and entered into force on 1 May 2021<sup>6</sup>. This agreement does not apply to Gibraltar.

5. In its declaration attached to the decision on the signature of the Trade and Cooperation Agreement between the European Union, Euratom and the United Kingdom, the Commission stated that it would stand ready to examine any request from Spain, in agreement with the United Kingdom, to initiate the procedure for the negotiation of a separate agreement on Gibraltar provided it is compatible with Union law and Union interests.

6. The Kingdom of Spain and the United Kingdom reached an understanding on a possible framework for an agreement on Gibraltar and on 31 December 2020, the Kingdom of Spain invited the Commission to initiate, on the basis of this understanding, the negotiations of such agreement at Union level.

## **II. PURPOSE AND SCOPE OF THE ENVISAGED AGREEMENT**

7. The aim of the negotiations is to establish a broad and balanced agreement between the Union and Euratom, of the one part, and the United Kingdom in respect of Gibraltar, of the other part, in view of the particular geographical situation of Gibraltar, taking into account its status under international law, and in view of the specificities of Gibraltar and its special relation with Spain.

8. The envisaged agreement should aim to attain a balanced economic and social development of 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.

9. The envisaged agreement should ensure a balance of rights and obligations, and a level playing field that will stand the test of time. This balance must ensure the autonomy of the Union’s legal order and decision-making as well as the protection of the Union’s financial interests and be consistent with the Union’s fundamental principles.

## **III. CONTENT OF THE ENVISAGED AGREEMENT**

### **GENERAL PRINCIPLES**

10. The envisaged agreement between the Union and the United Kingdom should be without prejudice to the issues of sovereignty and jurisdiction. It should not affect the legal

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<sup>6</sup> See footnote 4.

position of the Kingdom of Spain with regard to sovereignty and jurisdiction in respect of Gibraltar.

11. The envisaged agreement between the Union and the United Kingdom should be negotiated in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union.

12. The envisaged agreement should not prevent the conclusion of administrative arrangements between Spain and the UK in respect of Gibraltar on matters covered by this agreement insofar as their provisions are compatible with those of the agreement and with Union law.

### **BASIS FOR COOPERATION**

13. Respect for and safeguarding of human rights and fundamental freedoms, democratic principles, the rule of law including the United Kingdom's continued commitment to respect the European Convention on Human Rights (ECHR) and support for non-proliferation should constitute essential elements for the envisaged relationship. The fight against climate change, as elaborated in the UNFCCC process and in particular in the Paris Agreement should also constitute an essential element of the relationship. So should the ILO Decent Work Agenda, including quality job creation, rights at work, safe working conditions, social protection and social dialogue, with gender equality as a crosscutting objective. The relationship should reaffirm the Parties' commitment to promoting effective and rule-based multilateralism.

14. In view of the importance of data flows, the envisaged agreement should affirm the Parties' commitment to ensuring a high level of personal data protection, and fully respect, on a full dynamic alignment basis, the Union's personal data protection rules, including Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and Directive (EU) 2016/680 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 the interpretation and supervision thereof by the European Data Protection Board and the Court of Justice of the European Union.

### **CIRCULATION OF PERSONS**

15. The envisaged agreement should aim at removing all current physical barriers between Gibraltar and the Schengen area for the circulation of persons. The agreement should not provide for the participation of Gibraltar in the Schengen acquis or for its association to its implementation, application and development. UK authorities in respect of Gibraltar should not have access to databases reserved under Union law to Member States or countries associated with the Schengen or Dublin acquis.

16. The envisaged agreement should provide that border controls in full compliance with the Schengen acquis are to be carried out by Spain; such border controls should consist of the performance by Spain of border checks on entry and exit at newly established Border Crossing Points at the airport and port of Gibraltar and the performance of border surveillance in the adjacent waters.

17. The envisaged agreement should provide that Spanish border guards have all necessary powers and obligations to carry out the border controls and surveillance, including with respect to refusal of entry, receipt of requests for international protection, arrest of a person and seizure of property and the application and use of IT systems, in line with the applicable Union legislation. In case follow up actions need to be taken, the agreement should provide for an obligation on the UK authorities in respect of Gibraltar to assist and facilitate the transfer of the person or object concerned to the authorities of Spain.

18. The agreement should provide that time spent in Gibraltar will be counted as time spent in the Schengen area for the purpose of the calculation of authorised stay.

19. Removing the physical barriers, including any physical infrastructure and related checks and controls for persons, between the territory of Gibraltar and the Schengen area, requires, as a condition, comprehensive safeguards in order to protect the security and integrity of Schengen area.

20. These safeguards should include at least:

*[Special rules for residents of Gibraltar]*

- a) The agreement should provide that persons who are legally resident in Gibraltar, have visa-free access to the Schengen area for up to 90 days in any 180 day period in line with the relevant provisions of Union law. Their passports will not be stamped on entry into or exit from the Schengen area and they will be exempted from the requirements under the EES<sup>7</sup> and ETIAS<sup>8</sup> Regulations.
- b) The agreement should provide that persons who are legally resident in Gibraltar may not be denied entry in the territory of Gibraltar.
- c) The agreement should provide that, acquiring and maintaining the right to reside in Gibraltar would be conditional on the existence of a real connection with Gibraltar to be established on the basis of actual and regular physical presence over an appropriate period of time and of other objective and verifiable criteria to the exclusion of investment in Gibraltar's economy and real estate, or of predetermined financial payments to Gibraltar's authorities; the agreement should provide that UK nationals other than those legally resident in Gibraltar at time of signature of the agreement should be treated as third country nationals for the purpose of applying for and obtaining residence in Gibraltar after the agreement's signature.

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<sup>7</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

<sup>8</sup> Règlement (UE) 2018/1240 du Parlement européen et du Conseil du 12 septembre 2018 portant création d'un système européen d'information et d'autorisation concernant les voyages (ETIAS) et modifiant les règlements (UE) no 1077/2011, (UE) no 515/2014, (UE) 2016/399, (UE) 2016/1624 et (UE) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

- d) UK nationals other than UK nationals legally resident in Gibraltar at the time of signature of the agreement are to be treated as any other third country nationals for the purposes of entry and stay in Gibraltar.

*[Responsibility for applicants for international protection (Dublin and Eurodac)]*

- e) Rules establishing that Spain, in cooperation with the UK, would be responsible for the examination of asylum applications submitted in Gibraltar in line with applicable Union law. Where necessary UK authorities in respect of Gibraltar would have to assist and facilitate the Spanish authorities in exercising their tasks, including with regard to fingerprinting of applicants for international protection and those apprehended while trying to cross the border irregularly for the purpose of the Eurodac system. As a consequence of this set-up, the movement of applicants for international protection between the territory of the Member States and Dublin Associated Countries, on the one hand, and Gibraltar, on the other hand, should not result in a cessation of responsibility under the Dublin Regulation.

*[Return/ irregular migration]*

- f) Rules establishing an obligation for Spain, in cooperation with the UK, to return illegally staying third country nationals from the territory of Gibraltar, including at the border, and to take all necessary measures to enforce such returns in line with applicable Union law. Where necessary, UK authorities in respect of Gibraltar would have to assist and facilitate the Spanish authorities in exercising their tasks.
- g) Rules ensuring that migrant smuggling is punishable by Gibraltar law as a criminal offence.

*[Carriers' liability]*

- h) Rules ensuring the application at the border crossing points at the port and airport of Gibraltar of Union law on carriers' liability [Article 26 of the Convention Implementing the Schengen Agreement and Directive 2001/51/EC] for the transport to Gibraltar by sea or air from a third country of third country nationals who do not possess the necessary travel documents for entry into the Schengen area and on the obligation of such carriers to return these third country nationals to their country of departure; the agreement should also specify that Gibraltar would not be considered as a territory of a third country for the purpose of the application of the aforementioned rules on carriers' liability by the Union Member States.

*[Advance Passenger Information]*

- i) Rules ensuring the application of the Advance Passenger Information (API) Directive in Gibraltar [Article 26 of the Convention Implementing the Schengen Agreement and Directive 2004/82/EC]; the UK in respect of Gibraltar should provide that, for flights originating outside the Schengen area and arriving in Gibraltar airport, Advance Passenger Information (API) is transmitted to the Spanish authorities performing border checks.

*[Visas and residence permits]*

- j) The envisaged agreement should provide that Spain would be exclusively competent for issuing, on the basis of Union law, short-stay visas in respect of Gibraltar.
- k) Rules providing that Spain would be sole competent to issue or renew long-stay visas valid for Gibraltar. Such long-stay visas may only be issued or renewed where the relevant conditions under law applicable in the territory of Gibraltar are fulfilled, which is to be determined by the UK authorities in respect of Gibraltar; Spain may refuse to issue or renew a visa on the basis of an alert in the Schengen Information System; the agreement would provide that the issuing of a long-stay visa valid for Gibraltar should not oblige a Member State to withdraw an alert for the purposes of refusal of entry from the Schengen Information System.
- l) Rules providing that Spain would be competent to issue or renew residence permits for third country nationals valid for Gibraltar following a request by the UK authorities in respect of Gibraltar for persons fulfilling the relevant conditions under law applicable in the territory of Gibraltar and provided that the rules based on point 20 c) are fulfilled. Spain may refuse to issue a residence permit on the basis of an alert in the Schengen Information System; the agreement would provide that the issue or renewal of a residence permit valid for Gibraltar should not oblige a Member State to withdraw an alert for the purposes of refusal of entry from the Schengen Information System. The agreement should specify that residence permits are clearly marked as valid for Gibraltar. UK authorities in respect of Gibraltar may be authorised to issue these residence permits under certain conditions.
- m) Rules requiring residence permits and long-stay visas already issued by Gibraltar to third country nationals legally resident in Gibraltar at the time of the agreement's entry into force to be replaced by residence permits issued in accordance with the Agreement within 2 years from its entry into force. The agreement should provide that existing residence permits are notified to Spain, who may perform checks in the relevant databases and may request the competent authorities in Gibraltar to withdraw these permits on grounds of public policy or internal security.

*[Security]*

- n) Rules on the exchange of operational information between the UK authorities in respect of Gibraltar and the Member States, including information on criminal records and information on wanted and missing persons and objects, both upon request and spontaneously, where this is relevant for the prevention, detection or investigation of serious crime in Gibraltar or in the Member States, the execution of a sentence or detention order, the safeguarding against, and the prevention of, threats to public safety; UK authorities in respect of Gibraltar shall have no access to databases established on the basis of Union law.
- o) Rules on cooperation between the UK authorities in respect of Gibraltar and Europol and Eurojust in line with arrangements for the cooperation with third countries set out in relevant Union legislation including rules on the exchange of personal data between these Agencies and the competent UK authorities in respect of Gibraltar.

- p) Rules providing for the possibility of cross border operational cooperation, such as the possibility of cross-border surveillance, cross-border ‘hot pursuit’ of criminal suspects, the organisation of joint patrols and other joint operations.
- q) Rules obliging the UK in respect of Gibraltar to require PNR data in respect of all incoming flights to Gibraltar airport to be made available to the Spanish authorities in line with the PNR directive [*Directive (EU) 2016/681*]; to this end, the agreement should provide that for the purpose of the application of the PNR directive Gibraltar would not be considered as a territory of a third country.
- r) Rules requiring the performance of enhanced police checks in the areas near the land border between Spain and the territory of Gibraltar, for both law enforcement and migration purposes.
- s) Rules providing for the application in Gibraltar of Union rules on firearms [*Firearms Directive (EU) 2021/555*]; the agreement should provide that UK authorities in respect of Gibraltar establish export authorisations, and import and transit measures 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.
- t) Rules providing for the application in Gibraltar of Union rules on explosives precursors [*Regulation (EU) 2019/1148*].
- u) Rules ensuring that the trafficking in illicit drugs punishable under Union law is also punishable under Gibraltar law as a criminal offence and rules relating to Narcotic drugs and psychotropic substances.
- v) A rule requiring the UK in respect of Gibraltar to ensure that persons who would otherwise be refused entry into the Schengen area, inter alia on grounds of being considered a threat to public policy or internal security, are prevented and prohibited from leaving the territory of Gibraltar and entering the Schengen area; in view of this, the agreement would establish a pre-notification or pre-authorisation scheme for Gibraltar residents in order to allow travel into the Schengen area.

*[Legal framework for effective judicial cooperation in criminal matters in key areas]*

- w) The agreement should ensure there is a legal framework in place allowing for effective judicial cooperation in criminal matters in key areas, which should include at least the following:
  - Provisions that ensure the application of the Council of Europe Convention on extradition and of its Additional Protocols to Gibraltar;
  - Provisions that ensure the application of relevant Council of Europe Conventions on mutual legal assistance and of their Additional Protocols to Gibraltar;
  - Provisions that ensure the application of relevant Council of Europe Conventions on asset freezing and confiscation to Gibraltar.

21. Under the envisaged agreement the parties should ensure that their laws allow crossing between the Union and Gibraltar without checks at a border crossing point.

22. The envisaged agreement should provide for a mechanism whereby future relevant developments of Union law will – where necessary – be reflected in adaptations to the agreement; the agreement should also include a provision according to which the part of the agreement related to the circulation of persons will be terminated by the Union in case the adaptation is not effected.

23. The envisaged agreement should provide for an obligation to admit any Schengen evaluation related activities of Union institutions and the Member States on the territory of Gibraltar.

24. In case of non-respect of the safeguards put in place, the envisaged agreement should provide for the possibility for the Union to suspend unilaterally all provisions related to the circulation of persons between the Union and Gibraltar.

25. The envisaged agreement should foresee a mechanism to evaluate the implementation of this part of the agreement. After the first four years of implementation, and without prejudice to point 57, the agreement should provide the possibility for each party to make a decision on whether to continue or terminate the agreement.

## **ECONOMY AND TRADE**

### **LEVEL PLAYING FIELD**

26. Given the Union and Gibraltar's geographic proximity and economic interdependence, the envisaged agreement should ensure open and fair competition, encompassing robust commitments to ensure a level playing field and contribute to sustainable development. These commitments should take into account the scope and depth of the envisaged agreement, the overall relationship and the economic connectedness. The envisaged agreement should uphold high standards over time, with Union standards and international standards applied within the EU<sup>9</sup> as a reference point, in particular in the areas of State aid, labour and social standards, environment and climate, tax matters, anti-money laundering and terrorist financing and other regulatory measures and practices in those areas. The envisaged agreement should ensure that the port of Gibraltar competes fairly with other European ports, in particular the port of Algeciras, including, inter alia, with respect to bunkering services.

27. Without prejudice to points 62 and 65, it should include adequate mechanisms to ensure effective implementation, enforcement and dispute settlement, including appropriate remedies. The envisaged agreement should also foresee autonomous measures to react quickly to disruptions of the equal conditions of competition in relevant areas with Union standards as reference point.

28. The governing body should be empowered to address the evolution of levels of protection and to modify the level playing field commitments in order to include additional areas or to lay down higher standards over time.

### **State aid**

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<sup>9</sup> Including all fundamental ILO Conventions.

29. On State aid, the envisaged agreement should ensure the application of State aid rules to and in Gibraltar based on Union rules as reference point and should foresee mechanisms addressing the evolution of such rules over time in order to avoid distortion of trade or competition. The Union and the United Kingdom in respect of Gibraltar should also commit to effective enforcement, including through administrative and judicial proceedings, as well as effective remedies.

### Labour and social standards

30. On labour and social standards, the envisaged agreement should ensure that the Union and the United Kingdom in respect of Gibraltar uphold their high levels of protection over time, with Union standards as reference point, in relation to at least the following areas: fundamental rights at work; occupational health and safety standards; fair working conditions and employment standards; information and consultation rights at company level; and restructuring of undertakings. It should also ensure effective domestic enforcement.

### Environment and climate

31. On environment and climate, the envisaged agreement should ensure that the Union and the United Kingdom in respect of Gibraltar uphold high levels of protection over time, with Union standards as reference point, in relation to at least the following areas that are relevant to the geographical context of Gibraltar:

access to environmental information; public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; air emissions and air quality; nature and biodiversity conservation; waste management including at the port of Gibraltar; noise emissions; the protection and preservation of the aquatic and marine environment, including at the port reception facilities at the port of Gibraltar; the prevention, reduction and elimination of risks to human and animal health or the environment arising from the production, use, release and disposal of chemical substances; and climate change in particular emissions and removal of greenhouse gases, including the effective carbon pricing systems.

32. The envisaged agreement should ensure the Union and the United Kingdom in respect of Gibraltar respect the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, the principle that environmental protection should be integrated into the making of policies, and that the polluter should pay. It should also ensure effective domestic enforcement.

### Direct taxation

33. On direct taxation, the envisaged agreement should recognise and commit the Union and the United Kingdom in respect of Gibraltar to implementing the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the OECD standards against Base Erosion and Profit Shifting (BEPS). The envisaged agreement should ensure that Gibraltar applies over time the relevant key taxation standards applicable within the Union in relation the exchange of information on request, spontaneously, and automatically. It should also ensure that Gibraltar applies the standards applicable in the Union in relation to the fight against tax avoidance practices, public country-by-country reporting by credit-institutions and investment firms. The envisaged agreement should reaffirm the commitment of the Union and of the United Kingdom in respect of Gibraltar to curb harmful tax measures, taking into account the G20-OECD BEPS Action Plan and ensure that the United Kingdom in respect of Gibraltar commits to the Code of Conduct for Business Taxation.

### Other instruments for trade and sustainable development

34. The envisaged agreement should promote sustainable development through trade and investment taking into account the EU's most recent approach, while being commensurate to the relationship with the United Kingdom in respect of Gibraltar.

### Anti-money laundering and counter-terrorist financing

35. The envisaged agreement should include commitments to support international efforts to prevent and combat money laundering and terrorist financing and ensure that the United Kingdom in respect of Gibraltar applies the standards on preventing money laundering and terrorist financing applicable in the Union.

### TRADE IN GOODS

36. The envisaged agreement should aim at removing the physical barriers between Gibraltar and the Union for the free circulation of goods. Removing the physical barriers, including any physical infrastructure or control post and related checks and controls for goods, between Gibraltar and the Union, requires, as a condition, comprehensive arrangements in order to protect the integrity of the Union's Single Market and Customs Union and the Union's financial interests.

37. The envisaged agreement should therefore aim at providing for a customs union in accordance with Article XXIV of the GATT 1994 between the Union and the UK in respect of Gibraltar and should contain arrangements to ensure that relevant provisions of Union law, in particular in the field of goods, apply to and in Gibraltar, including:

- customs legislation as defined in the Union Customs Code, including the prohibitions and restrictions, the security measures and the controls on physical movements of cash, with the exception of Union's Free Trade Agreements;
- the Union's Common External Tariff, duties and trade policy measures, including Trade Defence Instruments (TDI) and Trade statistics;
- excise and Value Added Tax (VAT) legislation, including on services, in order to bring Gibraltar in the Union's VAT and excise territory;
- legislation on administrative cooperation and mutual administrative assistance between Union Member States including in tax and customs matters and for the recovery of claims related to taxes and duties;
- licencing systems relevant for imports and exports; and
- product requirements and standards applicable in the Single Market, including on tobacco and related products, and sanitary and phytosanitary (SPS) measures.

38. The arrangements should include, in particular, provisions on customs and tax cooperation and on the exchange of information to prevent and combat fraud, smuggling, in particular of products subject to excise duties or special taxes such as tobacco products, and drug trafficking, trafficking in firearms and explosives precursors, including cash movements and money laundering and terrorist financing in relation thereto. Customs cooperation should also include coordination in customs controls, collaboration on joint operations as well as special forms of cooperation in force in the Union.

39. Where Union law applicable in Gibraltar provides certain discretion to Union Member States, the United Kingdom in respect of Gibraltar should align with the measures adopted by Spain when exercising that discretion, including as regards the level of taxation of goods. In

particular, the envisaged agreement should include provisions to ensure the application in Gibraltar of a taxation system for goods, aligned with the taxation system of Spain. That alignment would minimize the retail price differential with Spain for products subject to excise duties or special taxes, in particular for alcohol, fuel and tobacco products, in order to prevent diversion of trade or smuggling.

40. The envisaged agreement should contain arrangements to ensure that no good could enter the Customs Union's territory from Gibraltar without having previously been declared and subject to the necessary checks and controls which are obligatory at any other entry point of the Customs Union on the basis of the relevant provisions of Union law made applicable to and in Gibraltar. The necessary checks and controls may be carried out in Gibraltar or in other points of entry into the Customs Union's territory where the appropriate infrastructure exists. The envisaged agreement should include provisions to ensure that any customs, SPS and any other controls and checks at the border posts or customs offices in Gibraltar are carried out, either by the Spanish authorities, or a minima, jointly by the Spanish authorities and the competent authorities in Gibraltar. For the checks and controls, Border Control Posts (BCP) and customs offices would have to be established at the Gibraltar port and airport and the use notably of the TRACES system would be compulsory. The Spanish authorities should have an ongoing and continuous full electronic access, on a real-time basis, to the relevant IT customs/SPS/indirect taxes systems of the competent authorities in Gibraltar for control and checks purposes.

41. The envisaged agreement should also include provisions to allow for the monitoring of any other activities of the competent authorities in Gibraltar, in particular market surveillance authorities, related to the implementation and application of provisions of Union law made applicable by the envisaged agreement, including with a right for Union representatives to be present in Gibraltar and to have access to the relevant IT systems of the competent authorities in Gibraltar.

42. The envisaged agreement should also include the possibility for the Union to unilaterally take appropriate measures, including the reinstatement of the physical infrastructure that has been removed and the related checks and controls for goods, and the withdrawal of any trade preferences which have been granted, in case of insufficient or defective application of the provisions of the envisaged agreement, of errors, maladministration or abuses committed by the UK authorities in respect of Gibraltar, of lack of cooperation, irregularities or fraud, or of serious economic, societal or environmental difficulties or diversion of trade.

43. The envisaged agreement should provide for a mechanism whereby future relevant developments of Union law such as on a Carbon Border Adjustment Mechanism can – where necessary – be reflected in adaptations to the agreement, and provide for appropriate measures in case the necessary adaptation is not effected.

44. The envisaged agreement should also provide for an adequate attribution to the Union's budget of customs duties collected in Gibraltar or on behalf of United Kingdom authorities in respect of Gibraltar. The envisaged agreement should also contain arrangements to counter fraud and any other illegal activity affecting the financial interests of the Union or the financial interests of the United Kingdom in respect of Gibraltar.

## TRANSPORT

45. Subject to the prior understanding between Spain and the United Kingdom on the airport of Gibraltar, the envisaged agreement should

a) ensure that air transport services between Gibraltar and points in the Union territory are provided by Union air carriers only; and

(b) include adequate provisions on the safe, secure and environmentally sound operation of the Gibraltar airport and as regards competition on a fair basis between the Gibraltar airport and Union airports.

46. The envisaged Agreement should allow for the carriage of goods and passengers by road between the parties provided that those transport operations are limited to the contiguous border zone.

## SPECIFIC FIELDS OF COOPERATION

### ENVIRONMENT

47. The envisaged agreement should lay down arrangements for enhanced co-operation between the competent authorities in respect of the environment, including the facilitation of scientific research into the marine environment. The Agreement should provide for a level of environmental protection equivalent to Union standards. It may be operationalised through administrative arrangements between Spain and the United Kingdom in respect of Gibraltar, in all relevant fields including land reclamation.

### WORKERS' RIGHTS (including social security coordination)

48. The envisaged agreement should ensure that Union citizens residing legally in Spain and United Kingdom nationals residing legally in Gibraltar, with the exception of those acquiring a right of residence after the signature of the envisaged agreement in accordance with points 20(c) and 20(m), enjoy in Gibraltar and Spain respectively a right to take up an activity as an employed person and to pursue such activity in accordance with the rules applicable to United Kingdom nationals in Gibraltar and EU citizens in Spain. To give full effect to this right, they also should enjoy all corollary rights EU law grants to mobile workers, including the right to enter and leave Gibraltar and Spain, reside there during their work, acquire a right of permanent residence and be able to avail themselves of safeguards where the United Kingdom or Spain seek to restrict their rights in Gibraltar and Spain respectively.

49. The envisaged agreement should prohibit any discrimination on the grounds of nationality in Gibraltar and Spain in respect of beneficiaries of the Agreement, as set out in relevant Union acquis, in particular as regards living, employment and working conditions.

50. Corresponding rights should also be granted to family members of beneficiaries of the Agreement, as set out in relevant Union rules, irrespective of their nationality.

51. Given that the protection of social security rights is essential to guarantee the effective exercise of cross-border work, the provisions on workers' rights in the envisaged agreement should be complemented by provisions on social security coordination. The agreement should ensure, in particular, that its beneficiaries working or having worked in Gibraltar enjoy a high

level of social security protection and should respect the fundamental principle of equal treatment.

52. The beneficiaries of the agreement involved as workers that are posted in the supply of services under mode 4 shall enjoy the rights referred to in paragraphs 48 to 51, where relevant to them, only in respect of services that are both locally produced and consumed at the contiguous frontier zone.

## **EURATOM MATTERS**

53. The envisaged agreement may cover relevant matters regulated under the Euratom Treaty and its secondary legislation, in particular, but not limited to, provisions related to health and safety, the nuclear common market and nuclear safeguards.

## **FINANCIAL MECHANISM**

54. A financial mechanism should be established to promote cohesion between Gibraltar and the Campo de Gibraltar, for example on matter of training and employment. Both Parties should provide funding for this mechanism. The mechanism should include measures for the protection of the Union's financial interests against fraud and other illegal activities and irregularities.

## **INSTITUTIONAL PROVISIONS**

### **STRUCTURE**

55. The envisaged agreement should be embedded in an overall governance framework covering all areas of cooperation and, as appropriate, agreements and arrangements supplementing the envisaged agreement.

56. The envisaged agreement should allow for its periodical review.

57. The envisaged agreement should be established for an indefinite period of time and could be terminated at the request of either Party, prior notice to the other Party of three months.

### **GOVERNANCE**

58. In order to ensure the proper functioning of the envisaged agreement, it should establish efficient and effective arrangements for its management, supervision, implementation and review, and for the resolution of disputes and enforcement, in full respect of the autonomy of the Parties' respective legal orders.

59. The envisaged agreement should provide for the possibility of autonomous measures, including the suspension of the application of the agreement, as well as any supplementing agreements, in whole or in part in the event of a breach of essential elements.

60. The envisaged agreement should establish a governing body responsible for managing and supervising the implementation and operation of the envisaged agreement, facilitating the resolution of disputes. It should take decisions and make recommendations concerning its evolution. Member States, including Spain, should be part of the delegation representing the Union in the governing body.

61. The governing body should comprise the Parties' representatives at an appropriate level, reach decisions by mutual consent, and meet as often as required to fulfil its tasks. If necessary, that body could also establish specialised sub-committees to assist it in the performance of its tasks.

62. In relation to the provisions of Union law made applicable to Gibraltar, the institutions, in particular the Court of Justice of the European Union, and bodies, offices and agencies of the Union should, in relation to the UK (Gibraltar) and natural and legal persons residing or established in the territory of Gibraltar, have the powers as conferred upon them by Union law. In particular, the Court of Justice of the European Union (CJEU) should have the jurisdiction provided for in the Treaties in that respect.

63. The envisaged agreement should include appropriate arrangements for dispute settlement by an independent arbitration panel whose decisions are binding on the Parties and enforcement, including provisions for expedient problem-solving.

64. Should a dispute raise a question of interpretation of Union law, which may also be indicated by either Party, the arbitration panel should refer the question to the CJEU as the sole arbiter of Union law, for a binding ruling. The arbitration panel should decide the dispute in accordance with the ruling given by the CJEU.

65. Where a Party fails to take measures necessary to comply with the binding resolution of a dispute within a reasonable period of time, the other Party would be entitled to request financial compensation or take proportionate and temporary measures, including suspension of its obligations within the scope of the envisaged agreement.

66. In case of an alleged failure by one Party to comply with its obligations under the agreement, the other Party would be entitled to interim remedial measures, including the suspension of a part or the whole of the agreement, that are proportionate to the alleged failure and the economic and societal impact thereof, and provided that this Party initiates a dispute settlement procedure regarding the alleged breach.

#### EXCEPTIONS AND SAFEGUARDS

67. The envisaged agreement should provide for appropriate exceptions. These should include the disclosure of information related to the Parties' security interests.

#### AUTHENTIC LANGUAGES

68. The envisaged partnership, which should be equally authentic in all official languages of the Union, should include a language clause to that effect.