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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations

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Subject:	Annex to the proposal for a COUNCIL DECISION on the signing, on behalf of the Union, of the Agreement In Respect Of Gibraltar Between The European Union And The European Atomic Energy Community, Of The One Part, And The United Kingdom Of Great Britain And Northern Ireland, Of The Other Part
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EUROPEAN  
COMMISSION

Brussels, XXX  
[...] (2026) XXX draft

ANNEX

**SENSITIVE\***  
*UNTIL ADOPTION*

ANNEX

*to the*

**Proposal for a COUNCIL DECISION**

**on the signing, on behalf of the Union, of the Agreement In Respect Of Gibraltar  
Between The European Union And The European Atomic Energy Community, Of The  
One Part, And The United Kingdom Of Great Britain And Northern Ireland, Of The  
Other Part**

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AGREEMENT IN RESPECT OF GIBRALTAR BETWEEN THE EUROPEAN UNION AND THE EUROPEAN  
ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

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PREAMBLE

THE EUROPEAN UNION

AND

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

1. REAFFIRMING their commitment to democratic principles, the rule of law, human rights, countering proliferation of weapons of mass destruction and to the fight against climate change, which constitute essential elements of this and supplementing agreements,
2. RECOGNISING the importance of global cooperation to address issues of shared interest,
3. NOTING that the United Kingdom withdrew from the European Union and that Gibraltar is not included in the territorial scope of the Trade and Cooperation Agreements concluded between the European Union and the European Atomic Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at London and Brussels on 30 December 2020,
4. SEEKING to establish a new mutually cooperative relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland, in respect of Gibraltar (“the Parties”), which also promotes shared prosperity and close and constructive relations in respect of Gibraltar and the adjacent area in the Kingdom of Spain, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar,
5. CONSIDERING that, in order to ensure the efficient implementation and correct interpretation and application of this Agreement and any supplementing agreements, as well as compliance with the obligations under those agreements, it is essential to establish rules for governance, in particular dispute settlement and enforcement rules,
6. CONSIDERING that all current physical barriers to the circulation of persons between Gibraltar and the Schengen area should be removed, while preserving the integrity of the Schengen area through appropriate controls, measures and safeguards, and taking into account that Gibraltar does not participate in and is not associated to the Schengen acquis,
7. CONSIDERING that, to strengthen the security of the Parties, the removal of physical barriers to the circulation of persons and the controls, measures and safeguards established should be

complemented by cooperation between the Parties relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security,

8. REAFFIRMING, given the geographical proximity between the Parties, the commitment to cooperate to prevent and combat money laundering and terrorist financing as well as tax evasion and tax avoidance, and to ensure the implementation of international standards of good governance in the tax area,
9. RECOGNISING the need for a balanced economic partnership to be underpinned by a level playing field for open and fair competition and sustainable development, through effective frameworks for state aid control and a commitment to uphold the Parties' respective high levels of protection in the areas of labour and social standards, environment, the fight against climate change, and taxation,
10. CONSIDERING that all physical barriers to the movement of goods by land between Gibraltar and the Union should be removed, while protecting the integrity of the Union's Single Market and the Parties' financial interests, including by:
  - ensuring the fight against customs fraud through appropriate customs controls and procedures as well as other measures;
  - providing for cooperation mechanisms between the Parties and safeguards, equally preventing and combating tax fraud, evasion and avoidance;
  - applying relevant Union rules governing the movement, production and placing on the market of goods, including Prohibitions and Restrictions and market access rules,
11. SEEKING, given the geographical proximity between the Parties, to cooperate in civil nuclear safety and security matters,
12. CONSIDERING the importance of ensuring road transport for passengers and goods between Gibraltar and a limited contiguous frontier zone in the territory of the Union, and road transport of goods between Gibraltar and the United Kingdom through the territory of the European Union, as well as certain access to the ports of the Parties,
13. SEEKING to establish rules applicable to Gibraltar airport and its operation,
14. SEEKING to establish clear rules and close and effective cooperation between the competent institutions of the Kingdom of Spain and Gibraltar to protect and provide quick and under optimum conditions to ensure the rights of frontier workers moving between the Kingdom of Spain and

Gibraltar to work and corresponding coordination of social security rights, as well as ensuring the rights for their family members,

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

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

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

HAVE AGREED AS FOLLOWS:

**PART ONE:**  
**COMMON AND INSTITUTIONAL PROVISIONS**

**TITLE I: GENERAL PROVISIONS**

Article 1

Purpose

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

Article 2

Sovereignty

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

Article 3

Definitions

1. For the purposes of this Agreement and any supplementing agreement, and unless otherwise specified, the following definitions apply:
  - (a) “Party” or “Parties” means the European Union and the United Kingdom, in respect of Gibraltar;
  - (b) a “Party’s law” or “the Parties’ laws” means, with reference to the United Kingdom, in respect of Gibraltar, the laws applicable in Gibraltar, unless specifically provided otherwise;

- (c) "data subject" means an identified or identifiable natural person; an identifiable person being a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
  - (d) "day" means a calendar day;
  - (e) "Member State" means a Member State of the European Union;
  - (f) "personal data" means any information relating to a data subject;
  - (g) "Contiguous frontier zone" means the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, in the Kingdom of Spain.
2. Any reference to the "Union" in this Agreement or any supplementing agreement shall be understood as including the European Atomic Energy Community, unless otherwise specified or where the context otherwise requires.
  3. Any reference to the "United Kingdom" in this Agreement or any supplementing agreement shall be understood as referring to the United Kingdom as the State being responsible for the external relations of Gibraltar.

#### Article 4

##### Supplementing Agreements

1. Where the Union and the United Kingdom conclude other bilateral agreements between them in respect of Gibraltar, such agreements shall constitute supplementing agreements to this Agreement unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations between the Union and the United Kingdom, in respect of Gibraltar, as governed by this Agreement and shall form part of the overall framework.
2. Paragraph 1 also applies to:
  - (a) agreements between the Union and its Member States, of the one part, and the United Kingdom, in respect of Gibraltar, of the other part;

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

#### Article 5

##### Good faith

1. The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks that flow from this Agreement and any supplementing agreement.
2. They shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and from any supplementing agreement, and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement or any supplementing agreement.

#### Article 6

##### Communications and notifications

1. Formal communications and decisions to be notified, made by or addressed to the Gibraltar competent authorities, shall be transmitted through the Foreign, Commonwealth and Development Office of the Government of the United Kingdom (hereinafter, "the FCDO"), or such other United Kingdom body, both based in the United Kingdom, as the Government of the United Kingdom may decide to appoint.
2. The FCDO shall certify as authentic documents issued by the competent authorities of Gibraltar where decisions are to be directly enforced before a court or other enforcement authority in a Member State without the need of a formal previous notification.
3. The notification by the United Kingdom of competent authorities in Gibraltar pursuant to this Agreement or any supplementing agreement shall also include reference to the FCDO or other United Kingdom body referred to in paragraph 2.

#### Article 7

##### Removal of physical barriers

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

## TITLE II: BASIS FOR COOPERATION

### Article 8

#### Democracy, rule of law and human rights

1. The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, and respect for human rights, which underpin their domestic and international policies. In that regard, the Parties reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties.
2. The Parties shall promote such shared values and principles in international forums. The Parties shall cooperate in promoting those values and principles, including with or in third countries.

### Article 9

#### Fight against climate change

1. The Parties consider that climate change represents an existential threat to humanity and reiterate their commitment to strengthening the global response to this threat. The fight against human-caused climate change as elaborated in the United Nations Framework Convention on Climate Change ("UNFCCC") process, and in particular in the Paris Agreement adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its 21st session (the "Paris Agreement"), inspires the domestic and external policies of the Union and the United Kingdom. Accordingly, each Party shall respect the Paris Agreement and the process set up by the UNFCCC and refrain from acts or omissions that would materially defeat the object and purpose of the Paris Agreement.
2. The Parties shall advocate for the fight against climate change in international forums, including by engaging with other countries and regions to increase their level of ambition in the reduction of greenhouse emissions.

### Article 10

#### Countering proliferation of weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction ("WMD") and their means of delivery, to both state and non-state actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to cooperate and to contribute to

countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties.

2. The Parties agree furthermore to cooperate on and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:
  - (a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments to the extent that those instruments are open to signature, ratification or accession by the Parties; and
  - (b) establishing an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls.
3. The Parties agree to establish a regular dialogue on those matters.

#### Article 11

##### Small arms and light weapons and other conventional weapons

1. The Parties recognise that the illicit manufacture, transfer and circulation of small arms and light weapons ("SALW"), including their ammunition, their excessive accumulation, their poor management, inadequately secured stockpiles and their uncontrolled spread continue to pose a serious threat to peace and international security.
2. The Parties agree to observe and fully implement their respective obligations in the case of the United Kingdom, as extended to Gibraltar, to deal with the illicit trade in SALW, including their ammunition, under existing international agreements and UN Security Council resolutions, as well as their respective commitments within the framework of other international instruments applicable in this area, such as the UN Programme of Action to prevent, combat and eradicate the illicit trade in SALW in all its aspects.
3. The Parties recognise the importance of domestic control systems for the transfer of conventional arms in line with existing international standards. The Parties recognise the importance of applying such controls in a responsible manner, as a contribution to international and regional peace, security and stability, and to the reduction of human suffering, as well as to the prevention of diversion of conventional weapons.

4. The Parties undertake, in that regard, to cooperate with each other within the framework of the Arms Trade Treaty, including in promoting the universalisation and full implementation of that Treaty by all UN member states.
5. The Parties therefore undertake to cooperate in their efforts to regulate or improve the regulation of international trade in conventional arms and to prevent, combat and eradicate the illicit trade in arms. The Parties shall take steps to sign, ratify, or accede to, as appropriate, and fully implement the international instruments listed in Annex 1, to the extent that those instruments are open to signature, ratification or accession by the Parties.
6. The Parties agree to establish a regular dialogue on those matters.

#### Article 12

##### The most serious crimes of concern to the international community

1. The Parties reaffirm that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, including with the International Criminal Court. The Parties agree to fully support the universality and integrity of the Rome Statute of the International Criminal Court and related instruments.
2. The Parties agree to establish a regular dialogue on those matters.

#### Article 13

##### Counter-terrorism

1. The Parties shall cooperate at the bilateral, regional and international levels to prevent and combat acts of terrorism in all its forms and manifestations in accordance with international law, including, where applicable, international counterterrorism-related agreements, international humanitarian law and international human rights law, as well as in accordance with the principles of the Charter of the United Nations. The Parties shall take steps to sign, ratify, or accede to, as appropriate, and fully implement the international instruments listed in Annex 2 to the extent that those instruments are open to signature, ratification or accession by the Parties.
2. The Parties shall enhance cooperation on counter-terrorism, including preventing and countering violent extremism and the financing of terrorism, with the aim of advancing their common security interests, taking into account the United Nations Global Counter-Terrorism Strategy and relevant

United Nations Security Council resolutions, without prejudice to law enforcement and judicial cooperation in criminal matters and intelligence exchanges.

3. The Parties agree to establish a regular dialogue on those matters. This dialogue will, inter alia, aim to promote and facilitate:
  - (a) the sharing of assessments on the terrorist threat;
  - (b) the exchange of best practices and expertise on counter terrorism;
  - (c) operational cooperation and exchange of information; and
  - (d) exchanges on cooperation in the framework of multilateral organisations.

#### Article 14

##### Personal data protection

1. This Article applies to the protection of natural persons in relation to their personal data when processed wholly or partly by automated means, or other than by automated means when they form part of a filing system or are intended to form part of a filing system (hereinafter “data protection”).
2. Annex 3 shall form an integral part of this Article. This annex shall not include the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup> governing the competence and role of the lead supervisory authority and the supervisory authority concerned.
3. Article 19 shall apply to Annex 3.
4. Without prejudice to Article 20, the provisions of the United Kingdom, in respect of Gibraltar, referred to in paragraph 1 of Article 18 in the area covered by Annex 3 shall be interpreted in accordance with the relevant acts of the European Data Protection Board (hereinafter “the Board”) in the same manner and under the same conditions as they apply to the Member States. This includes the opinions that the data protection supervisory authority of the United Kingdom, in respect of Gibraltar, requests or receives pursuant to Article 64 of Regulation (EU) 2016/679, with respect to rules applicable to the United Kingdom, in respect of Gibraltar, that are the same as the rules contained in Annex 3.
5. The data protection supervisory authority of the United Kingdom, in respect of Gibraltar, shall take utmost account of decisions taken by the competent supervisory authority pursuant to Article 60 of Regulation (EU) 2016/679 and decisions taken by the Board pursuant to Article 65 of Regulation (EU)

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<sup>1</sup> 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, OJ L 119, 4.5.2016, pp. 1–88.

2016/679, when deciding on cases raising similar questions of interpretation and application of the same rules as those contained in Regulation (EU) 2016/679.

6. The reference to Member States in Article 68(3) of Regulation (EU) 2016/679 shall not be read as including the United Kingdom, in respect of Gibraltar. The data protection supervisory authority of the United Kingdom, in respect of Gibraltar, may be invited to meetings of the Board only in cases where decisions addressed to that supervisory authority are discussed or the presence of that supervisory authority is necessary and in the interest of the Union to ensure the effective application of the same rules as the Union acts in the area of data protection referred to in paragraph 1 of Article 18 in Gibraltar. In such cases, the data protection supervisory authority of the United Kingdom, in respect of Gibraltar shall participate as an expert or guest pursuant to the relevant Rules of procedure of the Board. Its participation shall be strictly limited to the relevant agenda points and it shall be referred to in the relevant documents, such as the minutes of the meeting, as the supervisory authority of the United Kingdom, in respect of Gibraltar.
7. For the purposes of this Agreement, all references to third countries and their competent authorities contained in the provisions of Union law listed in Annex 3 shall be understood as not including the United Kingdom, in respect of Gibraltar, and its competent authorities provided paragraph 2 is complied with in accordance with paragraph 1 of Article 19.
8. Whenever the Union intends to adopt an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 or Article 36 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>2</sup>, the United Kingdom, in respect of Gibraltar, shall be kept duly informed.

#### Article 15

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

1. The Parties recognise the importance of global cooperation to address issues of shared economic, environmental and social interest. Where it is in their mutual interest, they shall promote multilateral solutions to common problems.
2. While preserving their decision-making autonomy, and without prejudice to other provisions of this Agreement or any supplementing agreement, the Parties shall endeavour to cooperate on current and emerging global issues of common interest such as peace and security, climate change,

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<sup>2</sup> 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, OJ L 119, 4.5.2016, pp. 89–131.

sustainable development, cross-border pollution, environmental protection, digitalisation, public health and consumer protection, taxation, financial stability, and free and fair trade and investment. To that end, they shall endeavour to maintain a constant and effective dialogue and to coordinate their positions in multilateral organisations and forums in which the Parties participate, such as the United Nations, the Group of Seven (G-7) and the Group of Twenty (G-20), the Organisation for Economic Co-operation and Development, the International Monetary Fund, the World Bank and the World Trade Organization.

## Article 16

### Essential elements

1. Paragraph 1 of Article 8, paragraph 1 of Article 9 and paragraph 1 of Article 10 constitute essential elements of the cooperation established by this Agreement and any supplementing agreement.
2. If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in paragraph 1, it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part.
3. Before doing so, the Party invoking the application of this Article shall request that the Cooperation Council meet immediately with a view to seeking a timely and mutually agreeable solution. If no mutually agreeable solution is found within 30 days from the date of the request to the Cooperation Council, the Party may take the measures referred to in paragraph 2.
4. The measures referred to in paragraph 2 shall be in full respect of international law and shall be proportionate. Priority shall be given to the measures which least disturb the functioning of this Agreement and of any supplementing agreements.
5. The Parties consider that, for a situation to constitute a serious and substantial failure to fulfil any of the obligations described as essential elements in paragraph 1, its gravity and nature would have to be of an exceptional sort that threatens peace and security or that has international repercussions. For greater certainty, an act or omission which materially defeats the object and purpose of the Paris Agreement shall always be considered as a serious and substantial failure for the purposes of this Article.

## TITLE III: CIVIL NUCLEAR COOPERATION

### Article 17

#### Civil nuclear cooperation

1. The Parties acknowledge the importance of international cooperation for effective nuclear safety arrangements and shall work together on the continuous improvement of international nuclear safety standards and Conventions, and of their implementation. Insofar as it does not conflict with developments in legally binding international nuclear safety standards, the United Kingdom, in respect of Gibraltar, and the Union shall not weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, shared by the Parties and applied in respect of Gibraltar until 31 December 2020 in relation to nuclear safety, radiation protection, safe management of radioactive waste and spent fuel, decommissioning, safe shipment of nuclear material, emergency preparedness and response, and effective control of radioactive material and radioactive sources.
2. The United Kingdom, in respect of Gibraltar, shall implement a robust and effective system of nuclear material accountancy and control aiming to ensure that nuclear material (as defined in Article XII of the Statute of the International Atomic Energy Agency) is exclusively used for peaceful purposes at such time as these arrangements are required.
3. The United Kingdom, in respect of Gibraltar, shall implement safety and security arrangements, in accordance with relevant international agreements, in relation to any relevant civil nuclear facilities and radioactive sources in Gibraltar, at such time as these arrangements are required.
4. The United Kingdom, in respect of Gibraltar, shall implement, at such time as these arrangements are required, an agreement negotiated with the IAEA for the application of safeguards in Gibraltar, and shall take steps to sign, ratify or accede to, as appropriate, and fully implement the international instruments listed in Part 1 of Annex 4 as well as, where relevant, their future amendments to the extent they are ratified by the United Kingdom. Furthermore, the United Kingdom, in respect of Gibraltar, shall take steps to follow, as appropriate, the guidance documents listed in Part 2 of Annex 4 as well as their future amendments to the extent they are used by the United Kingdom.
5. The Parties acknowledge the importance of international cooperation for effective nuclear security arrangements and shall work together on the continuous improvement of international nuclear security standards and conventions. The Union and the United Kingdom, in respect of Gibraltar, shall

not weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, applied by the Union and the United Kingdom, in respect of Gibraltar, until 31 December 2020 in relation to physical protection.

6. The United Kingdom has extended application of the Convention on Third Party Liability in the Field of Nuclear Energy concluded at Paris on 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 6 November 1982 to Gibraltar. The Parties note that the United Kingdom will continue to take steps to extend the Protocol of 12 February 2004 (which came into force on 1 January 2022 in the United Kingdom) as well as any further amendments, unless a Party has notified the other Party in writing that it does not accept the amendment.
7. The United Kingdom, on behalf of Gibraltar, shall continue to maintain and periodically review operational arrangements in relation to events in, or affecting, Gibraltar, the Convention on the Early Notification of a Nuclear Accident adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986 and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986, should such an event occur. These operational arrangements are detailed in Annex 5 and their updates shall be notified to the other Party as soon as possible, but not later than 3 months after their entry into effect, and Annex 5 shall be amended accordingly.
8. With respect to the effective control of radioactive material and radioactive sources, the United Kingdom, in respect of Gibraltar, shall ensure at least equivalent effectiveness and coverage as that provided under both Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods and Council Directive 2013/59/Euratom of 5 December 2013, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, including as amended or replaced in future.

#### TITLE IV: PRINCIPLES OF INTERPRETATIONS AND DEFINITIONS

##### Article 18

##### Public international law

1. The provisions of this Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.
2. For greater certainty, except as provided for in paragraphs 1 and 4 of Article 19 and in Article 20, neither this Agreement nor any supplementing agreement establishes an obligation to interpret their provisions in accordance with the domestic law of either Party.
3. Without prejudice to Article 20, for greater certainty, an interpretation of this Agreement or any supplementing agreement given by the courts of either Party shall not be binding on the courts of the other Party.

#### Article 19

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

1. The United Kingdom, in respect of Gibraltar, shall have in place in its domestic law, and effectively apply, the same provisions as those contained:
  - (a) in the Union acts listed in the provisions or in those Annexes to this Agreement to which this Article applies, or
  - (b) under the conditions laid down in paragraphs 2 to 4, in a subsequent Union act, namely:
    - (i) a Union act amending or replacing a Union act as referred to in subparagraph a);
    - (ii) a Union act supplementing or implementing a Union act as referred to in subparagraph a); or
    - (iii) another Union act on the subject matter of a Union act as referred to in subparagraph a).
2. Where the Union adopts a subsequent Union act, it shall immediately notify the United Kingdom, in respect of Gibraltar, of the adoption of such act.
3. Within thirty days of the notification referred to in paragraph 2, the United Kingdom, in respect of Gibraltar, shall notify the Union of its decision whether to accept the content of, and to implement into its domestic law, the subsequent Union act. The acceptance by the United Kingdom, in respect of Gibraltar, of the content of a subsequent Union act shall create rights and obligations between the United Kingdom, in respect of Gibraltar, and the Union.

4. If the implementation into domestic law of the subsequent Union act requires the fulfilment of constitutional requirements, the United Kingdom, in respect of Gibraltar, shall inform the Union of this at the time of the notification referred to in paragraph 3. The United Kingdom, in respect of Gibraltar, shall promptly inform the Union in writing upon fulfilment of all constitutional requirements. From the entry into force of the subsequent Union act and until the information upon fulfilment of constitutional requirements, the United Kingdom, in respect of Gibraltar, shall provisionally apply, to the largest extent possible, the same rules as those contained in the subsequent Union act.
5. If the United Kingdom, in respect of Gibraltar:
  - (a) notifies its decision not to accept the content of a subsequent Union act; or
  - (b) does not make a notification within the time limit set out in paragraph 3; or
  - (c) does not inform the Union, at the latest six weeks after the entry into force of a subsequent Union act, of the implementation of that act into its domestic law

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

## Article 20

### Consistent interpretation

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

## Article 21

### Private rights

1. Without prejudice to paragraphs 1 and 2 of Article 19, Article SSC.70 and Titles I and II of Part Four, and with the exception, with regard to the Union, of Title V of Part Two, nothing in this Agreement or any supplementing agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties.

2. A Party shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in breach of this Agreement or any supplementing agreement.

#### TITLE IV: INSTITUTIONAL FRAMEWORK

##### Article 22

##### Cooperation Council

1. A Cooperation Council is hereby established. It shall comprise representatives of the Union, and of the United Kingdom, in respect of Gibraltar. The Cooperation Council may meet in different configurations depending on the matters under discussion.
2. The Cooperation Council shall be co-chaired by a Member of the European Commission and a representative of the Government of the United Kingdom at ministerial level. It shall meet at the request of the Union or the United Kingdom, in respect of Gibraltar, and, in any event, at least once a year, and shall set its meeting schedule and its agenda by mutual consent.
3. The Cooperation Council shall oversee the attainment of the objectives of this Agreement and any supplementing agreement. It shall supervise and facilitate the implementation and application of this Agreement and of any supplementing agreement. Each Party may refer to the Cooperation Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.
4. The Cooperation Council shall have the power to:
  - (a) adopt decisions in respect of all matters where this Agreement or any supplementing agreement so provides;
  - (b) make recommendations to the Parties regarding the implementation and application of this Agreement or of any supplementing agreement;
  - (c) adopt, by decision, amendments to this Agreement or to any supplementing agreement in the cases provided for in this Agreement or in any supplementing agreement;
  - (d) except in relation to Title IV of Part One, until the end of the fourth year following the entry into force of this Agreement, adopt decisions amending this Agreement or any supplementing agreement, provided that such amendments are necessary to correct errors, or to address omissions or other deficiencies;

- (e) discuss any matter related to the areas covered by this Agreement or by any supplementing agreement;
  - (f) delegate certain of its powers to a Specialised Committee, except those powers and responsibilities referred to in point (g) of this paragraph;
  - (g) by decision, establish Specialised Committees and assign tasks to them, dissolve any Specialised Committee, or change the tasks assigned to them.
5. The work of the Cooperation Council shall be governed by the rules of procedure set out in Annex 6. The Cooperation Council may amend that annex.

## Article 23

### Specialised Committees

1. The following Specialised Committees are hereby established:
  - (a) the Specialised Committee on Circulation of Persons;
  - (b) the Specialised Committee on Economy and Trade;
  - (c) the Specialised Committee on Aviation.
2. With respect to issues related to their area of competence, Specialised Committees shall have the power to:
  - (a) monitor and review the implementation and ensure the proper functioning of this Agreement or any supplementing agreement;
  - (b) assist the Cooperation Council in the performance of its tasks and, in particular, report to the Cooperation Council and carry out any task assigned to them by it;
  - (c) adopt decisions and recommendations in respect of all matters for which the Cooperation Council has delegated its powers to a Specialised Committee in accordance with point (f) of paragraph 1 of Article 22 or where the Agreement so provides;
  - (d) discuss technical issues arising from the implementation of this Agreement or any supplementing agreement;
  - (e) provide a forum for the Parties to exchange information, discuss best practices and share implementation experience.
3. The Specialised Committees shall be informed as necessary of the implementation of the administrative arrangements concluded by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain on matters relating to the implementation of this Agreement.

4. Specialised Committees shall comprise representatives of each Party. Each Party shall ensure that its representatives on the Specialised Committees have the appropriate expertise with respect to the issues under discussion.
5. The Specialised Committees shall be co-chaired by a representative of the Union and a representative of the United Kingdom, in respect of Gibraltar.
6. Unless otherwise provided for in this Agreement, or unless the co-chairs decide otherwise, they shall meet at least once a year.
7. Specialised Committees shall set their meeting schedule and agenda by mutual consent.
8. The work of the Specialised Committees shall be governed by the rules of procedure set out in Annex 6.
9. By way of derogation from paragraph 8, a Specialised Committee may adopt and subsequently amend its own rules that shall govern its work.

#### Article 24

##### Decisions and Recommendations

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

## PART TWO: CIRCULATION OF PERSONS

### TITLE I: GENERAL PRINCIPLES AND OBJECTIVES

#### Article 25

##### Protection of human rights and fundamental freedoms

1. The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.
2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the European Convention on Human Rights and, in the case of the Union and its Member States, in the Charter of Fundamental Rights of the European Union.

#### Article 26

##### Definitions

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

- (a) "Border checks" means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States and Gibraltar or authorised to leave it;
- (b) "Border control" means the activity carried out at a border, in accordance with and for the purposes of this Agreement, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;
- (c) "Border surveillance" means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent or detect unauthorised border crossings or the circumvention of border checks, to contribute to

raising situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border illegally;

- (d) “Civilian component” means civilian persons who are in the employ of, or contracted by, the Government of the United Kingdom and who are not persons resident in Gibraltar or in the Union, with the exception of persons who have the right to reside in the United Kingdom or the Common Travel Area;
- (e) “Coercive action” means measures to be taken in respect of a person or object when performing functions related to border control, including as a follow up to alerts in databases and information systems used in the context of border control including, but not limited to, temporary limitation of movement, detention, arrest, placement under protection, inquiries, search and seizure of objects, and any other form of action in response to alerts with the purpose of investigating or gathering evidence that a crime has been committed or planned as well as refusals of entry;
- (f) “Family members forming part of the household” means the spouse or partner of a member of the non-resident United Kingdom Forces or civilian component or the child of such member depending on them for support and who are not persons resident in the European Union nor in Gibraltar;
- (g) “International protection” means refugee status according to the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967 and subsidiary protection status whereby a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person, to their country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country;
- (h) “Member States applying the Schengen acquis in full” means the Member States which have abolished checks on persons at their common borders;
- (i) “Non-resident United Kingdom Forces” means persons serving in the United Kingdom Forces, either as regulars or reserves, who are citizens of the United Kingdom, Commonwealth citizens, citizens of Ireland or have the right to reside in the United Kingdom or the Common Travel Area and who are not persons resident in Gibraltar;
- (j) “Persons resident in Gibraltar” means persons having the legal right to reside in Gibraltar irrespective of their nationality, with the exception of Union citizens and nationals of Iceland, the

Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation as well as nationals of the Principality of Andorra and the Republic of San Marino following the entry into force of agreements conferring such nationals with free movement rights;

- (k) "Second Line Check" means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);
- (l) "Second Line Checks Area" means a special location, as delimited in accordance with arrangements made by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain pursuant to Article 33, where activities including second line checks and operational cooperation between the competent authorities take place;
- (m) "Third country national" means any person who is not:
  - (i) a Union citizen within the meaning of Article 20(1) of the Treaty on Functioning of the European Union or a family member of a Union citizen, irrespective of their nationality, as referred to in Articles 2 and 3 of Directive 2004/38/EC of the European Parliament and of the Council<sup>3</sup>;
  - (ii) a national of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra or the Republic of San Marino and their family members, irrespective of their nationality, who, under agreements between the Union and those respective countries, enjoy rights of free movement equivalent to those referred to in subparagraph (a);
- (n) "Visiting third country forces" means persons serving or who are in the employ of, or contracted by, the armed services of a NATO member or of selected partners who are not persons resident in the Union, or in Gibraltar, and who are due to arrive in Gibraltar on the invitation of the United Kingdom.

## Article 27

### References to certain Union acts

For the purpose of this Part, references to Union acts in Article 26, 29 and the annex referred to therein, 32, 33, 35, 36, 37, 42, 43, 46, 47, 48, 50, 51, 52, 53, 55, 61, 64, 74, 76, 86, 90, 96, 104 and 151 shall be

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<sup>3</sup> 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.

understood to include those Union acts as amended or replaced in future as well as any Union act implementing or supplementing those Union acts.

#### Article 28

##### Removal of physical barriers

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

#### Article 29

##### Border crossing points

1. For the purposes of this Agreement, the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set up border crossing points at Gibraltar port and airport, at which border checks as referred to in paragraph 2 shall be carried out.
2. All passengers entering Gibraltar from Gibraltar port or airport shall be subject to border checks at the border crossing points established pursuant to paragraph 1.
3. By way of derogation from paragraph 1, border checks may be carried out at the airport border crossing point, if the volume of traffic flows through the port allows for an efficient, high and uniform level of control at the airport border crossing point. In this case, the United Kingdom in respect of Gibraltar, and the Kingdom of Spain shall ensure that passengers and crew members arriving at the port are escorted from the port to the airport border crossing point, for the purposes of undergoing the checks referred to in Articles 33(1) and (2). The modalities for the application of this derogation shall be set out in an administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain.
4. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall allow the use of automated border control systems at these border crossing points for their respective checks of persons resident in Gibraltar and Union citizens and their third country family members and beneficiaries of free movement rights under agreements concluded by the Union, in accordance with domestic and Union law.
5. Border checks on entry shall be carried out by the competent authorities of the United Kingdom, in respect of Gibraltar, and subsequently by the competent authorities of the Kingdom of Spain. Border

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

6. Any second line checks must be carried out at the Second Line Checks Area.
7. Without prejudice to Articles 32(3) and 43, entry conditions required by the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain shall be cumulative. The United Kingdom, in respect of Gibraltar, undertakes to align entry conditions under the law of the United Kingdom, in respect of Gibraltar, to those applicable under Union law.
8. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall ensure that entry into Gibraltar from outside the Schengen area without controls at internal borders may only take place via the border crossing points referred to in paragraph 1.
9. Notwithstanding paragraphs 2, 5, and 8, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain may allow the entry into Gibraltar other than via the border crossing points, in the cases provided for by Article 5(2) a, b, c of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>4</sup> (the Schengen Borders Code) or Article 38 of this Agreement.
10. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall ensure that the necessary infrastructure is in place and maintained to allow the border crossing points referred to in paragraph 1 to be operated in a manner appropriate to the volume of traffic flows to ensure an efficient, high and uniform level of control in accordance with the Schengen Borders Code. That infrastructure shall comply with the requirements referred to in Annex 7 of this Agreement and shall be set out in the administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain referred to in Article 33(5).
11. As regards Annex VI of the Schengen Borders Code, Points 2.3.1., 3.1.2, 3.1.4, 3.1.5, 3.2.1, 3.2.5 and 3.2.6 of that Annex shall apply in respect of border checks performed by the competent authorities of the Kingdom of Spain at the border crossing points established in Article 29(1). Any information to be provided under those points is to be provided simultaneously and without delay to both the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain.

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<sup>4</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (OJ L 77, 23.3.2016, pp. 1–52).

## Article 30

### Circulation of persons between Gibraltar and the Member States

1. The Parties shall ensure that persons may circulate between Gibraltar and the Member States applying the Schengen acquis in full without border checks being carried out, without prejudice to the provisions on sea borders in Annex VI of the Schengen Borders Code, irrespective of their nationality.
2. Notwithstanding the first paragraph, where there is a serious threat to the public policy, public health or internal security, the Member States applying the Schengen acquis in full or the United Kingdom, in respect of Gibraltar, as the case may be, may exceptionally reinstate border control between Gibraltar and the territory of the Member States applying the Schengen acquis in full for a limited period of up to 10 days. That period may be prolonged by a period of 20 days and by subsequent periods of one month until a maximum of six months. Border control between Gibraltar and the territory of the Member States applying the Schengen acquis in full shall only be reinstated as a last resort, and the scope and duration of the reinstatement shall not exceed what is strictly necessary to respond to the serious threat.
3. Where any of the Member States applying the Schengen acquis in full or the United Kingdom, in respect of Gibraltar, decide to reinstate or prolong border control between Gibraltar and the territory of that Member State in accordance with paragraph 2, the Union, where the border control is reinstated by a Member State, or the United Kingdom, in respect of Gibraltar, where the border control is reinstated by the latter, shall inform the other Party thereof:
  - (a) at the latest four weeks before a planned reinstatement or prolongation or as soon as possible where the circumstances giving rise to the need to reinstate or prolong border controls become known less than four weeks before a planned reinstatement or prolongation;
  - (b) immediately and not later than 48 hours after a decision to reinstate or prolong border control in response to a serious threat requiring immediate action to be taken.
4. When informing the other Party of a decision to reinstate or prolong border control between Gibraltar and the territory of a Member State applying the Schengen acquis in full in accordance with paragraph 3, the Union, where the border control is reinstated by a Member State, or the United Kingdom, in respect of Gibraltar, where the border control is reinstated by the latter, shall provide the other Party with the following information:

- (a) whether the reinstatement or prolongation takes place on the ground of a serious threat to its public policy, public health or internal security;
  - (b) relevant details of the ground or grounds unless there are overriding security or confidentiality reasons for not doing so;
  - (c) the names of the authorised crossing-points;
  - (d) the starting date and duration of the reinstatement or prolongation; and
  - (e) where appropriate, the measures that could be taken by the other Party.
5. The Parties shall ensure that the public are informed in a coordinated manner of a decision to reinstate or prolong border control between Gibraltar and the territory of the Member States applying the Schengen acquis in full, in particular the start and end dates and scope of the reinstatement, unless there are overriding security reasons for not doing so.

### Article 31

#### Union databases

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

### TITLE II:

#### BORDER CROSSING

### Article 32

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

1. For the purposes of this Agreement, the competent authorities of the United Kingdom, in respect of Gibraltar, shall exercise border control, comprising border checks and border surveillance, in accordance with Gibraltar Immigration, Asylum and Refugee Act, as amended or replaced.
2. Where, following border checks carried out by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain as referred to in Article 29(2), the competent authorities of the United Kingdom, in respect of Gibraltar, intend to refuse entry to a person and there is no requirement for other coercive action to be taken in accordance with Article 34(3), they shall immediately inform the competent authorities of the Kingdom of Spain at the border crossing point and escort the person to the Second

Line Checks Area, where the competent authorities of Kingdom of Spain shall review whether the entry conditions under Union law are complied with, in accordance with Article CIRCERS.33 and without prejudice to the possibility for the Kingdom of Spain to authorise entry in application of Article 6(5) of the Schengen Borders Code.

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

#### Article 33

##### Border control by the competent authorities of the Kingdom of Spain

1. For the purpose of this agreement the competent authorities of the Kingdom of Spain shall perform any functions which are required to exercise border control, comprising border checks and border surveillance, as set out in the Schengen Borders Code and related tasks under Union law.
2. Border checks are to be carried out at the border crossing points, established in Article 29(1), to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Kingdom of Spain or authorised to leave it.
3. Border surveillance is to be carried out between border crossing points in Gibraltar including the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks and prevent or detect unauthorised border crossings.
4. Functions as referred to in paragraph 1 shall include:
  - (a) Border check functions inter alia, comprising the right to:
    - (i) perform border checks on persons, including second line checks, in accordance with the Schengen Borders Code;
    - (ii) refuse entry to third country nationals who do not fulfil the entry conditions laid down in Article 6(1) of the Schengen Borders Code, other than persons resident in Gibraltar, and

persons belonging to the categories set out in Article 6(5) of the Schengen Borders Code. Where the third country national who has been refused entry was brought to the border by a carrier and pending onward transportation in accordance with the obligations of carriers referred to in Article 36, take appropriate measures to prevent the third country national who have been refused entry from entering illegally;

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

- (i) prevent unauthorised border crossings, and take measures against persons who have crossed the border illegally, including apprehending such persons and ensuring their return in accordance with the provisions respecting Directive 2008/115/EC of the European Parliament and of the Council<sup>5</sup>;
- (ii) perform border surveillance in such a way as to prevent and discourage persons from circumventing the checks at border crossing points, by means of stationary or mobile units;

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

- (i) use IT systems and information systems processing personal data in accordance with national, Union and international law, take all necessary follow-up actions or actions to be taken in accordance with national, Union and international law and establish the technical and organisational security measures required by national, Union and international law to protect personal data against accidental or unlawful destruction or accidental loss, alteration and unauthorised disclosure or access, including access by third-country authorities;
- (ii) arrest, search, detain, interview, place under protection a person, or seize or search property, where it is justified in the course of border control carried out by the competent authorities of the Kingdom of Spain and in accordance with Spanish, Union and international law;
- (iii) accept applications for international protection presented by any third-country national or stateless person presenting to the competent authorities of the Kingdom of Spain.

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

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<sup>5</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, pp. 98–107).

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

#### Article 34

##### Follow up actions to border checks – alerts in information systems

1. In the performance of tasks in accordance with Articles 32 and 33, the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain shall, respectively, follow up on alerts in their respective databases and information systems, in accordance with the applicable domestic and Union law.
2. Where alerts in the respective databases and information systems require coercive action to be taken, the person concerned shall be escorted to the Second Line Checks Area, with the exception of the situation under the second subparagraph.

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

3. Where coercive action is required on the basis of alerts existing only in the databases and information systems operated by the United Kingdom, in respect of Gibraltar, the competent authorities of the United Kingdom, in respect of Gibraltar, shall take the appropriate follow up actions under the applicable domestic law of the United Kingdom, in respect of Gibraltar.
4. Where coercive action is required on the basis of alerts existing only in the databases and information systems operated by the Kingdom of Spain, the competent authorities of the Kingdom of Spain shall take the appropriate follow up actions under national and Union law.
5. Where coercive action for arrest or detention of a person is required on the basis of paragraphs 3 and 4, the following procedure shall apply, as appropriate:
  - (a) In the course of entry border checks, the person shall not object to the arrest or detention; or alternatively the person shall be given the choice to be refused entry;

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

6. Where coercive action is required both on the basis of alerts existing in the databases and information systems operated by the competent authorities of the United Kingdom, in respect of Gibraltar, and those of the Kingdom of Spain, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain shall agree on the authority which will carry out the action in question or carry it out first, and, where appropriate, on any follow-up, with the exception of situations under paragraphs 7 and 9.
7. Where coercive action for arrest and detention of persons or seizure of objects is required both on the basis of alerts existing in the databases and information systems operated by the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain, and such coercive action can only be carried out by one of these authorities, the action shall be taken by the competent authorities of Spain, in accordance with the applicable national and Union law. However, in exceptional cases, a stay of arrest and detention where there are individual human rights concerns or where there are conflicting international obligations concerning extradition, may be requested by the relevant competent authority. In such case, the issues must be resolved by the relevant authorities before any removal takes place.
8. The competent authorities of either the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, shall notify the other competent authorities of the termination of coercive action carried out pursuant to paragraphs 6 and 7 with a view to enabling the other competent authorities, where appropriate, and with the exception of situations under paragraph 9, follow-up action to be carried out on the basis of alerts existing in the databases and information systems operated by the competent authorities.
9. Where coercive action for arrest or detention is required by the competent authorities of the Kingdom of Spain, and the person concerned is a person resident in Gibraltar, the action may only be carried out by the competent authorities of the United Kingdom, in respect of Gibraltar. The competent authorities of the United Kingdom, in respect of Gibraltar shall, upon request by the competent authorities of the Kingdom of Spain and following receipt of such information as is necessary to enable lawful execution of the coercive action, carry out the requested action with a view to enabling the Kingdom of Spain to take follow-up action to be carried out on the basis of alerts existing in databases and information systems operated by its competent authorities. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of

Spain of the coercive action carried out with a view to a fast extradition pursuant to the first paragraph.

10. In all cases of arrest under this Article, the person shall be provided with appropriate procedural safeguards prior to any decision or choice.
11. This Article is without prejudice to the obligations of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain under the Statute of the International Criminal Court.

#### Article 35

##### Follow up actions to border control – refusals of entry

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under the law of the United Kingdom, in respect of Gibraltar, only, in accordance with Article 32.
2. The competent authorities of the Kingdom of Spain shall enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under Union law, only, in accordance with Article 33(4)(a)(ii), and who have not been authorised to enter in application of Article 6(5) of the Schengen Borders Code.
3. The competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain, shall jointly enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under both the law of the United Kingdom, in respect of Gibraltar, and Union law, in accordance with Articles CIRCERS.32 and CIRCERS.33(4)(a)(ii).
4. Refusals of entry in accordance with this Article shall be enforced after any action which may have been taken as a follow up to an alert existing in the databases and information systems of the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain in accordance with Article 34.

#### Article 36

##### Carriers' Liability

Article 26 of the Convention Implementing the Schengen Agreement and Council Directive 2001/51/EC of 28 June 2001<sup>6</sup> shall apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar, for the transport

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<sup>6</sup> Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, pp. 45–46).

to Gibraltar by sea or air from a third country of persons other than Union citizens, nationals of Iceland, the Kingdom of Norway, the Swiss Confederation, the Principality of Liechtenstein, and nationals of the Principality of Andorra and the Republic of San Marino following the entry into force of agreements conferring such nationals with free movement rights, third country nationals who do not possess the necessary travel documents for entry into the Member States except Ireland.

Article 19 shall apply.

#### Article 37

##### Advance Passenger Information

The United Kingdom, in respect of Gibraltar, shall ensure that carriers transfer Advance Passenger Information (API) concerning flights originating outside the Schengen area and arriving in the airport to the authorities of the Kingdom of Spain. The API data as well as its transfer shall comply with the requirements of Council Directive 2004/82/EC<sup>7</sup>.

Article 19 shall apply.

#### Article 38

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

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

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<sup>7</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, pp. 24–27).

2. Only the following documents shall be required for the registration of members of non-resident United Kingdom Forces or of visiting third country forces, to be presented at the Schengen border crossing points:
  - (a) personal identity card issued by the Ministry of Defence of the United Kingdom or the Ministry of Defence of the visiting third-country force showing names, date of birth, rank and number (if any), service, and photograph;
  - (b) individual or collective movement order, in the Spanish and English languages, issued by the Ministry of Defence of the United Kingdom and certifying the status of the individual or group as a member or members of a non-resident United Kingdom Force or of a visiting third-country force and to the movement ordered;

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

3. In respect of the entry and exit of non-resident United Kingdom Forces, of those residence permit holders who are entitled to the provision in Article 50(13) and 51(12), of visiting third-country forces and of the civilian component arriving and exiting aboard State aircraft or State vessels, the United Kingdom shall make information available to the Kingdom of Spain necessary for the identification of such persons. The identification of these persons upon arrival or departure shall take place by the Liaison Officers designated in accordance with an administrative arrangement between the Kingdom of Spain and the United Kingdom. Family members forming part of the household shall be directed to the border crossing points.
4. On the conditions specified in paragraph 5 and subject to compliance with the formalities established in this Agreement relating to entry and exit of the members of the civilian component of non-resident United Kingdom Forces and family members forming part of the household, such persons shall be exempt from passport and visa regulations and immigration inspection at Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1), but they shall not be considered as acquiring any right to permanent residence or domicile in the Schengen area.
5. Only the following documents shall be required for the registration of members of the civilian component of non-resident United Kingdom Forces and family members forming part of the household who are nationals of the United Kingdom or who have the right to reside in the United Kingdom or the Common Travel Area. They must be presented at the Schengen border crossing points referred to in Article 29(1):

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

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

6. Members of the civilian component or family members forming part of the household who are not citizens of the United Kingdom or who do not have the right to reside in the United Kingdom or the Common Travel Area shall be subject to Schengen border checks as foreseen in Article 33. These persons shall not undergo additional Schengen border checks to exit or enter a Member State applying the Schengen acquis according to paragraph 7 provided that their entry or exit has been authorized according to this paragraph.
7. Those members of non-resident United Kingdom Forces, of visiting third-country forces, of the civilian component and family members forming part of their household, that wish to exit or enter a Member State applying the Schengen acquis in full shall be subject to the Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1). The United Kingdom and the Kingdom of Spain shall inform these persons of the obligation to undergo such checks and of the possibility that they may be subject to disciplinary action if they fail to do so, without prejudice to the application of Union acts governing the return of illegally staying third-country nationals. Regularly constituted units or formations shall not be allowed to enter or exit the Schengen area through the border crossing points referred to in Article 29(1).

### TITLE III: SAFEGUARDS

#### Chapter 1 RESIDENCE IN GIBRALTAR

Special rules, issuance of residence permits and visas

## Article 39

### Scope

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

## Article 40

### Relation with EU law

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

## Article 41

### Visa free travel

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

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

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

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

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

## Article 42

### Facilitations at the external borders

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

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

2. When crossing the external borders of a Member State, including the border crossing points referred to in Article 29(1), persons resident in Gibraltar shall be exempt from the requirement to be in possession of a valid travel authorisation pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council<sup>8</sup>.

#### Article 43

##### Entry into Gibraltar

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

#### Article 44

##### Entry to the Member States for transit purposes

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

#### Article 45

##### Right of residence in Gibraltar

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<sup>8</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) (OJ L 236, 19.9.2018, pp. 1–71).

1. A legal right to reside in Gibraltar shall be proven on the basis of a person holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar, and subject to the conditions set out in this Article.
2. The United Kingdom, in respect of Gibraltar, shall ensure that identity cards and residence permits issued in Gibraltar are issued only to persons who meet the conditions for entitlement to such identity card or residence permit set out in the legislation in force on the date of entry into force of this Agreement.
3. The United Kingdom, in respect of Gibraltar, shall ensure that the conditions for entitlement to an identity card issued in Gibraltar in the legislation referred to in paragraph 2 are consistent with international law.
4. The United Kingdom, in respect of Gibraltar, shall inform the Cooperation Council whenever changes are proposed to be made to the conditions in the legislation referred to in paragraph 2 after the date of entry into force of this Agreement. The Cooperation Council shall, within one month of being so informed, provide its opinion on whether or not such changes are compatible with this Agreement. Such changes shall not, in any event, make it possible for a person to be able to obtain:
  - (a) an identity card issued in Gibraltar, on the basis of prior residence in Gibraltar, unless they have been resident in Gibraltar for a continuous period of at least ten years immediately prior to the date of application for the card;
  - (b) a residence permit issued in Gibraltar unless they are able to demonstrate a genuine connection with Gibraltar.
5. The condition in point (b) of paragraph 4 shall be established on the basis of a person being able to demonstrate actual and regular physical presence in Gibraltar over an appropriate period of time or on the basis of other objective and verifiable criteria.
6. The conditions for entitlement to an identity card issued by the competent authorities of the United Kingdom in respect of Gibraltar on a basis other than prior residence as well as the condition for entitlement to a residence permit referred to in point (b) of paragraph 4 shall not be met:
  - (a) on the basis of predetermined investments having been made in Gibraltar's economy or real estate; or
  - (b) as a result of any predetermined financial payments having been made to the Gibraltar authorities.

7. Subject only to Article 52, the United Kingdom, in respect of Gibraltar, shall ensure that residence permits issued in Gibraltar are issued or renewed only in accordance with the procedure set out in Articles 50 and 51.
8. Residence permits issued to persons who no longer meet the conditions in point (b) of paragraph 4 shall be withdrawn.

#### Article 46

##### Enhanced notification for persons resident in Gibraltar

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

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

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

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

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

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

3. Where the United Kingdom, in respect of Gibraltar, has received a notification referred to in paragraph 2, it shall:
  - (a) inform the person concerned of the notification and the content thereof;
  - (b) take all necessary steps to prevent prohibited travel to the Schengen area, including through police and judicial cooperation with the Kingdom of Spain.
4. This Article shall not apply to
  - (a) family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;
  - (b) family members, irrespective of their nationality, of nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

#### Article 47

##### Short stay visas in respect of Gibraltar

1. Nationals of third countries required to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall also be required to be in possession of a visa to enter and stay in Gibraltar.
2. Nationals of third countries exempt from the requirement to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall not be required to be in possession of a visa to enter and stay in Gibraltar.
3. Short-stay visas issued in accordance with Union law, in particular Regulations (EC) No 810/2009 of the European Parliament and of the Council<sup>9</sup> and (EU) 2018/1806 of the European Parliament and of the Council<sup>10</sup>, shall also be valid for entry and stay in Gibraltar for a maximum period of 90 days in any 180-day period. Where the main purpose is to stay in Gibraltar, the Kingdom of Spain, the neighbouring Member State, shall issue the visa.
4. The Kingdom of Spain shall notify the United Kingdom, in respect of Gibraltar, when it intends to issue a visa in accordance with the second sentence of paragraph 3. Where the United Kingdom, in

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<sup>9</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, pp. 1–58).

<sup>10</sup> Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, pp. 39–58).

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

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

#### Article 48

##### Exceptional external borders visas in respect of Gibraltar

1. This Article applies when, following the completion of border checks, a person who is not in possession of a valid visa required to enter Gibraltar or the Member States, expresses the wish to enter and stay only in Gibraltar.
2. In the case referred to in paragraph 1, the competent authorities of the United Kingdom, in respect of Gibraltar, may exceptionally issue a short-stay visa at the external border crossing points established pursuant to Article 29(1) when there are compelling grounds to do so on humanitarian grounds, if the following conditions are fulfilled:
  - (a) the applicant submits supporting documents or other evidence substantiating unforeseeable and imperative reasons for entry on humanitarian grounds;
  - (b) the applicant satisfies the conditions for entry, other than compliance with one or more of the following conditions:
    - (i) holding a visa, required by the competent authorities of the United Kingdom, in respect of Gibraltar, and by the competent authorities of the Kingdom of Spain;
    - (ii) having stayed in the territory of the Member States for no more than 90 days in any 180-day period;
    - (iii) being in possession of a valid travel document that entitles the holder to cross the border and that satisfies the following criteria:
      - a) its validity extends at least three months after the intended date of departure;
      - b) it has been issued within the previous 10 years; and

- (c) the applicant's return to their country of origin or residence or transit through States other than Member States applying the Schengen acquis in full is assessed as certain.
3. A visa exceptionally issued at the external borders in accordance with paragraph 2 shall be valid only for the territory of Gibraltar, entitling the holder to stay there for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. The period of the duration of stay may subsequently be extended by a maximum of 15 days if the competent authorities of the United Kingdom, in respect of Gibraltar, consider that the visa holder has provided proof of *force majeure* or humanitarian reasons preventing them from leaving. It shall not give the holder the right to enter the territory of the Member States.
  4. Where the Kingdom of Spain considers that a visa should not be issued or extended in accordance with paragraphs 2 and 3 because there are sufficiently serious reasons pertaining to public policy, internal security or public health, including on the basis of an alert issued in the Schengen Information System, it shall inform the United Kingdom, in respect of Gibraltar, of its objection to issuance of such a visa. In that case, the United Kingdom, in respect of Gibraltar, shall refrain from issuing a visa at the external borders in accordance with paragraph 2.
  5. When the United Kingdom, in respect of Gibraltar, decides to issue or extend a visa in accordance with paragraphs 2 or 3, it shall allow the competent authorities of the Kingdom of Spain to record the data of the applicant, including biometric identifiers, that is required for visa issuance or extension in accordance with Union law, in particular with the provisions of Regulation (EU) 2018/1806 of the European Parliament and of the Council, of Regulation (EC) 810/2009 of the European Parliament and of the Council and of Regulation (EC) 767/2008 of the European Parliament and of the Council<sup>11</sup>. The Kingdom of Spain shall enter these data into the Visa Information System, adding information indicating that the visa has been issued with territorial validity limited to the territory of Gibraltar pursuant to this Article.
  6. The number of visas pursuant to paragraph 2 shall not exceed 15 in each calendar year. That number of visas issued each calendar year may be amended by decision of the Cooperation Council.
  7. Visas issued pursuant to paragraph 2 shall be issued in a format to be determined by the competent authorities of the United Kingdom, in respect of Gibraltar. The United Kingdom, in respect of Gibraltar,

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<sup>11</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, pp. 60–81.

shall provide the Kingdom of Spain with specimens of such visas and any subsequent modification thereto for information purposes.

#### Article 49

##### Long stay visas valid for Gibraltar

Long stay visas valid for Gibraltar shall not be issued.

#### Article 50

##### Residence permits in respect of Gibraltar

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for issuing or renewing residence permits in respect of Gibraltar. Such residence permits may only be issued or renewed, where the relevant conditions under Article 45 are fulfilled.
2. Before issuing or renewing a residence permit, the competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain.
3. Within 28 calendar days of being notified under paragraph 2, the competent authorities of the Kingdom of Spain may inform the competent authorities of the United Kingdom, in respect of Gibraltar, of their objection to the issuance or renewal of a residence permit where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy<sup>12</sup>, internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall not issue or renew the residence permit, and shall inform the applicant of the outcome and provide to the applicant the contact details of the competent authorities of the Kingdom of Spain. Upon request of the applicant, the competent authorities of the Kingdom of Spain shall, with due regard to their obligations under national and Union law, inform the applicant of:
  - (a) its decision to object to the issuing or renewing of a residence permit;
  - (b) the grounds for objecting to the issuing or renewing of the residence permit, considering the applicant to be a threat to public policy, or internal security, public health or the international relations, accompanied, where appropriate, by the essence of the reasons;-and

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<sup>12</sup> Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

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

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

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

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

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

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

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

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

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

6. Where, a residence permit is issued, or not withdrawn, because the competent authorities of the Kingdom of Spain have not objected to it pursuant to paragraphs 3 or 5 and despite an alert in the Schengen Information System for the purposes of refusing entry, or for the purposes of return, that residence permit does not give the holder the right to enter the territory of the Member States.
7. A residence permit in respect of Gibraltar shall comply with the uniform format laid down in Union law and shall bear clear indications that it is valid for Gibraltar.
8. The United Kingdom, in respect of Gibraltar, shall provide the Kingdom of Spain with specimens of permits in respect of Gibraltar and any subsequent modification thereto for the purpose of Spain

notifying these to the Commission in line with the procedure in Article 39(1)(a) of the Schengen Borders Code.

9. The Kingdom of Spain shall designate, in accordance with Article 68, the authority responsible for receiving the information pursuant to this Article. The United Kingdom, in respect of Gibraltar, shall notify, in accordance with Article 68, the authority responsible for receiving applications for residence permits, issuing or renewing residence permits in respect of Gibraltar and submitting information to the Kingdom of Spain pursuant to this Article.
10. This Article shall apply until the date on which the Visa Information System (VIS) operations start pursuant to Regulation (EU) 2021/1134 of the European Parliament and of the Council<sup>13</sup>. From that date, Article 51 shall apply.
11. The Union shall inform the United Kingdom, in respect of Gibraltar, of the date on which the operations referred to in paragraph 9 will start, in advance of that date.
12. Paragraphs 2 to 6 shall not apply to:
  - (a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;
  - (b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).
13. In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to the United Kingdom, in respect of Gibraltar, where the competent authorities of the Kingdom of Spain have objected to the issuance of the residence permit in accordance with paragraph 3, they shall be issued a residence permit with territorial validity limited to Gibraltar.

Article 51  
Residence permits in respect of Gibraltar

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<sup>13</sup> Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System, OJ L 248, 13.7.2021, pp. 11–87.

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for issuing or renewing residence permits in respect of Gibraltar. Such residence permits may only be issued or renewed, where the relevant conditions under Article 45 are fulfilled.
2. Before issuing or renewing a residence permit, the competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain.
3. Without prejudice to paragraph 1, the competent authorities of the United Kingdom, in respect of Gibraltar, shall ensure that the data necessary for the Kingdom of Spain to be able to comply with Chapter III of Regulation (EC) No 2008/767 with regard to applications for residence permits made in Gibraltar, is collected and transferred to the competent authorities of the Kingdom of Spain within 2 working days of the application being made.

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

- (a) the data collected is accurate, up to date and of an adequate level of quality and completeness;
  - (b) has been collected lawfully, respecting the safeguards laid down in that chapter;
  - (c) the applicant has been provided with the information referred to in Articles 37(1) and (2) of Regulation (EC) 2008/767; and
  - (d) the applicant provides at the time of application consent to the processing of their data in line with the provisions of Regulation (EC) 2008/767.
4. Within 28 calendar days of being notified under paragraph 2, the competent authorities of the Kingdom of Spain may inform the competent authorities of the United Kingdom, in respect of Gibraltar, of their objection to the issuance or renewal of a residence permit, where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy<sup>14</sup>, internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall not issue or renew the residence permit and shall inform the applicant of the outcome and provide to the applicant the contact details of the competent authorities of the Kingdom of Spain. Upon request of the applicant, the competent authorities of the Kingdom of

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<sup>14</sup> Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

Spain shall, with due regard to their obligations under national and Union law, inform the applicant of:

- (a) their decision to object to the issuing or renewing of a residence permit;
- (b) the grounds for objecting to the issuing or renewing of the residence permit, considering the applicant to be a threat to public policy, or internal security, public health or the international relations, accompanied, where appropriate, by the essence of the reasons;-and
- (c) the appropriate remedies in accordance with national and Union law.

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

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

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

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

- (a) their decision to request the withdrawal of a residence permit;
- (b) the grounds for considering the holder to be a threat to public policy, or internal security, public health or the international relations accompanied, where appropriate, by the essence of the reasons; and
- (c) the appropriate remedies in accordance with national and Union law.

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

7. Where a residence permit is issued, or not withdrawn, because the competent authorities of the Kingdom of Spain have not objected to it pursuant to paragraphs 4 or 6 and despite an alert in the

Schengen Information System for the purposes of refusing entry, or for the purposes of return, that residence permit does not give the holder the right to enter the territory of the Member States.

8. A residence permit in respect of Gibraltar shall comply with the uniform format laid down in Union law and shall bear clear indications that it is valid for Gibraltar.
9. The United Kingdom, in respect of Gibraltar, shall provide Spain with specimens of permits in respect of Gibraltar and any subsequent modification thereto for the purpose of the Kingdom of Spain notifying these to the Commission in line with the procedure in Article 39(1)(a) of the Schengen Borders Code.
10. The Kingdom of Spain shall designate, in accordance with Article 68, the authority responsible for receiving the information pursuant to this Article. The United Kingdom, in respect of Gibraltar, shall notify in accordance with Article 68 the authority responsible for receiving applications for residence permits, issuing or renewing residence permits in respect of Gibraltar and submitting information to the Kingdom of Spain pursuant to this Article.
11. Paragraphs 2 to 7 shall not apply to
  - (a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;
  - (b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).
12. In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to the United Kingdom, in respect of Gibraltar, where the competent authorities of the Kingdom of Spain has objected to the issuance of the residence permit in accordance with paragraph 4, they shall be issued a residence permit with territorial validity limited to Gibraltar.

#### Article 52

##### Transitional rule for residence permits

1. Residence permits issued by the competent authorities of the United Kingdom, in respect of Gibraltar, prior to the date of entry into force of this Agreement shall remain valid for a period of two calendar years after that date or until their expiration date, whichever comes first.
2. The United Kingdom, in respect of Gibraltar, shall provide the Kingdom of Spain with specimens of such permits and any subsequent modification thereto for the purposes of the Kingdom of Spain

notifying these to the Commission in accordance with Article 39(1) (a) of the Schengen Borders Code.

3. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain of the holders of residence permits in force at the time of the entry into force of this Agreement. The competent authorities of the Kingdom of Spain may, on the basis of checks on such persons in the relevant Union, national and international databases, including the Schengen Information System request the competent authorities of the United Kingdom, in respect of Gibraltar, to withdraw a residence permit where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy<sup>15</sup>, internal security, public health or the international relations of any of the Member States. Upon receipt of such a request, the competent authorities of the United Kingdom, in respect of Gibraltar, shall withdraw the relevant residence permit subject to a right of appeal in before a national court.

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

4. Paragraph 3 shall not apply to
  - (a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;
  - (b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

## Chapter 2

### APPLICATIONS FOR INTERNATIONAL PROTECTION AND RETURN

#### Article 53

##### Applications for international protection

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<sup>15</sup> Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

1. Subject to paragraphs 6 to 10, where a person makes an application for international protection in Gibraltar, the competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for the examination of that application.
2. Where an application for international protection is made pursuant to paragraph 1, the applicant shall be escorted by the competent authorities of the United Kingdom, in respect of Gibraltar, to the Second Line Checks Area for the purposes of registering the application, subject to paragraph 5. The competent authorities of the United Kingdom, in respect of Gibraltar, shall immediately inform the competent authorities of the Kingdom of Spain, subject to paragraph 5.
3. Without prejudice to paragraph 1, where a person is going through the border checks carried out pursuant to Article 29, they may make an application for international protection before the competent authorities of the United Kingdom, in respect of Gibraltar or before those of the Kingdom of Spain.
4. Where a person makes an application for international protection before or during the performance of border checks carried out pursuant to Article 29, the checks shall be completed. In the event that border checks trigger the need for follow-up action to be taken as referred to in Article 34, such action shall be taken to the extent that it respects and does not undermine the right to international protection and the principle of non-refoulement.  
Where an application for international protection is made pursuant to paragraph 3, the applicant shall be escorted by the competent authorities before which they made the application to the Second Line Checks Area for the purposes of registering the application, subject to paragraph 5.  
Where a person makes an application for international protection before the competent authorities of the Kingdom of Spain, the Kingdom of Spain shall be responsible for the examination of that application in accordance with Union and domestic law.  
Where a person makes an application for international protection before the competent authorities of the United Kingdom, in respect of Gibraltar, the United Kingdom, in respect of Gibraltar, shall be responsible for the examination of that application in accordance with domestic law, and subject to paragraphs 6 to 10.
5. For the purposes of examining individual applications and after a final decision on the application has been taken, the competent authorities shall not:
  - (a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;

- (b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or their dependants, or the liberty and security of their family members still living in the country of origin.
6. Where the United Kingdom, in respect of Gibraltar, is responsible for the examination of an application for international protection, the application shall be processed in accordance with standards that are at least equivalent to those applicable in the Union with respect to eligibility criteria for and content of international protection, as well as with respect to the procedures applicable to the examination of applications for international protection and reception conditions of applicants.
7. Where the competent authorities of the Kingdom of Spain are informed of an application for international protection in accordance with paragraph 2, they may inform the competent authorities of the United Kingdom, in respect of Gibraltar, within 14 calendar days of their objection to the granting of international protection by the United Kingdom, in respect of Gibraltar. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from granting international protection until they have given full consideration to any information provided by the competent authorities of the Kingdom of Spain. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain of the final decision and the reasons therefor, subject to paragraph 5. The competent authorities of the Kingdom of Spain shall notify the competent authorities of the United Kingdom, in respect of Gibraltar, if the period of 14 calendar days referred to in the first sentence is to be extended by a maximum of 14 calendar days. The absence of a response by the expiry of that 14 calendar days period shall be considered a positive response. In any case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from granting international protection before the end of the period provided in this paragraph.
8. Where the United Kingdom, in respect of Gibraltar, is responsible for the examination of an application for international protection, it shall take all necessary measures to ensure that an applicant, other than a Union citizen, is not permitted to enter, and is prevented from entering, the territory of the Member States for the duration of the procedure for international protection and until a final decision is taken on the application.

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

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

Where a final decision has been taken rejecting an application for international protection, the competent authorities of the United Kingdom, in respect of Gibraltar, shall take all necessary measures to ensure that the person concerned is removed from Gibraltar, in accordance with rules and safeguards that ensure standards equivalent to those laid down in Directive 2008/115/EC of the European Parliament and of the Council<sup>16</sup>.

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

### Chapter 3 POLICE COOPERATION

#### Article 54 Information exchange

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

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<sup>16</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, pp. 98–107.

- (a) prevention, investigation, detection or prosecution of criminal offences, including the fight against organised crime and illegal trafficking;
  - (b) execution of criminal penalties;
  - (c) safeguarding against, and prevention of, threats to public safety; and
  - (d) prevention and combating of money laundering and the financing of terrorism.
2. For the purposes of this Article, a “competent authority” means a domestic police, customs or other authority that is competent under domestic law to undertake activities for the purposes set out in paragraph 1.
  3. Information, including on wanted and missing persons as well as objects, may be requested by a competent authority of the United Kingdom, in respect of Gibraltar, or of a Member State, or provided spontaneously to a competent authority of the United Kingdom, in respect of Gibraltar, or of a Member State. Information may be provided in response to a request or spontaneously, subject to the conditions of the domestic law which applies to the providing competent authority and within the scope of its powers.
  4. Information may be requested and provided to the extent that the conditions of the domestic law which applies to the requesting or providing competent authority do not stipulate that the request or provision of information must be made or channelled via judicial authorities.
  5. In urgent cases, the providing competent authority shall respond to a request, or provide information spontaneously, as soon as possible.
  6. A requesting authority of any of the Parties may, in accordance with relevant domestic law, at the time of making the request or at a later point in time, seek consent from the providing authority of any of the Parties for the information to be used for evidential purposes in proceedings before a judicial authority. The providing authority may, subject to the conditions set out in the provisions referred to in Chapter 5 of Title V of this Part and in its domestic law, consent to the information being used for evidential purposes before a judicial authority in a Member State, where the requesting authority pertains to the latter, or in the United Kingdom, in respect of Gibraltar, where the requesting authority pertains to the latter. Equally, where information is provided spontaneously, the providing authority may consent to the information being used for evidential purposes in proceedings before a judicial authority in a Member State, where the information is provided to a competent authority of the latter, or in the United Kingdom, in respect of Gibraltar, where the information is provided to a competent authority of the latter. Where consent is not

given under this paragraph, the information received shall not be used for evidential purposes in proceedings before a judicial authority.

7. The providing authority may, under relevant domestic law, impose conditions on the use of the information provided.
8. A competent authority may provide under this Article any type of information which it holds, subject to the conditions of the domestic law which applies to it and within the scope of its powers. This may include information from other sources, only if onward transfer of that information is permitted in the framework under which it was obtained by the providing competent authority.
9. Information may be provided under this Article via any appropriate communication channel, including the secure communication line for the purpose of provision of information through Europol, subject to Article 73.
10. Without prejudice to paragraph 5, all formal communications and notifications under this article shall be performed in line with article 6(1). This does not include communications and decisions which relate to urgent operational or logistical matters.

#### Article 55

##### Continued surveillance

1. The competent authorities of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain who, as part of a criminal investigation, are keeping under surveillance in the Kingdom of Spain or in Gibraltar, as the case may be, a person who is presumed to have participated in a criminal offence listed in Annex 8 or a person under surveillance who can assist in identifying or tracing such a person, may continue their surveillance, in line with the relevant Schengen *acquis*, in Gibraltar or Spain, respectively.
2. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical modalities concerning the performance of the duties of the competent authorities and operational cooperation aspects relating to the continued surveillance referred to in paragraph 1.

#### Article 56

##### Uninterrupted pursuit

1. Officers of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain who are pursuing an individual caught in the act of committing or of participating in one of the offences listed in Annex 8 may continue pursuit, in line with the relevant Schengen *acquis*, in Gibraltar or Spain, respectively. The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.
2. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical modalities concerning the performance of the duties of the competent authorities and operational cooperation aspects relating to the pursuit referred to in paragraph 1.

#### Article 57

##### Communication

1. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall install and keep in place, communication lines and other direct links to facilitate police and customs cooperation between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain, in particular for the timely transmission of information for the purposes of continued surveillance and uninterrupted pursuit.
2. In addition, the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall consider further possibilities for enhancing direct communication between their police and customs services. The details of such arrangements shall be laid down bilaterally.

#### Article 58

##### Joint operations

1. In order to step up police cooperation, the competent authorities of the Union and the Member States, on the one side, and of the United Kingdom, in respect of Gibraltar, on the other side, may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials from either side participate in operations within the Member States or in Gibraltar, as the case may be.
2. The Union in respect of its Member States and the United Kingdom, in respect of Gibraltar, shall submit declarations regarding competent authorities for the purpose of this Article and laying down the conditions for and practical aspects of the cooperation in line with Union law. Such conditions shall *inter alia* specify whether the designated officers or other officials referred to in paragraph 1

may exercise executive powers, the responsibility for actions committed by the seconding side's officers, as well as the applicable law.

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

#### Article 59

##### Relevant databases

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

#### Article 60

##### Protection and assistance during joint operation

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

#### Article 61

##### Passenger Name Record data

The United Kingdom, in respect of Gibraltar, shall ensure that carriers transfer Passenger Name Record (PNR) data concerning flights arriving in Gibraltar to the competent authorities of the Kingdom of Spain. Such transfers shall comply with the requirements of Directive (EU) 2016/681 of the European Parliament and of the Council<sup>17</sup>.

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<sup>17</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger

Article 19 shall apply.

#### Article 62

##### Enhanced police checks

1. Where necessary, on the basis of a risk assessment, in order to prevent criminal offences and irregular migration, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain shall perform enhanced police checks in Gibraltar and in the contiguous frontier zone, respectively.
2. Enhanced police checks as referred to in paragraph 1 may take the form of joint operations in accordance with Article 58.

#### Article 63

##### Applicable provisions of Union law

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

Article 19 applies.

### TITLE IV: IMPLEMENTATION, APPLICATION, EVALUATION AND ENFORCEMENT

#### Article 64

##### Schengen evaluations

The United Kingdom, in respect of Gibraltar, shall admit Union and Member State representatives and experts designated by Union agencies conducting evaluations of the application of the Schengen acquis by Spain pursuant to this Part. The United Kingdom, in respect of Gibraltar, shall assist and facilitate such representatives to exercise their tasks, as set out in Council Regulation (EU) 2022/922<sup>18</sup> including, but not limited, to visiting and inspecting infrastructure located in Gibraltar.

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name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4.5.2016, pp. 132–149.

<sup>18</sup> Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, OJ L 160, 15.6.2022, pp. 1–27.

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

#### Article 65

##### Evaluation of the implementation

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

#### Article 66

##### Termination of the agreement after the evaluation of the implementation

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

#### Article 67

##### Suspension of obligations

1. Notwithstanding Article 334, and with full respect of the exercise of the responsibilities incumbent upon the Parties with regard to law and order, the safeguarding of internal security and the management of their section of the external borders, in case of serious non-respect of commitments under this Part, or where either Party considers that it is exposed to a serious and persistent threat to internal security due to the absence of controls between the Union and Gibraltar, either Party, after

consultations with each other, may temporarily suspend the implementation of its obligations under Titles I to V of this Part. The Union will take the opinion of the Kingdom of Spain duly into account.

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

#### Article 68

##### Notifications, declarations, reservations and designations

1. By the date of the entry into force of this Agreement, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall make the notifications and designations provided for in Articles 50(9) and 51(10).
2. By that same date, the Union in respect of the Member States, and the United Kingdom, in respect of Gibraltar, shall make declarations referred to in Article 58(2).
3. By the date of the entry into force of this Agreement, the Union and the United Kingdom, in respect of Gibraltar, shall make any of the notifications provided for in Article 121(2), Article 122(2) and Article 130(4).
4. To the extent that such notification has not been made, at the point in time referred to in the first paragraph, notifications may be made as soon as possible and at the latest two months after the entry into force of this Agreement.

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

5. The notifications provided for in the following provisions may be made at any time:
  - (a) Article 118(4);

- (b) Article 124(1);
  - (c) Article 125(2);
  - (d) Article 144(1);
  - (e) Article 145(1);
  - (f) Article 165(4);
  - (g) Article 166(5);
  - (h) Article 167(5);
  - (i) Article 176(2); and
  - (j) Article 184(3) and (7).
6. The notifications and declarations provided for in the following provisions may be modified at any time:
- (a) Article 58(2);
  - (b) Article 124(1);
  - (c) Article 125(2); and
  - (d) Article 184(3) and (7).
7. The notifications provided for in the following provisions may be withdrawn at any time:
- (a) Article 121(2);
  - (b) Article 122(2);
  - (c) Article 124(1);
  - (d) Article 130(4);
  - (e) Article 165(4);
  - (f) Article 166(5); and
  - (g) Article 167(5).
8. By the date of entry into force of this Agreement, the United Kingdom, in respect of Gibraltar shall notify the Union of the identity of the following authorities:
- (a) the authority considered as the competent authority for the purposes of Chapter 1 of Title V of this Part as referred to in point (b) of Article 74 and a short description of its competences;
  - (b) the authority considered as the competent authority for the purposes of Chapter 2 of Title V of this Part, as referred to in Point (b) of Article 90, and a short description of its competences;
  - (c) the authority competent by virtue of the domestic law of the United Kingdom, in respect of Gibraltar, to execute an arrest warrant as referred to in point (c) of Article 117;

- (d) the authority competent by virtue of the domestic law of the United Kingdom, in respect of Gibraltar, to issue an arrest warrant as referred to in point (d) of Article 117;
  - (e) the authority under Article 142; and
  - (f) the authority notified under Article 182.
9. By the date of entry into force of this Agreement, the Union shall, on its behalf or on behalf of its Member States, as the case may be, notify the United Kingdom, of the identity of the following authorities:
- (a) the authority competent by virtue of the domestic law of each Member State to execute an arrest warrant as referred to in point (c) of Article 117;
  - (b) the authority competent by virtue of the domestic law of each Member State to issue an arrest warrant as referred to in point (d) of Article 117;
  - (c) the authority for each Member State under Article 142;
  - (d) the Union body referred to in Article 153;
  - (e) the central authority for each Member State under Article 182(1); and
  - (f) any Union body notified under the first sentence of Article 182(3) and whether it is also designated as a central authority under the last sentence of that paragraph.
10. Where the Union makes a notification or declaration referred to in this Article, it shall indicate to which of its Member States the notification or declaration applies or whether it is making the notification or declaration on its own behalf
11. The Union, Spain and the United Kingdom, in respect of Gibraltar, may notify more than one authority with respect to paragraphs 2, 7 and 8, as the case may be, and may limit such notifications for particular purposes only.
12. The notifications referred to in paragraphs 7 and 8 may be modified at any time.
13. All notifications, declarations, reservations and designations referred to in this Article shall be made through the mechanism established in accordance with Article 19.

#### Article 69

#### Security exception

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

## TITLE V: LAW ENFORCEMENT AND JUDICIAL COOPERATION

### Article 70

#### Objective

1. The objective of this Title is to provide for law enforcement and judicial cooperation between the Member States and Union institutions, bodies, offices and agencies, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, in relation to the prevention, investigation, detection and prosecution of criminal offences and the prevention of and fight against money laundering and financing of terrorism.
2. This Title only applies to law enforcement and judicial cooperation in criminal matters taking place exclusively between the Union and the Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side. It does not apply to situations arising between the Member States, or between Member States and Union institutions, bodies, offices and agencies, nor does it apply to the activities of authorities with responsibilities for safeguarding national security when acting in that field.

### Article 71

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

1. This Article applies if a Member State ceases to participate in, or enjoy rights under, provisions of Union law relating to law enforcement and judicial cooperation in criminal matters analogous to any of the relevant provisions of this Title.
2. The United Kingdom, in respect of Gibraltar, may notify the Union in writing of its intention to cease to operate the relevant provisions of this Part in relation to that Member State.
3. A notification given under paragraph 2 takes effect on the date specified therein, which shall be no earlier than the date on which the Member State ceases to participate in, or to enjoy rights under, the provisions of Union law referred to in paragraph 1.

Chapter 1  
COOPERATION WITH EUROPOL

Article 72

Objective

The objective of this Chapter is to establish cooperative relations between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, in order to support and strengthen the action by the Member States and the United Kingdom, in respect of Gibraltar, as well as their mutual cooperation in preventing and combating serious crime, terrorism and forms of crime which affect a common interest covered by a Union policy, as referred to in Article 75.

Article 73

Communication

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

Article 74

Definitions

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

- (a) "competent authority" means, for the Union, Europol and, for the United Kingdom, in respect of Gibraltar, a domestic law enforcement authority, responsible under domestic law for preventing and combating criminal offences in Gibraltar;
- (b) "Europol" means the European Union Agency for Law Enforcement Cooperation, set up under Regulation (EU) 2016/794 of the European Parliament and of the Council (the "Europol Regulation").

Article 75

Forms of crime

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

2. Related criminal offences are criminal offences committed in order to procure the means of committing the forms of crime referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such crimes, and criminal offences committed to ensure impunity for such crimes.
3. Where the list of forms of crime for which Europol is competent under Union law is changed, the Specialised Committee on Circulation of Persons may, upon a proposal from the Union, amend Annex 10 accordingly from the date when the change to Europol's competence enters into effect.

#### Article 76

##### Scope of cooperation

The cooperation may, in addition to the exchange of personal data under the conditions laid down in this Chapter and in accordance with the tasks of Europol as defined in the Europol Regulation, in particular include:

- (a) the exchange of information such as specialist knowledge;
- (b) general situation reports;
- (c) results of strategic analysis;
- (d) information on criminal investigation procedures;
- (e) information on crime prevention methods;
- (f) participation in training activities; and
- (g) the provision of advice and support in individual criminal investigations as well as operational cooperation.

#### Article 77

##### National contact point and liaison officers

1. The national contact point of the United Kingdom to Europol, designated pursuant to Article 568(1) of the Trade and Cooperation Agreement, shall act as the central point of contact between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar.
2. The exchange of information and notifications between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall, except where direct exchange of information is necessary in urgent cases and is considered appropriate by both Europol and the relevant competent

authority of the United Kingdom, in respect of Gibraltar, take place between Europol and the national contact point referred to in paragraph 1.

3. The national contact point referred to in paragraph 1 shall also be the central point of contact in respect of review, correction and deletion of personal data.
4. Liaison officers seconded by the United Kingdom to Europol, pursuant to Article 568(4) of the Trade and Cooperation Agreement, may also facilitate the cooperation established under this Chapter with regard to the United Kingdom, in respect of Gibraltar. A liaison officer seconded by Europol to the United Kingdom may also facilitate the cooperation with regard to the United Kingdom, in respect of Gibraltar.
5. The United Kingdom shall ensure that the liaison officers referred to in paragraph 4 have speedy access to the relevant domestic databases of the United Kingdom, in respect of Gibraltar, that are necessary for them to fulfil their tasks.
6. The details of the tasks of the liaison officers responsible for Gibraltar, as referred to in paragraph (4), their rights and obligations and the costs involved shall be governed by working arrangements concluded between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, as referred to in Article 86.
7. The liaison officers responsible for Gibraltar, as referred to in paragraph 4, and representatives of the competent authorities of the United Kingdom, in respect of Gibraltar, may be invited to operational meetings. Member State liaison officers and third-country liaison officers, representatives of competent authorities from the Member States and third countries, Europol staff and other stakeholders may attend meetings organised by the liaison officers responsible for Gibraltar, as referred to in paragraph (4), or the competent authorities of the United Kingdom, in respect of Gibraltar.

#### Article 78

##### Exchanges of information

1. Exchanges of information between the competent authorities shall comply with the objective and provisions of this Chapter. Personal data shall be processed only for the specific purposes referred to in paragraph 2.
2. The competent authorities shall clearly indicate, at the latest at the moment of transferring personal data, the specific purpose or purposes for which the personal data are being transferred. For transfers to Europol, the purpose or purposes of such transfer shall be specified in line with the

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

3. The competent authorities receiving the personal data shall give an undertaking stating that such data will be processed only for the purpose for which they were transferred. The personal data shall be deleted as soon as they are no longer necessary for the purpose for which they were transferred.
4. Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall determine without undue delay, and in any event no later than six months after receipt of the personal data, if and to what extent those personal data are necessary for the purpose for which they were transferred and inform the transferring authority accordingly.

#### Article 79

##### Restrictions on access to and further use of transferred personal data

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

## Article 80

### Different categories of data subjects

1. The transfer of personal data in respect of victims of a criminal offence, witnesses or other persons who can provide information concerning criminal offences, or in respect of persons under the age of 18, shall be prohibited unless such transfer is strictly necessary and proportionate in individual cases for preventing or combating a criminal offence.
2. The United Kingdom, in respect of Gibraltar, and Europol shall each ensure that the processing of personal data under paragraph 1 is subject to additional safeguards, including restrictions on access, additional security measures and limitations on onward transfers.

## Article 81

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

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

## Article 82

### Assessment of reliability of the source and accuracy of information

1. The competent authorities shall indicate as far as possible, at the latest when transferring the information, the reliability of the source of the information on the basis of the following criteria:
  - (a) where there is no doubt as to the authenticity, trustworthiness and competence of the source, or if the information is provided by a source which has proved to be reliable in all instances;
  - (b) where the information is provided by a source which has in most instances proved to be reliable;

- (c) where the information is provided by a source which has in most instances proved to be unreliable;
  - (d) where the reliability of the information cannot be assessed.
2. The competent authorities shall indicate as far as possible, at the latest when transferring the information, the accuracy of the information on the basis of the following criteria:
    - (a) information the accuracy of which is not in doubt;
    - (b) information known personally to the source but not known personally to the official passing it on;
    - (c) information not known personally to the source but corroborated by other information already recorded;
    - (d) information not known personally to the source and which cannot be corroborated.
  3. Where the receiving competent authority, on the basis of information already in its possession, comes to the conclusion that the assessment of information or of its source supplied by the transferring competent authority in accordance with paragraphs 1 and 2 needs correction, it shall inform that competent authority and shall attempt to agree on an amendment to the assessment. The receiving competent authority shall not change the assessment of information received or of its source without such agreement.
  4. If a competent authority receives information without an assessment, it shall attempt as far as possible and where possible in agreement with the transferring competent authority to assess the reliability of the source or the accuracy of the information on the basis of information already in its possession.
  5. If no reliable assessment can be made, the information shall be evaluated as provided for in point (d) of paragraph 1 and point (d) of paragraph 2.

### Article 83

#### Security of the information exchange

1. The technical and organisational measures put in place to ensure the security of the information exchange under this Chapter shall be laid down in administrative arrangements as referred to in Article 86.
2. The Parties agree on the establishment, implementation and operation of secure communication lines for the purpose of the exchange of information under this Chapter.

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

#### Article 84

##### Liability for unauthorised or incorrect personal data processing

1. The competent authorities shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid liability under their respective legal frameworks vis-à-vis an injured party, neither Europol nor the competent authorities of the United Kingdom, in respect of Gibraltar, may plead that the other competent authority had transferred inaccurate information.
2. If damages are awarded either against Europol or against the competent authorities of the United Kingdom, in respect of Gibraltar, because of the use by either of them of information which was erroneously communicated by the other, or communicated as a result of a failure on the part of the other to comply with their obligations, the amount paid as compensation under paragraph 1 either by Europol or by the competent authorities of the United Kingdom, in respect of Gibraltar, shall be repaid by the other, unless the information was used in breach of this Chapter.
3. Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2.

#### Article 85

##### Exchange of classified and sensitive non-classified information

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

#### Article 86

##### Working and administrative arrangements

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

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

#### Article 87

##### Notification of implementation

1. The United Kingdom, in respect of Gibraltar, and Europol shall each make publicly available a document setting out in an intelligible form the provisions regarding the processing of personal data transferred under this Chapter including the means available for the exercise of the rights of data subjects, and shall each ensure that a copy of that document be provided to the other.
2. Where not already in place, the United Kingdom, in respect of Gibraltar, and Europol shall adopt practical arrangements specifying how compliance with the provisions regarding the processing of personal data will be enforced in practice. The United Kingdom, in respect of Gibraltar, and Europol shall each send a copy of those practical arrangements to the other and to the respective supervisory authorities.

#### Article 88

##### Powers of Europol

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

#### Chapter 2

##### COOPERATION WITH EUROJUST

#### Article 89

##### Objective

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

## Article 90

### Definitions

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

- (a) "Assistant" means a person who may assist a National Member and the National Member's Deputy, or the Liaison Prosecutor, as referred to in the Eurojust Regulation and in Article 95(3) respectively;
- (b) "College" means the College of Eurojust, as referred to in the Eurojust Regulation;
- (c) "competent authority" means, for the Union, Eurojust, represented by the College or a National Member and, for the United Kingdom, in respect of Gibraltar, a domestic authority with responsibilities under domestic law relating to the investigation and prosecution of criminal offences in Gibraltar;
- (d) "Domestic Correspondent for Terrorism Matters" means the contact point designated by the United Kingdom in accordance with Article 94, responsible for handling correspondence related to terrorism matters;
- (e) "Eurojust" means the European Union Agency for Criminal Justice Cooperation, set up under Regulation (EU) 2018/1727 of the European Parliament and of the Council<sup>19</sup> (the "Eurojust Regulation");
- (f) "Liaison Magistrate" means the magistrate posted by Eurojust to the United Kingdom in accordance with Article 96;
- (g) "Liaison Prosecutor" means the public prosecutor seconded by the United Kingdom to Eurojust and subject to the domestic law of the United Kingdom as regards the public prosecutor's status, in accordance with Article 95(3);
- (h) "National Member" means the National Member seconded to Eurojust by each Member State, as referred to in the Eurojust Regulation.

## Article 91

### Communication

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<sup>19</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust)(OJ EU L 295, 21.11.2018, p. 138).

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

#### Article 92

##### Forms of crime

1. The cooperation established under this Chapter relates to the forms of serious crime within the competence of Eurojust, as listed in Annex 11, including related criminal offences.
2. Related criminal offences are the criminal offences committed in order to procure the means of committing forms of serious crime referred to in paragraph 1, criminal offences committed in order to facilitate or commit such serious crimes, and criminal offences committed to ensure impunity for such serious crimes.
3. Where the list of forms of serious crime for which Eurojust is competent under Union law is changed, the Specialised Committee on Circulation of Persons may, upon a proposal from the Union, amend Annex 11 accordingly from the date when the change to Eurojust's competence enters into effect.

#### Article 93

##### Scope of cooperation

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

#### Article 94

##### Contact points to Eurojust

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

#### Article 95

##### Liaison Prosecutor

1. The Liaison Prosecutor and Liaison Prosecutor's Assistants of the United Kingdom to Eurojust, seconded pursuant to Article 585(1) and (3) of the Trade and Cooperation Agreement, shall facilitate the cooperation established under this Chapter, in respect of Gibraltar, within the scope of their competence. When necessary, Assistants may replace the Liaison Prosecutor or act on the Liaison Prosecutor's behalf.
2. The details of the tasks of the Liaison Prosecutor and of the Liaison Prosecutor's Assistants referred to in paragraph 1, their rights and obligations and the costs involved shall be governed by a working arrangement, as referred to in Article 104.
3. The United Kingdom shall inform Eurojust of the nature and extent of the role of the Liaison Prosecutor and the Liaison Prosecutor's Assistants, referred to in paragraph 1, in order to accomplish their tasks of facilitating cooperation in accordance with this Chapter.
4. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall have access to the information contained in the domestic criminal record, or in any other register of the competent authorities of the United Kingdom, in respect of Gibraltar, in accordance with domestic law in the case of a prosecutor or person of equivalent competence.
5. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall have the power to contact the competent authorities of the United Kingdom, in respect of Gibraltar, directly.
6. The working documents of the Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall be held inviolable by Eurojust.

#### Article 96

##### Liaison Magistrate

1. The Liaison Magistrate of Eurojust posted to the United Kingdom, pursuant to Article 586(1) of the Trade and Cooperation Agreement, may facilitate judicial cooperation in respect of Gibraltar, in cases in which Eurojust provides assistance, in accordance with Article 53 of the Eurojust Regulation.
2. The details of the Liaison Magistrate's tasks referred to in paragraph 1, the Liaison Magistrate's rights and obligations and the costs involved, shall be governed by a working arrangement as referred to in Article 104.

#### Article 97

##### Operational and strategic meetings

1. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in Article 95(1) and the contact point to Eurojust referred to in Article 94 may participate in meetings with regard to strategic matters at the invitation of the President of Eurojust and in meetings with regard to operational matters with the approval of the National Members concerned.
2. National Members, their Deputies and Assistants, the Administrative Director of Eurojust and Eurojust staff may attend meetings organised by the Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in Article 95(1) and the contact point to Eurojust referred to in Article 94.

#### Article 98

##### Exchange of non-personal data

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

#### Article 99

##### Exchange of personal data

1. Personal data requested and received by competent authorities under this Chapter shall be processed by them only for the objectives set out in Article 89, for the specific purposes referred to in paragraph 2 and subject to the restrictions on access or further use referred to in paragraph 3.
2. The transferring competent authority shall clearly indicate, at the latest when transferring personal data, the specific purpose or purposes for which the data are being transferred.
3. The transferring competent authority may indicate, when transferring personal data, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its onward transfer, erasure or destruction after a certain period of time, or its further processing. Where the need for such restrictions becomes apparent after the personal data have been provided, the transferring authority shall inform the receiving authority accordingly.
4. The receiving competent authority shall comply with any restriction on access or further use of the personal data indicated by the transferring competent authority as provided for in paragraph 3.

#### Article 100

##### Channels of transmission

1. Information shall be exchanged, subject to paragraph 3, between the Liaison Prosecutor or the Liaison Prosecutor's Assistants referred to in Article 95(1) or, if none is appointed or otherwise available, the United Kingdom's contact point to Eurojust referred to in Article 94 and the National Members concerned or the College.
2. Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, shall each ensure that their respective representatives are authorised to exchange information at the appropriate level and in accordance with their respective legal frameworks, and are adequately screened.
3. Information may be exchanged, where necessary in urgent cases, if Eurojust has posted a Liaison Magistrate to the United Kingdom, and where considered appropriate by both the Liaison Magistrate and the relevant competent authority, between the Liaison Magistrate and any competent authority of the United Kingdom in respect of Gibraltar; in that event, the Liaison Prosecutor as set out in Article 95(1) or the Liaison Prosecutor's Assistants shall be informed of any such information exchange.

#### Article 101

##### Onward transfers

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

#### Article 102

##### Liability for unauthorised or incorrect personal data processing

1. The competent authorities shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid liability under their respective legal frameworks vis-à-vis an injured party, neither Eurojust nor the competent authorities of the United Kingdom, in respect of Gibraltar, may plead that the other competent authority had transferred inaccurate information.
2. If damages are awarded against any competent authority because of its use of information which was erroneously communicated by the other, or communicated as a result of a failure on the part of the other to comply with their obligations, the amount paid as compensation under paragraph 1 by the

competent authority shall be repaid by the other, unless the information was used in breach of this Chapter.

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

#### Article 103

##### Exchange of classified and sensitive non-classified information

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

#### Article 104

##### Working arrangement

1. The modalities of cooperation between the United Kingdom, in respect of Gibraltar, and Eurojust, as appropriate to implement the provisions of this Chapter shall be the subject of a working arrangement concluded between Eurojust and the competent authorities of the United Kingdom in accordance with Articles 47(3) and 56(3) of the Eurojust Regulation.
2. In lieu of concluding working arrangements pursuant to paragraph 1, the competent authorities of the United Kingdom and Eurojust may agree that any existing working arrangement between the competent authorities of the United Kingdom and Eurojust pursuant to Article 594 of the Trade and Cooperation Agreement shall also apply in respect of Gibraltar.

#### Article 105

##### Powers of Eurojust

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

Chapter 3  
EXCHANGE OF CRIMINAL RECORD INFORMATION

Article 106

Objective

1. The objective of this Chapter is to enable the exchange between the Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, of information extracted from the criminal record.
2. In the relations between the United Kingdom, in respect of Gibraltar, and the Member States, the provisions of this Chapter supplement the provisions of Chapter 5 of Title V of this Part with regard to the exchange of criminal record information.

Article 107

Definitions

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

- (a) “conviction” means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal record of the convicting Member State or the United Kingdom, in respect of Gibraltar;
- (b) “criminal proceedings” means the pre-trial stage, the trial stage and the execution of a conviction;
- (c) “criminal record” means the domestic register or registers recording convictions in accordance with domestic law.

Article 108

Central authorities

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

## Article 109

### Notifications

1. Each Member State and the United Kingdom, in respect of Gibraltar, shall take the necessary measures to ensure that all convictions handed down by its criminal courts are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person.
2. The central authority of each Member State shall inform the central authority of the United Kingdom, in respect of Gibraltar, of all criminal convictions handed down by its criminal courts in respect of nationals of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar, as well as of any subsequent alterations or deletions of information contained in the criminal record, as entered in the criminal record. The central authority of the United Kingdom, in respect of Gibraltar, shall inform the central authority of any Member State of all criminal convictions handed down by its criminal courts in respect of nationals of that Member State, as well as of any subsequent alterations or deletions of information contained in the criminal record, as entered in the criminal record. The central authorities of the Member States and of the United Kingdom, in respect of Gibraltar, shall communicate such information to each other at least once per month.
3. If the central authority of a Member State or of the United Kingdom, in respect of Gibraltar, becomes aware of the fact that a convicted person is a national of two or more Member States or a national of one or more Member States and nationals of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar, it shall transmit the relevant information to each of them, even if the convicted person is a national of the Member State within whose territory that person was convicted or a national of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar, who was convicted in Gibraltar.

## Article 110

### Storage of convictions

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

2. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall ensure that if a subsequent alteration or deletion is notified under Article 109, an identical alteration or deletion is made to the information stored in accordance with paragraph 1.
3. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall ensure that only information which has been updated in accordance with paragraph 2 of this Article is provided when replying to requests made under Article 111.

#### Article 111

##### Requests for information

1. If information from the criminal record of a Member State or of the United Kingdom, in respect of Gibraltar, is requested at domestic level for the purposes of criminal proceedings against a person or for any purposes other than that of criminal proceedings, the central authority of that Member State or of the United Kingdom, in respect of Gibraltar, as the case may be, may, in accordance with its domestic law, submit to the central authority of another Member State or of the United Kingdom, in respect of Gibraltar, as the case may be, a request for information and related data to be extracted from the criminal record.
2. If a person addresses a request for information on their own criminal record to the central authority of a Member State or of the United Kingdom, in respect of Gibraltar, of which they are not a national, that central authority shall submit to the central authority of the Member State of the person's nationality or of the United Kingdom, in respect of Gibraltar, if the person is a national of the United Kingdom, a request for information and related data to be extracted from the criminal record in order to be able to include that information and related data in the extract to be provided to the person concerned.

#### Article 112

##### Replies to requests

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

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

#### Article 113

##### Channel of communication

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

#### Article 114

##### Conditions for the use of personal data

1. Each Member State and the United Kingdom, in respect of Gibraltar, may use personal data received in reply to its request under Article 112 only for the purposes for which they were requested.
2. If the information was requested for any purposes other than that of criminal proceedings, personal data received under Article 112 may be used by a Member State or the United Kingdom, in respect of Gibraltar, in accordance with its domestic law only within the limits specified by the requested central authority in the form set out in Chapter 2 of Annex 12.
3. Notwithstanding paragraphs 1 and 2, personal data provided by a requested central authority in reply to a request under Article 112 may be used by the Member State or the United Kingdom, in respect of Gibraltar, by which the request was made to prevent an immediate and serious threat to public security.

4. Each Member State and the United Kingdom, in respect of Gibraltar, shall ensure that their central authorities do not disclose personal data notified under Article 109 to authorities in third countries unless the following conditions are met:
  - (a) the personal data are disclosed only on a case-by-case basis;
  - (b) the personal data are disclosed to authorities whose functions are directly related to the purposes for which the personal data are disclosed under point (c) of this paragraph;
  - (c) the personal data are disclosed only if necessary:
    - (i) for the purposes of criminal proceedings;
    - (ii) or any purposes other than that of criminal proceedings; or
    - (iii) to prevent an immediate and serious threat to public security;
  - (d) the personal data may be used by the requesting third country only for the purposes for which the information was requested and within the limits specified by the Member State or the United Kingdom, in respect of Gibraltar, as the case may be, that notified the personal data under Article 109; and
  - (e) the personal data are disclosed only if the central authority, having assessed all the circumstances surrounding the transfer of the personal data to the third country, concludes that appropriate safeguards exist to protect the personal data.
5. This Article does not apply to personal data obtained by a Member State or the United Kingdom, in respect of Gibraltar, as the case may be, under this Chapter and originating from that Member State or the United Kingdom, in respect of Gibraltar, as the case may be.

#### Chapter 4 SURRENDER

#### ARTICLE 115 Objective

The objective of this Chapter is to ensure that the extradition system between the Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, is based on a mechanism of

surrender pursuant to an arrest warrant in accordance with the terms of this Chapter.

#### ARTICLE 116

##### Principle of proportionality

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

#### ARTICLE 117

##### Definitions

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

- (a) "arrest warrant" means a judicial decision issued by a Member State or by the United Kingdom, in respect of Gibraltar, with a view to the arrest and surrender by the United Kingdom, in respect of Gibraltar, or a Member State of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order;
- (b) "executing judicial authority" means the judicial authority of the executing Member State, or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, which is competent to execute the arrest warrant by virtue of the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar;
- (c) "issuing judicial authority" means the judicial authority of the issuing Member State or of the United Kingdom, in respect of Gibraltar, which is competent to issue an arrest warrant by virtue of the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar;
- (d) "judicial authority" means an authority that is, under the domestic law of a Member State or of the United Kingdom, in respect of Gibraltar, a judge, a court or a public prosecutor; a public prosecutor is considered a judicial authority only to the extent that domestic law so provides;
- (e) "third country" means a country other than a Member State or the United Kingdom or the United Kingdom, in respect of Gibraltar.

## ARTICLE 118

### Scope

1. An arrest warrant may be issued for acts punishable by the law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, when it is the issuing actor, by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences or detention orders of at least four months.
2. Without prejudice to paragraphs 3 and 4, surrender is subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, whatever the constituent elements or however it is described.
3. Subject to Article 119, points (b) to (h) of Article 120(1) and Articles 121, 122 and 123, the competent authorities of the United Kingdom, in respect of Gibraltar, if it is the executing actor, or of the executing Member State shall not refuse to execute an arrest warrant issued in relation to the following behaviour where such behaviour is punishable by deprivation of liberty or a detention order of a maximum period of at least 12 months:
  - (a) the behaviour of any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, or in relation to illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking or rape, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution must be intentional and made with the knowledge that the participation will contribute to the achievement of the group's criminal activities; or
  - (b) terrorism as defined in Annex 13.
4. The Union, acting on behalf of any of its Member States, and the United Kingdom, in respect of Gibraltar, may each notify the Specialised Committee on the Circulation of Persons that, on the basis of reciprocity, the condition of double criminality referred to in paragraph 2 will not be applied, provided that the offence on which the warrant is based is:
  - (a) one of the offences listed in paragraph 5, as defined by the law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor; and

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

5. The offences referred to in paragraph 4 are:

- (a) participation in a criminal organisation;
- (b) terrorism as defined in Annex 13;
- (c) trafficking in human beings;
- (d) sexual exploitation of children and child pornography;
- (e) illicit trafficking in narcotic drugs and psychotropic substances;
- (f) illicit trafficking in weapons, munitions and explosives;
- (g) corruption, including bribery;
- (h) fraud, including that affecting the financial interests of the United Kingdom, in respect of Gibraltar, a Member State or the Union;
- (i) laundering of the proceeds of crime;
- (j) counterfeiting currency;
- (k) computer-related crime;
- (l) environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties;
- (m) facilitation of unauthorised entry and residence;
- (n) murder;
- (o) grievous bodily injury;
- (p) illicit trade in human organs and tissue;
- (q) kidnapping, illegal restraint and hostage-taking;
- (r) racism and xenophobia;
- (s) organised or armed robbery;
- (t) illicit trafficking in cultural goods, including antiques and works of art;
- (u) swindling;
- (v) racketeering and extortion;
- (w) counterfeiting and piracy of products;
- (x) forgery of administrative documents and trafficking therein;
- (y) forgery of means of payment;
- (z) illicit trafficking in hormonal substances and other growth promoters;

- (aa) illicit trafficking in nuclear or radioactive materials;
- (bb) trafficking in stolen vehicles;
- (cc) rape;
- (dd) arson;
- (ee) crimes within the jurisdiction of the International Criminal Court;
- (ff) unlawful seizure of aircraft, ships or spacecraft; and
- (gg) sabotage.

#### ARTICLE 119

##### Grounds for mandatory non-execution of the arrest warrant

The execution of the arrest warrant shall be refused:

- (a) if the offence on which the arrest warrant is based is covered by an amnesty in the executing Member State or in the United Kingdom, in respect of Gibraltar, when it is the executing actor, where the competent authorities of that Member State or of the United Kingdom, in respect of Gibraltar, had jurisdiction to prosecute the offence under the criminal law of the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor;
- (b) if the executing judicial authority is informed that the requested person has been finally judged by a Member State or by the United Kingdom or by the United Kingdom, in respect of Gibraltar in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the Member State by which the requested person has been sentenced or of the United Kingdom or of the United Kingdom, in respect of Gibraltar, where the requested person has been sentenced by any of these; or
- (c) if the person who is the subject of the arrest warrant may not, owing to the person's age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

#### ARTICLE 120

##### Other grounds for non-execution of the arrest warrant

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

- (a) if, in one of the cases referred to in Article 118(2), the act on which the arrest warrant is based does not constitute an offence under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor; however, in relation to taxes or duties, customs and exchange, the execution of the arrest warrant shall not be refused on the grounds that the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the United Kingdom, in respect of Gibraltar, when it is the issuing actor or of the issuing Member State;
- (b) if the person who is the subject of the arrest warrant is being prosecuted in the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor, for the same act as that on which the arrest warrant is based;
- (c) if the judicial authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or if a final judgment which prevents further proceedings has been passed upon the requested person in a Member State or in the United Kingdom, in respect of Gibraltar, in respect of the same acts;
- (d) if the criminal prosecution or punishment of the requested person is statute-barred under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, and the acts fall within the jurisdiction of that Member State or of the United Kingdom, in respect of Gibraltar, under its own criminal law;
- (e) if the executing judicial authority is informed that the requested person has been finally judged by a third country or the United Kingdom in respect of the same acts provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing country;
- (f) if the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order and:
  - (i) if the executing actor is a Member State, the requested person is staying in, or is a national, or a resident, of that Member State; or

- (ii) if the executing actor is the United Kingdom, in respect of Gibraltar, the requested person is a national of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar or is a person staying in, or resident in, Gibraltar, and a competent authority of that Member State or of the United Kingdom, in respect of Gibraltar, undertakes to execute the sentence or detention order in accordance with the domestic law of the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor; if consent of the requested person to the transfer of the sentence or detention order to the executing Member State or to the United Kingdom, in respect of Gibraltar, when it is the executing actor, is required, the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, may refuse to execute the arrest warrant only after the requested person consents to the transfer of the sentence or detention order;
- (g) if the arrest warrant relates to offences which:
  - (i) are regarded by the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, as having been committed in whole or in part in the executing Member State or in Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, or in a place treated as such; or
  - (ii) have been committed outside the issuing Member State or Gibraltar when the United Kingdom, in respect of Gibraltar, is the issuing actor, and the law of the United Kingdom, in respect of Gibraltar, when it is the executing actor or of the executing Member State does not allow prosecution for the same offences if committed outside its territory;
- (h) if there are reasons to believe on the basis of objective elements that the arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of the person's sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of those reasons;
- (i) if the arrest warrant has been issued for the purpose of executing a custodial sentence or a detention order and the requested person did not appear in person at the trial resulting in the decision, unless the arrest warrant states that the person, in accordance with further procedural requirements defined in the domestic law of the issuing Member State or of the

United Kingdom, in respect of Gibraltar, if it is the issuing actor:

- (i) in due time:
  - (A) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person was aware of the date and place of the scheduled trial;
  - and
  - (B) was informed that a decision may be handed down if that person did not appear for the trial;
  - or
- (ii) being aware of the date and place of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by a competent authority of the Member State or of the United Kingdom, in respect of Gibraltar, to defend them at the trial, and was indeed defended by that lawyer at the trial;
- or
- (iii) after being served with the decision and being expressly informed about the right to a retrial or appeal in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
  - (A) expressly stated that the person did not contest the decision;
  - or
  - (B) did not request a retrial or appeal within the applicable time frame;
  - or
- (iv) was not personally served with the decision but:
  - (A) will be personally served with it without delay after the surrender and will be expressly informed of the right to a retrial or appeal in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
  - and
  - (B) will be informed of the time frame within which the person has to request such

a retrial or appeal, as mentioned in the relevant arrest warrant.

2. Where the arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions in point (i) (iv) of paragraph 1 and the person concerned has not previously received any official information about the existence of the criminal proceedings against them, that person may, when being informed about the content of the arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person concerned. The request of the person concerned shall neither delay the surrender procedure nor delay the decision to execute the arrest warrant. The provision of the judgment to the person concerned shall be for information purposes only; it shall not be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.
3. Where a person is surrendered under the conditions in point (i) (iv) of paragraph 1 and that person has requested a retrial or appeal, until those proceedings are finalised the detention of that person awaiting such retrial or appeal shall be reviewed in accordance with the domestic law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

## ARTICLE 121

### Political offence exception

1. The execution of an arrest warrant may not be refused on the grounds that the offence may be regarded by the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, as a political offence, as an offence connected with a political offence or as an offence inspired by political motives.
2. However, the United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that paragraph 1 will be applied only in relation to:
  - (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;
  - (b) offences of conspiracy or association to commit one or more of the offences referred to in

Articles 1 and 2 of the European Convention on the Suppression of Terrorism, if those offences of conspiracy or association correspond to the description of behaviour referred to in Article 118(3) of this Agreement; and

(c) terrorism as defined in Annex 13.

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

## ARTICLE 122

### Nationality exception

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

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

4. Where, in accordance with paragraph 3, the competent authorities of a Member State or of the United Kingdom, in respect of Gibraltar, institute proceedings against own nationals as referred to in paragraph 1, the competent authorities of that Member State or of the United Kingdom, in respect of Gibraltar, shall be able to take appropriate measures to assist the victims and witnesses, particularly with regard to the way in which the proceedings are conducted, in the following circumstances:
  - (a) where proceedings are being instituted in a Member State, where they are persons resident in the United Kingdom or in Gibraltar or in another Member State;
  - (b) where proceedings are being instituted in the United Kingdom, in respect of Gibraltar, where they are residents of a Member State.

#### ARTICLE 123

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

1. The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:
  - (a) if the offence on which the arrest warrant is based is punishable by a custodial life sentence or a lifetime detention order in the issuing Member State or in the United Kingdom, in respect of Gibraltar, if it is the issuing actor, the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, may make the execution of the arrest warrant subject to the condition that the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, give a guarantee deemed sufficient by the competent

- authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, that the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, will review the penalty or measure imposed, on request or at the latest after 20 years, or will encourage the application of measures of clemency for which the person is entitled to apply under the law or practice of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, aiming at the non-execution of such penalty or measure;
- (b) if a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing Member State or, where the executing actor is the United Kingdom, in respect of Gibraltar, a national of the United Kingdom or a person resident in Gibraltar, the surrender of that person may be subject to the condition that the person, after being heard, is returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, in order to serve there the custodial sentence or detention order passed against them in the issuing Member State or in Gibraltar when the issuing actor is the United Kingdom, in respect of Gibraltar; if the consent of the requested person to the transfer of the sentence or detention order to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, is required, the guarantee that the person be returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, to serve the person's sentence is subject to the condition that the requested person, after being heard, consents to be returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor;
- (c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.
2. The Specialised Committee on the Circulation of persons shall have the power to adopt any modifications to this Article as may be necessary to reflect changes made in the Trade and Cooperation Agreement.

#### ARTICLE 124

## Recourse to the central authority

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

## ARTICLE 125

### Content and form of the arrest warrant

1. The arrest warrant shall contain the following information set out in accordance with the form contained in Annex 14:
  - (a) the identity and nationality of the requested person;
  - (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
  - (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect that falls within the scope of Article 118;
  - (d) the nature and legal classification of the offence, particularly in respect of Article 118;
  - (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
  - (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the

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

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

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

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

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

#### ARTICLE 126

##### Transmission of an arrest warrant

1. Article 6(1) shall apply only in relation to initial transmission of the arrest warrant, which shall be transmitted in accordance with that Article and the provisions of this Chapter.
2. If the location of the requested person is known, the issuing judicial authority may transmit, in accordance with Article 6(1), the arrest warrant to the competent authority of the executing Member State, or the United Kingdom, in respect of Gibraltar, when it is the executing actor, allowing that authority to establish the authenticity of the arrest warrant.

#### ARTICLE 127

##### Detailed procedures for transmitting an arrest warrant

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

2. As an alternative to Article 126, the issuing judicial authority may request the International Criminal Police Organisation ("Interpol") to transmit an arrest warrant.
3. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States and the United Kingdom, in respect of Gibraltar.
4. If the authority which receives an arrest warrant is not competent to act upon it, it shall automatically forward the arrest warrant to the competent authority in the executing Member State or the United Kingdom, in respect of Gibraltar, where it is the executing actor, and shall inform the issuing judicial authority accordingly.

#### ARTICLE 128

##### Rights of a requested person

1. If a requested person is arrested for the purpose of the execution of an arrest warrant, the executing judicial authority, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, shall inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the United Kingdom, in respect of Gibraltar, if it is the issuing actor or the issuing Member State.
2. A requested person who is arrested for the purpose of the execution of an arrest warrant and who does not speak or understand the language of the arrest warrant proceedings shall have the right to be assisted by an interpreter and to be provided with a written translation in the native language of the requested person or in any other language which that person speaks or understands, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.
3. A requested person shall have the right to be assisted by a lawyer upon arrest, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.
4. The requested person shall be informed of the person's right to appoint a lawyer in the issuing Member State or in the United Kingdom, in respect of Gibraltar, when it is the issuing actor, for the purpose of assisting the requested person in the United Kingdom, in respect of Gibraltar, when it is