



Brussels, 3.2.2020  
COM(2020) 35 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations for a new partnership with the United Kingdom  
of Great Britain and Northern Ireland**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

With this recommendation, the European Commission invites the Council of the European Union to authorise the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, to nominate the Commission as Union negotiator and to address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

### **2. BACKGROUND**

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

The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement').<sup>1</sup>

The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that Agreement. This period will end on 31 December 2020, unless the Joint Committee established under the Withdrawal Agreement adopts, before 1 July 2020, a single decision extending the transition period for up to 1 or 2 years.

In the guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.

The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom ('Political Declaration').<sup>2</sup> It establishes the parameters of 'an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.'

Article 184 of the Withdrawal Agreement provides: 'The Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration of 17 October 2019 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.'

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

<sup>2</sup> OJ C 34, 31.1.2020, p. 1.

In its conclusions of 13 December 2019, the European Council reconfirmed its desire to establish as close as possible a future relationship with the United Kingdom in line with the Political Declaration and respecting the previously agreed European Council's guidelines, as well as statements and declarations, notably those of 25 November 2018. The European Council reiterated in particular that the future relationship with the United Kingdom will have to be based on a balance of rights and obligations and ensure a level playing field. The European Council invited the Commission to submit to the Council 'a draft comprehensive mandate for a future relationship with the United Kingdom immediately after its withdrawal'.

### **3. THE NEW PARTNERSHIP**

The ambitious and comprehensive new partnership envisaged in this recommendation reflects the conclusions and guidelines of the European Council and builds on the Political Declaration.

The envisaged partnership is a single package that comprises three main components:

- general arrangements (including provisions on basic values and principles and on governance);
- economic arrangements (including provisions on trade and level playing field guarantees); and
- security arrangements (including provisions on law enforcement and judicial cooperation in criminal matters, as well as on foreign policy, security and defence).

The envisaged partnership is premised on the recognition that prosperity and security are enhanced by the rules-based international order, defending individual rights and the rule of law, high standards of protection of workers' and consumers' rights and of the environment, the fight against climate change, and free and fair trade.

The scope of the partnership envisaged in this recommendation is comprehensive, in line with the conclusions of the European Council of 13 December 2019. It includes all areas of interest outlined in the Political Declaration: trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, participation in Union programmes and thematic areas of cooperation. The Commission stands ready to achieve as much as possible of this during the transition period and to continue negotiations on any remaining issues after the end of the transition period.

The envisaged partnership would respect the autonomy of the Union's decision-making and its legal order, the integrity of its single market and the Customs Union and the indivisibility of the four freedoms. It should ensure the protection of the Union's financial interests and reflect the United Kingdom's status as a non-Schengen third country that cannot have the same rights and enjoy the same benefits as a member. The envisaged partnership should be based on an overall governance framework covering all areas of cooperation.

As regards the territorial scope of the envisaged partnership, it is recalled that in the statements to the minutes of the European Council meeting of 25 November 2018, the following declaration of the European Council and of the Commission has been included: 'After the United Kingdom leaves the Union, Gibraltar will not be included in the territorial scope of the agreements to be concluded between the Union and the United Kingdom. However, this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar. Without prejudice to the competences

of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain.’

#### **4. THE NEGOTIATIONS**

The Commission will conduct the negotiations in accordance with the negotiating directives set out in the annex to the decision and in consultation with a special committee appointed by the Council.

The Commission will conduct the negotiations in continuous coordination with the Council and its preparatory bodies and will in a timely manner consult and report to the preparatory bodies of the Council and will provide in a timely manner all necessary information and documents relating to the negotiations.

The Commission will, in a timely manner, keep the European Parliament fully informed of the negotiations.

The Commission will conduct negotiations in cooperation with the High Representative of the Union for Foreign Affairs and Security Policy and in agreement with him for Common Foreign and Security Policy matters.

#### **5. LEGAL BASIS**

The procedural legal basis for a decision authorising the opening of negotiations and addressing directives to the negotiator is Article 218(3) and (4) TFEU. At this stage, because of the comprehensive scope of the envisaged partnership and the ambitious and long-term relationship that it seeks to establish, the appropriate substantive legal basis for the decision authorising the opening of negotiations and addressing directives to the negotiator is Article 217 TFEU. In addition, insofar as the annex to the decision contains negotiating directives regarding matters falling under the Euratom Treaty, the legal basis of the decision should include Article 101 EAEC. The legal basis of the recommended decision should therefore be Articles 218(3) and (4) TFEU and Article 101 EAEC. The substantive legal basis for the signature and conclusion of the new partnership can only be determined at the end of the negotiations.

Recommendation for a

## **COUNCIL DECISION**

### **authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 217, in conjunction with Article 218(3) and (4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, in particular Article 101 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') withdrew from the European Union.
- (2) The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') negotiated and concluded in accordance with Article 50 of the Treaty on European Union.<sup>3</sup>
- (3) The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that Agreement. This period will end on 31 December 2020, unless the Joint Committee established under the Withdrawal Agreement adopts, before 1 July 2020, a single decision extending the transition period for up to 1 or 2 years.
- (4) In the guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.
- (5) The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom ('Political Declaration').<sup>4</sup> It establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a

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<sup>3</sup> OJ L 29, 31.1.2020, p. 7.

<sup>4</sup> OJ C 34, 31.1.2020, p. 1.

comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.

- (6) Article 184 of the Withdrawal Agreement provides that the Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.
- (7) In its conclusions of 13 December 2019, the European Council reconfirmed its desire to establish as close as possible a future relationship with the United Kingdom in line with the Political Declaration and respecting the previously agreed European Council's guidelines, as well as statements and declarations, notably those of 25 November 2018. The European Council reiterated in particular that the future relationship with the United Kingdom will have to be based on a balance of rights and obligations and ensure a level playing field. The European Council invited the Commission to submit to the Council 'a draft comprehensive mandate for a future relationship with the United Kingdom immediately after its withdrawal'. The European Council stated that it would follow the negotiations closely and provide further general political directions as necessary.
- (8) Negotiations should therefore be opened with a view to establishing a new partnership with the United Kingdom of Great Britain and Northern Ireland. The Commission should be nominated as the Union negotiator. For Common Foreign and Security Policy matters, the Commission should conduct negotiations in agreement with the High Representative of the Union for Foreign Affairs and Security Policy.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Commission is hereby authorised to open negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland.

#### *Article 2*

The Commission is hereby nominated as the Union negotiator.

#### *Article 3*

The Commission shall conduct the negotiations in consultation with the [name of the special committee] and on the basis of the directives contained in the annex.

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*



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COM(2020) 35 final

ANNEX

**ANNEX**

*to the*

**Recommendation for a COUNCIL DECISION**

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## **ANNEX**

### **DIRECTIVES FOR THE NEGOTIATION OF A NEW PARTNERSHIP WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

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

1. Following the notification by the United Kingdom of Great Britain and Northern Ireland (hereinafter “the United Kingdom”) of its intention to withdraw from the European Union (hereinafter “the Union”) and the European Atomic Energy Community (hereinafter “Euratom”), the Union negotiated and concluded with the United Kingdom an agreement setting out the arrangements for its withdrawal (hereinafter “the Withdrawal Agreement”) in accordance with Article 50 of the Treaty on European Union (TEU).
2. In the guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy. The European Council set those guidelines with a view to the overall understanding of the framework for the envisaged partnership, that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.
3. During the negotiations under Article 50 of the TEU, an overall understanding on the framework for the envisaged partnership was identified with the United Kingdom and recorded in the political declaration setting out the framework for the envisaged partnership between the Union and the United Kingdom (hereinafter “the Political Declaration”) approved by the European Council (Article 50) on 17 October 2019. In this context, the Political Declaration accompanied the Withdrawal Agreement that was concluded by the Union and the United Kingdom.
4. The Withdrawal Agreement provides for a transition period during which Union law applies to and in the United Kingdom. This transition period will end on 31 December 2020, unless the Joint Committee established by the Withdrawal Agreement adopts, before 1 July 2020, a single decision extending the transition period for up to 1 or 2 years. In the Withdrawal Agreement, the Union and the United Kingdom committed to use their best endeavours to take the necessary steps to negotiate expeditiously the agreements governing their envisaged partnership with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period. In the Political Declaration, the Union and the United Kingdom undertook to use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020.
5. The negotiations of the envisaged partnership should be premised on the effective implementation of the Withdrawal Agreement and of its three Protocols. In this context, the envisaged partnership should continue to protect the Good Friday or Belfast Agreement reached on 10 April 1998 by the United Kingdom Government, the Irish Government and the other participants in the multiparty negotiations in all its parts, in recognition of the fact that the peace process in Northern Ireland will remain of paramount importance to the peace, stability and reconciliation on the island of Ireland.

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

6. In its conclusions of 13 December 2019, the European Council (Article 50) restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future, in line with the Political Declaration establishing the key parameters of the envisaged partnership between the Union and the United Kingdom. The Union's approach will continue to be defined by the overall positions and principles set out in the relevant European Council guidelines and conclusions, notably those of 23 March 2018 and 25 November 2018.
7. The aim of the negotiations is to establish a new partnership between the Union, and Euratom where relevant, and the United Kingdom that is comprehensive and covers the areas of interest outlined in the Political Declaration: trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence and thematic areas of cooperation. The envisaged partnership should form a coherent structure and be embedded in an overall governance framework.
8. The Political Declaration also envisages that, where the Parties consider it to be in their mutual interest during the negotiations, the envisaged partnership may encompass areas of cooperation beyond those described therein. It also recognises that the envisaged partnership might evolve over time.
9. The Commission should aim to achieve as much as possible during the short timeframe of the transition period and should be ready to continue negotiations on any remaining issues after the end of the transition period.

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

### **GENERAL PRINCIPLES**

10. The envisaged partnership between the Union and the United Kingdom, should be based on and refer, *inter alia*, to the following underlying principles and key objectives:
  - recognise that prosperity and security are enhanced by the rules-based international order, defending individual rights and the rule of law, high standards of protection of workers' and consumers' rights and of the environment, the fight against climate change, and free and fair trade;
  - reaffirm the Parties' commitment to work together to safeguard these general principles, and to cooperate against internal and external threats to their values and interests;
  - ensure a balance of rights and obligations, and a level playing field. This balance must ensure the autonomy of the Union's decision-making and legal order, ensure the protection of the Union's financial interests and be consistent with the other Union principles set out in the relevant European Council guidelines, in particular with respect to the integrity of the Single Market and the Customs Union and the indivisibility of the four freedoms;

- reflect the United Kingdom’s status as a non-Schengen third country, and that a non-member of the Union, that is not subject to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.

## **PART I: INITIAL PROVISIONS**

### **1. BASIS FOR COOPERATION**

#### **A. Core values and rights**

11. The envisaged partnership should be based on shared values and commitments, which should be expressed in the five binding political clauses (which underpin all comprehensive relationships between the Union and third countries) regarding: human rights, democracy and rule of law; non-proliferation of weapons of mass destruction; the fight against terrorism; prosecution of those accused of the most serious crimes of concern to the international community; small arms and light weapons. The respect for and safeguarding of human rights and fundamental freedoms, democratic principles, the rule of law and support for non-proliferation should constitute essential elements for the cooperation envisaged in the partnership. The fight against climate change, as elaborated in the UNFCCC process and in particular in the Paris Agreement should also constitute an essential element of the envisaged partnership. The envisaged partnership should reaffirm the Parties’ commitment to promoting effective and rule-based multilateralism.

#### **B. Data protection**

12. In view of the importance of data flows, the envisaged partnership should affirm the Parties’ commitment to ensuring a high level of personal data protection, and fully respect the Union’s personal data protection rules, including the Union’s decision-making process as regards adequacy decisions. The adoption by the Union of adequacy decisions, if the applicable conditions are met, should be an enabling factor for cooperation and exchange of information, in particular in the area of law enforcement and judicial cooperation in criminal matters.

### **2. AREAS OF SHARED INTEREST**

#### **A. Participation in Union and Euratom programmes**

13. The envisaged partnership should establish general principles, terms and conditions for the United Kingdom’s participation in and contribution to Union and Euratom programmes, subject to the conditions set out in the corresponding instruments, in areas such as science and innovation, youth, culture and education, development and international cooperation, defence capabilities, civil protection, space and other relevant areas when in the Union’s interest. This will include the general rules for the financing and the control and audit of the implementation of the programmes, and the appropriate consultation of the United Kingdom.
14. The envisaged partnership should ensure shared commitment to delivering a future PEACE PLUS, maintaining the current funding proportions for the future programme.

#### **B. Dialogues**

15. The envisaged partnership should provide for, as appropriate, dialogue and exchanges in areas of shared interest, with the view to identifying opportunities to

cooperate, share best practice and expertise, and act together, including in areas such as culture, education, science and innovation, tourism or statistics. In these areas, the envisaged partnership should recognise the importance of mobility and temporary movement of objects and equipment in enabling cooperation and also facilitate ongoing cooperation between culture and education related groups.

## **PART II: ECONOMIC PART**

### **1. OBJECTIVES AND PRINCIPLES**

16. The envisaged partnership should include an ambitious, wide-ranging and balanced economic partnership. This partnership should be comprehensive, encompassing a free trade agreement as well as wider sectoral cooperation where it is in the Union interest. It should be consistent with the applicable World Trade Organization (WTO) rules, notably Articles XXIV of the General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS), and ensure that all levels of government effectively comply with its provisions. It should include provisions on fisheries, as set out in Section 12 of this Part, in particular paragraph 85, and be underpinned by robust commitments ensuring a level playing field for open and fair competition, as set out in Section 15 of this Part, as well as by effective management and supervision, dispute settlement and enforcement arrangements, including appropriate remedies. It should facilitate, to the extent possible, trade and investment between the Parties, while respecting the integrity of the Union's Single Market and of its Customs Union.
17. The envisaged partnership should recognise that ensuring sustainable development is an overarching objective of the Parties. The economic partnership should ensure that the Parties retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives such as public health, animal and plant health and welfare, social services, public education, safety, the environment including fight against climate change, public morals, social or consumer protection, privacy and data protection, and promotion and protection of cultural diversity and the fight against money laundering.

### **2. GOODS**

#### **A. Objectives and principles**

18. The envisaged partnership should contain comprehensive arrangements including a free trade area, with customs and regulatory cooperation in line with Points B, C and D of this Section, underpinned by robust commitments ensuring a level playing field for open and fair competition, as well as by effective management and supervision, dispute settlement and enforcement arrangements, including appropriate remedies.

#### **B. Free trade area**

19. The envisaged partnership should aim at establishing a free trade area ensuring no tariffs, fees, charges having equivalent effect or quantitative restrictions across all sectors provided that a level playing field is ensured through robust commitments, as set out in Section 15 of this Part. All customs duties or taxes on exports or any measures of equivalent effect should be prohibited and no new ones should be introduced. The envisaged partnership should also prohibit any ban or restriction on

trade between the Parties, including quantitative restrictions or authorisation requirements, which are not justified by the specific rules and exceptions provided for in the economic partnership, and should contain enhanced disciplines on import and export licensing, import and export monopolies, repaired goods, transshipment, remanufactured goods and origin marking.

20. The envisaged partnership should include appropriate rules of origin based on the standard preferential rules of origin of the Union and taking into account the Union's interest.
21. The envisaged partnership should also include provisions to examine jointly appropriate measures in case of errors committed by the competent authorities, in particular in the application of the preferential rules of origin. It should also set out the procedures and appropriate measures that the Parties may take where lack of administrative cooperation in customs matters, irregularities or fraud are established, and with regards to the recovery of unpaid duties in case of customs fraud.
22. The envisaged partnership should include provisions on antidumping, countervailing and safeguard measures providing that either Party may take appropriate measures in accordance with the WTO Agreements on Implementation of Article VI of GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards, and with Article 5 of the Agreement on Agriculture, as appropriate.

### **C. Customs cooperation and trade facilitation**

23. Within the framework of the Union Customs Code, the envisaged partnership should aim at optimising customs procedures, supervision and controls and facilitating legitimate trade by making use of available facilitative arrangements and technologies, while ensuring that customs authorities can take effective measures at the border to enforce legitimate public policies and protect financial interests, including the effective and efficient enforcement of intellectual property rights by customs authorities on all goods under customs control.
24. To this end, the envisaged partnership should build on and go beyond the WTO Trade Facilitation Agreement. It should include a comprehensive set of customs-related provisions covering transparency, efficiency and non-discriminatory nature of customs procedures and practices.
25. The envisaged partnership should also provide for administrative cooperation and mutual assistance in customs and value added tax (VAT) matters including for the exchange of information to fight customs and VAT fraud and other illegal activities, and for mutual assistance for the recovery of claims related to taxes and duties.
26. Additionally, the envisaged partnership should include arrangements on facilitation of inspections and formalities in respect of the carriage of goods and on customs security measures, including through the mutual recognition of Authorised Economic Operators (AEO) programmes, where it is in the Union's interest and the necessary conditions regarding the security of trade in goods are met.

### **D. Regulatory aspects**

27. While preserving regulatory autonomy, the envisaged partnership should put in place provisions to promote regulatory approaches that are transparent, efficient, promote avoidance of unnecessary barriers to trade in goods and are compatible to the extent

possible. Disciplines on technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) should build on and go beyond the respective WTO agreements.

28. Specifically, the TBT disciplines should set out principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling. The TBT provisions should include a definition of international standards, based on the shared current practice of the two Parties, and should aim at promoting the use of relevant international standards as a basis for technical regulations, as well as streamlined testing and certification requirements through, for example, the application of a risk-based approach to conformity assessment (including the use of self-certification in sectors where this is possible and appropriate). The envisaged partnership should also establish a mechanism to address expeditiously any specific trade concern related to TBT measures and include provisions aiming to ensure the timely dissemination of information about applicable TBT measures to importers and exporters in both Parties.
29. In the area of SPS, the envisaged partnership should build on and go beyond the WTO Agreement on SPS measures, with the objective of facilitating access to each Party's market while protecting human and animal health, as well as plant health. The SPS provisions should pursue the application of a Union-wide export authorisation process (single entity), and should recognise regionalisation in case of disease or pest outbreaks on the basis of appropriate epidemiological information provided by the exporting Party. The SPS provisions should take into account the respective international standards, guidelines and recommendations of the International Plant Protection Convention (IPPC), the World Organisation for Animal Health (OIE) and Codex Alimentarius. The SPS provisions should cover transparency and non-discrimination, avoidance of undue delays, harmonisation, the recognition of the Parties' health and pest status, control, inspections and approval procedures, audits, certification, import checks, emergency measures, approval of establishments without prior inspections, regulatory cooperation, cooperation on antimicrobial resistance, cooperation in multilateral fora relevant for SPS issues, cooperation on sustainable food systems, and the creation of a mechanism to address expeditiously specific trade concerns related to SPS measures or any relevant issues. The envisaged partnership should promote continued cooperation and exchanges on animal welfare. The envisaged partnership should uphold the application of the precautionary principle in the Union as set out in the Treaty on the Functioning of the European Union.
30. The envisaged partnership should establish a framework for voluntary regulatory cooperation in areas of Union interest, including exchange of information and sharing of best practice.
31. The envisaged partnership should include cross-cutting disciplines on good regulatory practices and transparency for the development and implementation of efficient, cost-effective regulations for goods, including early public consultations on significant new regulations or significant reviews of existing measures.

### **3. SERVICES AND INVESTMENT**

#### **A. Objectives and principles**

32. The envisaged partnership should include ambitious, comprehensive and balanced provisions on trade in services and investment in services and non-services sectors, respecting each Party's right to regulate. These provisions should aim to deliver a level of liberalisation in trade in services beyond the Parties' WTO commitments and taking into account existing Union free trade agreements.
33. In line with Article V of the General Agreement on Trade in Services (GATS), the envisaged partnership should aim at substantial sectoral coverage, covering all modes of supply and providing for the absence of substantially all discrimination in the covered sectors. The envisaged partnership should provide for exceptions and limitations as appropriate, including the exclusion of activities carried out in the exercise of governmental authority. Audio-visual services should be excluded from the provisions related to liberalisation. The high quality of the Union's public services should be preserved in accordance with the Treaty on the Functioning of the European Union and in particular Protocol No 26 on Services of General Interest, and taking into account the Union's reservations in this area, including in the GATS. The provisions on services and investment should cover sectors such as professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services and transport services.<sup>5</sup>

#### **B. Market access and non-discrimination**

34. The envisaged partnership should include provisions on market access and national treatment under host state rules for the Parties' service providers and investors, as well as address performance requirements imposed on investors.
35. It should include provisions that would allow for the entry and temporary stay of natural persons for business purposes in defined areas. However, nothing in the envisaged partnership should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the envisaged partnership. The laws, regulations and requirements existing in the Union regarding working conditions and workers' rights should continue to apply.

#### **C. Regulatory aspects**

36. While preserving the regulatory autonomy of the Parties, the envisaged partnership should include provisions to promote regulatory approaches that are transparent, efficient, compatible to the extent possible, and which promote avoidance of unnecessary regulatory requirements.
37. In this context, the envisaged partnership should cover disciplines on domestic regulation. These should include horizontal provisions in line with Union practice in free trade agreements, such as on licensing procedures, and regulatory provisions in line with existing Union free trade agreements in specific sectors such as telecommunication services, financial services, delivery services, and international maritime transport services.

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<sup>5</sup> In respect to certain transport services, see also section 10 below.

38. The envisaged partnership should reaffirm the Parties' commitment to providing, through sectoral provisions in telecommunication services, for fair and equal access to public telecommunication networks and services to each other's services suppliers and address anticompetitive practices.
39. The envisaged partnership should establish a framework for voluntary regulatory cooperation in areas of Union interest, including exchange of information and sharing of best practice.
40. The envisaged partnership should include cross-cutting disciplines on good regulatory practices and transparency for the development and implementation of efficient, cost-effective regulations for services and investment, including early public consultations on significant new regulations or significant reviews of existing measures.
41. The envisaged partnership should also include a framework for negotiations on the conditions for the competent domestic authorities to recognise professional qualifications necessary to the pursuit of specific regulated professions, where in the Union's interest.

#### **4. COOPERATION ON FINANCIAL SERVICES**

42. The envisaged partnership should reaffirm the Parties' commitment to preserving financial stability, market integrity, investor and consumer protection and fair competition, while respecting the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. This is without prejudice to the Parties' ability to adopt or maintain any measure for prudential reasons. The key instrument the Parties will use to regulate interactions between their financial systems will be their respective unilateral equivalence frameworks.
43. The cooperation on financial services should establish close and appropriately structured voluntary cooperation on regulatory and supervisory matters, including in international bodies. This cooperation should preserve the Union's regulatory and supervisory autonomy. It should allow for informal exchange of information and bilateral discussions on regulatory initiatives and other issues of interest, for instance on equivalence. It should ensure, where possible, appropriate transparency and stability of the cooperation.

#### **5. DIGITAL TRADE**

44. In the context of the increasing digitalisation of trade covering both services and goods, the envisaged partnership should include provisions aiming at facilitating digital trade, addressing unjustified barriers to trade by electronic means, and ensuring an open, secure and trustworthy online environment for businesses and consumers, such as on electronic trust and authentication services or on not requiring prior authorisation solely on the grounds that the service is provided by electronic means. They should also provide for consumer protection in the online environment and on unsolicited direct marketing communication. These provisions should address data flows, while not affecting the Union's personal data protection rules.
45. The envisaged partnership should provide for cooperation in multilateral and multi-stakeholder fora in areas of mutual interest, and establish a dialogue to exchange information, experience and best practice relating to emerging technologies.



## **6. CAPITAL MOVEMENTS AND PAYMENTS**

46. The envisaged partnership should include provisions to enable the movement of capital and payments related to transactions liberalised under the envisaged partnership. It should entail safeguard and carve-out provisions (for example, concerning the Union's economic and monetary union and balance of payments), which should be in accordance with the Treaty on the Functioning of the European Union on free movement of capital.

## **7. INTELLECTUAL PROPERTY**

47. The envisaged partnership should provide for the protection and enforcement of intellectual property rights to stimulate innovation, creativity and economic activity, going beyond the standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the World Intellectual Property Organization (WIPO) conventions where relevant.
48. The envisaged partnership should preserve the Parties' current high levels of protection of intellectual property, such as copyright and related rights, trademarks, unregistered and registered design rights, geographical indications, patents, undisclosed information or plant variety rights. The envisaged partnership should confirm the protection of existing geographical indications as provided for in the Withdrawal Agreement and establish a mechanism for the protection of future geographical indications ensuring the same level of protection as that provided for by the Withdrawal Agreement.
49. The envisaged partnership should also ensure the effectiveness of enforcement of intellectual property rights, including in the digital environment and at the border.
50. The envisaged partnership should establish an appropriate mechanism for cooperation and exchange of information between the Parties on intellectual property issues of mutual interest, such as respective approaches and processes regarding trademarks, designs and patents.

## **8. PUBLIC PROCUREMENT**

51. Noting the United Kingdom's envisaged accession to the WTO Government Procurement Agreement (GPA), the envisaged partnership should provide for mutual opportunities in the Parties' respective public procurement markets based on the United Kingdom's access offer for accession to the GPA and beyond their commitments under the GPA in specific areas, without prejudice to their domestic rules to protect their essential security interests. These areas should include relevant procurement not covered by the GPA such as procurement in the utilities sectors not covered under the GPA. National treatment should ensure treatment no less favourable than that accorded to locally-established suppliers or service providers.
52. The envisaged partnership should commit the Parties to standards based on and going beyond those of the GPA ensuring transparency of market opportunities, public procurement rules, procedures and practices. Building on these standards, the envisaged partnership should address the risk of arbitrary behaviour when awarding contracts, and make available effective and accessible remedies and review procedures, including before judicial authorities.

## **9. MOBILITY**

- 53. Mobility arrangements, including on visa-free travel for short-term stays, in the envisaged partnership should be based on non-discrimination between the Union Member States and full reciprocity.
- 54. The envisaged partnership should aim at setting out conditions for entry and stay for purposes such as research, study, training and youth exchanges.
- 55. The envisaged partnership should address social security coordination, having appropriate regard to future movement of persons.
- 56. Any provisions should be without prejudice to the Common Travel Area (CTA) arrangements as they apply between the United Kingdom and Ireland, as referred to in Article 38(2) of the Withdrawal Agreement and in Article 3 of the Protocol on Ireland/Northern Ireland.

## **10. TRANSPORT**

### **A. Aviation**

#### **a) Air transport**

- 57. The envisaged partnership should address comprehensively the aviation relationship with the United Kingdom. It should ensure, on the basis of commercial principles and fair and equal opportunities to compete, a reciprocal, sustainable and balanced opening of markets while preserving the internal market for air transport services. Certain elements of the envisaged partnership may be implemented in a phased approach.
- 58. The envisaged partnership should ensure that all Union air carriers are treated equally and in a non-discriminatory manner, regardless of nationality, in all matters covered by the agreement.
- 59. It should include provisions related to applications from air carriers for operating authorisations based on procedures with minimum delay.
- 60. The envisaged partnership should encompass on a reciprocal basis certain traffic rights to ensure continued connectivity. However, the United Kingdom, as a non-member of the Union, cannot have the same rights and enjoy the same benefits as a member. Elements included in the Fifth Freedom of the Air may be considered if, taking into account the geographical proximity of the United Kingdom, they are balanced with corresponding obligations and in the interest of the Union.
- 61. The envisaged partnership should provide for adequate mechanisms for verification and information exchange with the aim of ensuring mutual confidence in its implementation. It should provide for air safety and security provisions which are as stringent as possible. It should cover operational and commercial flexibility provisions, with particular emphasis put on solving "doing business" issues.
- 62. In addition to the level playing field requirements set out in in Section 15 of this Part, there should be provisions for open and fair competition specific to the aviation sector.
- 63. The envisaged partnership should not prohibit taxation on a non-discriminatory basis of aircraft fuel supplied to aircraft. The agreement should not affect the field of VAT.

## **b) Aviation safety**

64. The envisaged partnership should facilitate trade and investment in aeronautical products, parts and appliances through cooperation in areas such as certification and monitoring, the production oversight and environmental approval and testing. Negotiations should be based on both Parties being satisfied with the other Party's requirements, regulatory processes and capacity to implement them.
65. Nothing in the envisaged partnership should entail reciprocal acceptance of the standards and technical regulations of the Parties. Rather, it should limit duplication of assessments to significant regulatory differences and allow, to the extent possible, reliance on the certification system of the other Party. It may also specify modalities, based for example on the respective experience and knowledge of the other party, for the respective level of involvement of the authorities. To facilitate the achievement of the objective set out above, the envisaged partnership may also provide for regulatory co-operation.
66. The acceptance by one Party of findings or certificates of the other Party shall only take place when, and as long as, the first Party is able to establish and maintain confidence in the other Party's ability to discharge its obligations in accordance with the envisaged partnership. The envisaged partnership should include appropriate co-operation mechanisms to verify on a reciprocal basis the continued fitness and ability of the regulatory bodies involved in its implementation.

## **B. Road transport**

67. The envisaged partnership should establish open market access for bilateral road freight transport, including unladen journeys, made in conjunction with these operations:
- by Union road haulage operators from the territory of the Union to the territory of the United Kingdom, and vice versa;
  - by United Kingdom road haulage operators to the territory of the Union, and vice versa.
68. The envisaged partnership should also provide for appropriate transit arrangements.
69. As third country operators, United Kingdom road haulage operators should not be granted the same rights and benefits as those enjoyed by Union road haulage operators in respect of road freight transport operations from one Union Member State to another ("grand cabotage") and road freight transport operations within the territory of one Union Member State ("cabotage").
70. In addition to the level playing field requirements set out in Section 15 of this Part, specific provisions should ensure that the common level of protection in relation to operators and drivers (including social rules) in the area of road transport is not reduced below the level provided by the common standards applicable in the Union and the United Kingdom at the end of the transition period.
71. The envisaged partnership should address requirements for tachograph technology.
72. Regarding the carriage of passengers by coach and bus (occasional and regular services), the envisaged partnership should take account of the multilateral Interbus Agreement and the Protocol to that Agreement regarding international regular and special regular services, that is currently in the process of being signed or ratified by the parties to that agreement and protocol.

### **C. Rail transport**

73. The envisaged partnership should address, if necessary, the specific situation of the Channel Tunnel.

## **11. ENERGY AND RAW MATERIALS**

### **A. Horizontal provisions on energy and raw materials**

74. The envisaged partnership should include horizontal provisions addressing trade and investment-related aspects of energy and raw materials. The envisaged partnership should aim at ensuring an open, transparent, non-discriminatory and predictable business environment and addressing double-pricing in this area. It should aim at setting transparent and non-discriminatory rules for exploration and production, and specific market access rules, and include provisions on renewable energies. The envisaged partnership should also include rules that support and further promote trade and investment in the renewable energy sector.
75. The envisaged partnership should also enhance cooperation in the abovementioned areas. The envisaged partnership should aim at promoting the development of a sustainable and safe low-carbon economy, such as investment in renewable energies and energy efficient solutions.

### **B. Electricity and gas**

76. The envisaged partnership should provide for cooperation to support the delivery of cost efficient, clean and secure supplies of electricity and gas, based on competitive markets and non-discriminatory access to networks. This cooperation requires robust level playing field commitments, including effective carbon pricing as set out in Section 15 of this Part, and the integration of renewable energy in the energy system. Competitive markets and non-discriminatory access to networks require effective unbundling of network operators, independent regulation, and measures to prevent abusive practices affecting wholesale energy markets.
77. The envisaged partnership should provide for the establishment of a framework to facilitate technical cooperation between electricity and gas networks operators and organisations for electricity and gas. Taking account of the fact that the United Kingdom will leave the internal market in energy, the framework should also include mechanisms to ensure as far as possible security of supply and efficient trade over interconnectors over different timeframes.

### **C. Civil nuclear**

78. Recognising the importance of nuclear safety and non-proliferation, the envisaged partnership should include provisions for wide-ranging cooperation between the Euratom and the United Kingdom on peaceful uses of nuclear energy.
79. The provisions on nuclear cooperation should be based on respecting international conventions and treaties. The provisions on nuclear cooperation should be underpinned by commitments to maintaining the high standards of nuclear safety applying at the end of the transition period, and on the commitment by Euratom and the United Kingdom to continue improving the implementation of the principles of the Convention on Nuclear Safety.
80. The provisions on nuclear cooperation should facilitate trade in nuclear materials and equipment, transfer of nuclear technology and enable cooperation and the exchange

of information between Euratom, the United Kingdom and its national authorities, including in relation to exchanging information on nuclear safeguards, nuclear safety, levels of radioactivity in the environment and the supply of medical radioisotopes.

## **12. FISHERIES**

81. The envisaged partnership should include, in its economic part, provisions on fisheries setting out a framework for the management of shared fish stocks, as well as the conditions on access to waters and resources. It should secure continued responsible fisheries that ensure the long-term conservation and sustainable exploitation of marine biological resources, in line with the relevant principles under international and Union law, notably those underpinning the Common Fisheries Policy as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013. The provisions on fisheries should be underpinned by effective management and supervision, and dispute settlement and enforcement arrangements, including appropriate remedies.
82. The provisions on fisheries should encompass cooperation on the development of measures for the sustainable exploitation and conservation of resources, including avoiding wasteful practises such as discarding. Such measures should be non-discriminatory and follow a science-based approach aligned to the objective of achieving maximum sustainable yield for concerned stocks. The envisaged partnership should include provisions for collaboration in data collection and research.
83. Besides the cooperation on conservation, management and regulation, the objective of the provisions on fisheries should be to uphold Union fishing activities. In particular, it should aim to avoid economic dislocation for Union fishermen that have traditionally fished in the United Kingdom waters.
84. To reach this objective, the provisions on fisheries should build on existing reciprocal access conditions, quota shares and the traditional activity of the Union fleet, and therefore:
  - provide for continued reciprocal access, for all relevant species, by Union and United Kingdom vessels to the waters of the Union and the United Kingdom;
  - define stable quota shares, which can only be adjusted with the consent of both Parties;
  - include modalities for transfers and exchanges of quotas and for the setting of annual or multi-annual total allowable catches (or effort limitations) on the basis of long-term management strategies;
  - organise the modalities for obtaining fishing authorisations and the provisions that ensure equality of treatment and compliance, including joint control and inspection activities.
85. The terms on access to waters and quota shares shall guide the conditions set out in regard of other aspects of the economic part of the envisaged partnership, in particular of access conditions under the free trade area as provided for in Point B of Section 2 of this Part.

86. The provisions on fisheries should be established by 1 July 2020, in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period.

### **13. SMALL AND MEDIUM-SIZED ENTERPRISES**

87. The envisaged partnership should include a specific chapter on small and medium sized enterprises (SMEs) which should assist SMEs to take full advantage of the envisaged partnership, inter alia through increasing the level of awareness among SMEs and enhancing their access to useful information on rules, regulations and procedures related to doing business, including public procurement.

### **14. GLOBAL COOPERATION**

88. The envisaged partnership should include provisions recognising the importance of global cooperation to address issues of shared economic, environmental and social interest. As such, while preserving their decision-making autonomy, the envisaged partnership should envisage cooperation in international fora, such as the G7 and the G20, where it is in their mutual interest, including in the areas of: climate change; sustainable development; cross-border pollution; environmental protection; public health and consumer protection; financial stability; and the fight against trade protectionism.

### **15. LEVEL PLAYING FIELD AND SUSTAINABILITY**

#### **A. General**

89. Given the Union and the United Kingdom's geographic proximity and economic interdependence, the envisaged partnership must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. These commitments should be commensurate with the scope and depth of the overall envisaged partnership and the economic connectedness of the Parties. These commitments should prevent distortions of trade and unfair competitive advantages. To that end, the envisaged agreement should uphold the common high standards in the areas of State aid, competition, state-owned enterprises, social and employment standards, environmental standards, climate change, and relevant tax matters. In so doing, the agreement should rely on appropriate and relevant Union and international standards. It should include adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement, including appropriate remedies. The Union should also have the possibility to apply autonomous interim measures to react quickly to disruptions of the equal conditions of competition in relevant areas.
90. The envisaged partnership should commit the Parties to continue improving their respective levels of protection with the goal of ensuring high levels of protection in the areas referred to in paragraph 89. The governing body should be empowered to modify the level playing field commitments in order to include additional areas or to lay down higher standards over time.

#### **B. Competition**

91. The envisaged partnership should ensure the application of Union State aid rules to and in the United Kingdom. For aid granted by the United Kingdom affecting trade between Great Britain and the Union, the United Kingdom should set up an independent and adequately resourced enforcement authority with effective powers

to enforce the applicable rules, which should work in close cooperation with the Commission. Disputes about the application of State aid rules in the United Kingdom should be subject to dispute settlement.

92. The envisaged partnership should provide that anticompetitive agreements, abuses of dominant position and concentrations of undertakings that threaten to distort competition are prohibited, unless remedied, in so far as they affect trade between the Union and the United Kingdom. The Parties should also commit to effective enforcement via a competition law and domestic administrative and judicial proceedings, permitting the effective and timely action against violations of competition rules, and to effective remedies.

### ***C. State-owned enterprises***

93. The envisaged partnership should include provisions on state-owned enterprises, designated monopolies and enterprises granted special rights or privileges to ensure that they do not distort competition or create barriers to trade and investment.

### ***D. Taxation***

94. The envisaged partnership should recognise and commit the Parties to implementing the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the OECD standards against Base Erosion and Profit Shifting (BEPS). It should ensure that the United Kingdom applies the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: exchange of information on income, financial accounts, tax rulings, country-by-country reports, beneficial ownership and potential cross-border tax-planning arrangements. It should also ensure that the United Kingdom applies the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to the fight against tax avoidance practices and public country-by-country reporting by credit-institutions and investment firms.
95. The envisaged partnership should reaffirm the Parties' commitment to curb harmful tax measures, taking into account the G20-OECD BEPS Action Plan. They should also ensure that the United Kingdom reaffirms its commitment to the Code of Conduct for Business Taxation.

### ***E. Labour and social protection***

96. The envisaged partnership should ensure that the level of labour and social protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards; and information and consultation rights at company level and restructuring. It should also protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and governments.
97. The envisaged partnership should ensure the United Kingdom's effective enforcement of its commitments and of its laws, regulations and practices reflecting those commitments, through adequately resourced domestic authorities, an effective system of labour inspections and effective administrative and judicial proceedings.

### ***F. Environment***

98. The envisaged partnership should ensure that the common level of environmental protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: access to environmental information; public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions; air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment; the protection and preservation of the marine environment; the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances; and climate change. This should take into account the fact that the Union and the United Kingdom share a common biosphere in respect of cross-border pollution. The envisaged partnership should lay down minimum commitments reflecting standards, including targets, in place at the end of the transition period in those areas, where relevant. The envisaged partnership should ensure the Parties respect the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.
99. The envisaged partnership should ensure that the United Kingdom implements a transparent system for the effective domestic monitoring, reporting, oversight and enforcement of its obligations by an independent and adequately resourced body or bodies.

#### ***G. Fight against climate change***

100. The envisaged partnership should reaffirm the Parties' commitments to effectively implement international agreements to tackle climate change, including those established under the United Nations Framework Conventions on Climate Change (UNFCCC), such as the Paris Agreement.
101. The envisaged partnership should ensure that the United Kingdom maintains a system of carbon pricing of at least the same effectiveness and scope as provided by the common standards, including targets, agreed within the Union before the end of the transition period and applicable for the period thereafter. The Parties should consider linking a United Kingdom national greenhouse gas emissions trading system with the Union's Emissions Trading System (ETS). Such linking of systems should be based on the conditions agreed within the Union, ensure the integrity of the Union's ETS and a level playing field, and provide for the possibility to increase the level of ambition over time.
102. The envisaged partnership should also ensure that in areas not covered by a system of carbon pricing, the United Kingdom does not reduce the level of protection below the level provided by the common standards, including targets, agreed within the Union by the end of the transition period and applicable for the period thereafter.
103. The envisaged partnership should ensure the United Kingdom implements a transparent system for the effective domestic monitoring, reporting, oversight and enforcement of its obligations by an independent and adequately resourced body or bodies.

#### ***H. Other instruments for sustainable development***



104. In line with the Parties' objective of ensuring sustainable development, the envisaged partnership should promote the implementation of the United Nations 2030 Agenda for sustainable development. It should include provisions on adherence to and effective implementation of relevant internationally agreed principles and rules. This should include conventions of the International Labour Organisation (ILO) and the Council of Europe European Social Charter. The envisaged partnership should also cover multilateral environmental agreements including those related to climate change, in particular the Paris Agreement, and climate change mitigation-related multilateral initiatives, such as in the International Maritime Organization (IMO).
105. In addition, where the Parties increase their level of environmental, social and labour and climate protection beyond the commitments in paragraphs 96, 98 and 100 to 102, the envisaged partnership should prevent them from lowering those additional levels in order to encourage trade and investment.
106. To this end, the envisaged partnership should promote a greater contribution of trade and investment to sustainable development, including by addressing through bilateral cooperation and in international fora, and other means, areas such as the facilitation of trade in environmental and climate-friendly goods and services and the promotion of voluntary sustainability assurance schemes and of corporate social responsibility. It should in particular envisage cooperation in international fora, such as the UNFCCC, the G7 and the G20, and bilaterally to increase the level of ambition on sustainable development and in the fight against climate change. It should also promote trade favouring low-emission, climate resilient development. The envisaged partnership should furthermore promote trade in legally obtained and sustainably managed natural resources, in particular in relation to biodiversity, fauna and flora, aquatic ecosystem, forestry products, and cover relevant international instruments and practices.
107. The envisaged partnership should provide for civil society participation and dialogue.
108. The envisaged partnership should provide for the monitoring of the implementation of the commitments and of the social and environmental impacts of the envisaged partnership through inter alia public review, public scrutiny and mechanisms to address disputes as well as instruments of encouragement and trade related co-operation activities, including in relevant international fora.

## **16. GENERAL EXCEPTIONS**

109. The envisaged partnership should include general exceptions, applicable to the relevant parts of the envisaged partnership, including regarding security, balance of payments, prudential supervision and taxation based on the relevant articles of WTO agreements.

## **PART III: SECURITY PART**

### **1. OBJECTIVES AND PRINCIPLES**

110. With a view to the Union's security and the safety of its citizens, the Parties should establish a broad, comprehensive and balanced security partnership. This partnership will take into account geographic proximity and evolving threats, including serious international crime, organised crime, terrorism, cyber-attacks, disinformation

campaigns, hybrid-threats, the erosion of the rules-based international order and the resurgence of state-based threats.

111. The envisaged partnership should reaffirm the Parties' commitment to promoting global security, prosperity and effective multilateralism, underpinned by their shared principles, values and interests. The security partnership should comprise law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, as well as thematic cooperation in areas of common interest.

## **2. LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS**

112. The security partnership should provide for close law enforcement and judicial cooperation in relation to the prevention, investigation, detection and prosecution of criminal offences, taking into account the United Kingdom's future status of a non-Schengen third country that does not provide for the free movement of persons. The security partnership should ensure reciprocity, preserve the autonomy of the Union's decision-making and the integrity of its legal order and take account of the fact that a third country cannot enjoy the same rights and benefits as a Member State.
113. The envisaged partnership should be underpinned by commitments to respect fundamental rights including adequate protection of personal data, which is an enabler for the cooperation. In this context, the envisaged partnership should provide for automatic termination of the law enforcement cooperation and judicial cooperation in criminal matters if the United Kingdom were to denounce the European Convention of Human Rights (ECHR). It should also provide for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR, thus making it impossible for individuals to invoke the rights under the ECHR before the United Kingdom's courts. The level of ambition of the law enforcement and judicial cooperation envisaged in the security partnership will be dependent on the level of protection of personal data ensured in the United Kingdom. The Commission will work toward an adequacy decision to facilitate such cooperation, if applicable conditions are met. The envisaged partnership should provide for suspension of the law enforcement and judicial cooperation set out in the security partnership, if the adequacy decision is repealed or suspended by the Commission or declared invalid by the Court of Justice of the European Union (CJEU). The security partnership should also provide for judicial guarantees for a fair trial, including procedural rights, e.g. effective access to a lawyer. It should also lay down appropriate grounds for refusal of a request for cooperation, including where such request concerns a person who has been finally convicted or acquitted for the same facts in a Member State or the United Kingdom.

### **A. Data exchange**

114. The envisaged partnership should establish arrangements for timely, effective, efficient and reciprocal exchanges between Passenger Information Units of Passenger Name Record (PNR) data and of the results of processing such data stored in respective national PNR processing systems. It should also provide a basis for transfers of PNR data by air carriers to the United Kingdom for the flights between the United Kingdom and a Member State. Such arrangements should comply with the relevant requirements, including those set out in the Opinion 1/15 of the CJEU.
115. The envisaged partnership should provide for arrangements between the Parties ensuring reciprocal access to data available at the national level on DNA and

fingerprints of suspected and convicted individuals as well as vehicle registration data (Prüm).

116. Without prejudice to the exchange of law enforcement information through Interpol, Europol, bilateral and international agreements, the envisaged partnership should provide for simplified exchanges of existing information and intelligence between the United Kingdom and Member States law enforcement authorities, with the view of delivering capabilities that, in so far as is technically and legally possible, and considered necessary and in the Union's interest, approximate those enabled by Council Framework Decision 2006/960/JHA. This would include information on wanted and missing persons and objects.

#### **B. Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters**

117. The envisaged partnership should provide for cooperation between the United Kingdom and Europol and Eurojust in line with arrangements for the cooperation with third countries set out in relevant Union legislation.
118. The envisaged partnership should establish effective arrangements based on streamlined procedures subject to judicial control and time limits enabling the United Kingdom and Union Member States to surrender suspected and convicted persons efficiently and expeditiously, with the possibilities to waive the requirement of double criminality for certain offences, and to determine the applicability of these arrangements to own nationals and for political offences.
119. To ensure effective and efficient practical cooperation between law enforcement and judicial authorities in criminal matters, the envisaged partnership should facilitate and supplement, where necessary, the application of relevant Council of Europe conventions, including by imposing time limits and providing for standard forms. It should also cover necessary supplementary forms of mutual legal assistance and arrangements appropriate for the United Kingdom future status, including on joint investigation teams and the latest technological advancements, with a view to delivering capabilities that, in so far as is technically and legally possible and considered necessary and in the Union's interest, approximate those enabled by the Union instruments.
120. Supplementing and facilitating the application of the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and its Additional Protocols, the envisaged partnership should put in place arrangements on exchange of information on criminal records appropriate to the United Kingdom's future status with the view of delivering capabilities that, in so far as technically and legally possible and considered necessary and in the Union's interest, approximate those enabled by the Union instrument.

#### **C. Anti-money laundering and counter-terrorism financing**

121. The envisaged partnership should include commitments to support international efforts to prevent and fight against money laundering and terrorist financing, particularly through compliance with Financial Action Task Force (FATF) standards. The provisions in the envisaged partnership should go beyond the FATF standards on beneficial ownership information, among others by providing for the existence of public registers for beneficial ownership information for companies and semi-public registers of beneficial ownership information for trusts and other legal arrangements.

### **3. FOREIGN POLICY, SECURITY AND DEFENCE**

- 122. The envisaged partnership should provide for an ambitious, close and lasting cooperation on external action to protect citizens from external threats, prevent conflicts, strengthen international peace and security and address the root causes of global challenges.
- 123. The envisaged partnership should preserve the autonomy of the Union's decision-making, including the shaping of its foreign policy, security and defence. The envisaged partnership should respect the legal order of the Union as well as its strategic and security interests.
- 124. When and where the United Kingdom has shared interests with the Union, the envisaged partnership should enable the United Kingdom as a third country to cooperate with the Union.
- 125. Making full use of the existing framework to cooperate with third countries, including through the United Nations and the NATO, the partnership should enable appropriate dialogue, consultation, exchange of information and cooperation mechanisms that are flexible, scalable and proportionate to the level of engagement of the United Kingdom alongside the Union.

#### **A. Consultation and cooperation**

- 126. The envisaged partnership should enable structured consultations between the Union and the United Kingdom through the Political Dialogue on Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) as well as sectoral dialogues. The Parties may put into operation such structured consultations, where appropriate, before the end of the transition period.
- 127. The envisaged partnership should enable cooperation between the Union and the United Kingdom in third countries, including on consular protection, and in international organisations, notably in the framework of the United Nations, with a view to combining efforts in external action and management of global challenges.

#### **B. Sanctions**

- 128. To enable the alignment of the United Kingdom with the Union sanction policy, when and where foreign policy objectives are shared, the envisaged partnership should facilitate dialogue and mutual exchange of information between the Union and the United Kingdom at appropriate stages of the policy cycle of their respective sanction regimes.

#### **C. Operations and missions**

- 129. The envisaged partnership should establish a framework in line with existing rules to enable the United Kingdom to participate on a case-by-case basis, and upon invitation by the Union, in CSDP missions and operations open to third countries.
- 130. Under this framework and in the context of a CSDP mission or operation in which the United Kingdom participates, the envisaged partnership should provide for interaction and exchange of information with the United Kingdom that are proportionate to the level of the United Kingdom's contribution.

#### **D. Defence capabilities development**

- 131. The envisaged partnership should preserve the strategic autonomy and freedom of action of the Union underpinned by its defence industrial base. Where it is in the

industrial and technological interest of the Union, to facilitate the interoperability of the respective armed forces, the security partnership may enable if and to the extent possible under the conditions of Union law:

- a) The United Kingdom's collaboration in the development of research and capability projects of the European Defence Agency (EDA) through an administrative arrangement;
  - b) The participation of eligible United Kingdom entities in collaborative defence projects bringing together Union entities supported by the European Defence Fund;
  - c) The participation of the United Kingdom on an exceptional basis in projects in the framework of the Permanent Structured Cooperation (PESCO), where invited to participate by the Union.
132. The envisaged partnership should provide that any participation of the United Kingdom in activities of the EDA or the European Union Satellite Centre (EUSC) that are related to the Union's wider policies should be in compliance with the participation rules defined in Union law.

#### **E. Intelligence exchanges**

133. The envisaged partnership should provide for the possibility of intelligence exchanges between the Union and the United Kingdom on a timely and voluntary reciprocal basis as appropriate, while preserving the autonomous production of intelligence products of the Union. Such intelligence exchanges should contribute to a shared understanding of Europe's security environment and facilitate cooperation between the Union and the United Kingdom.
134. The envisaged partnership should enable the exchange of intelligence and sensitive information between the relevant Union institutions, bodies, office and agencies and the United Kingdom authorities. The envisaged partnership should provide for the cooperation between the United Kingdom and EUSC in line with the Council Decision on the establishment of the EUSC in the field of space-based imagery.

#### **F. Space**

135. The envisaged partnership should provide for the possibility for the United Kingdom to have access to the Galileo Public Regulated Service (PRS) through provisions on PRS in accordance with Union law. Such provisions on PRS should allow the United Kingdom to secure access to the most resilient service of Galileo for sensitive applications in the context of Union operations or *ad hoc* operations involving its Member States.
136. Since access to the development of technologies is excluded, access to the Galileo PRS should be conditional upon:
- a) ensuring that the United Kingdom's use of PRS does not contravene the essential security interests of the Union and its Member States;
  - b) the United Kingdom participating in the non-security related activities of the Union's Space Programme as foreseen in Section 2(A) of Part I on participation in Union programmes, unless and until the United Kingdom grants the Union access to the envisaged United Kingdom Global Navigation Satellite System.

#### **G. Development cooperation**

137. The envisaged partnership should enable the United Kingdom to contribute to the Union's instruments and mechanisms in full respect of the autonomy of the Union in the programming of development priorities. The envisaged partnership should promote sustainable development and the eradication of poverty. In this regard, the partnership should provide for the continued support of the Parties for the implementation of the United Nations Sustainable Development Goals and European Consensus on Development.

#### **4. THEMATIC COOPERATION**

##### **A. Cyber security**

138. The envisaged partnership should enable a dialogue between the Union and the United Kingdom on cyber-security, including a cooperation to promote effective global practices on cyber security in relevant international bodies.
139. The envisaged partnership should enable the timely and reciprocal exchange of information between the Union and the United Kingdom on cyber-security, including on incidents and trends.
140. In this context, the envisaged partnership should enable cooperation ensuring reciprocity between the United Kingdom and the Computer Emergency Response Team – European Union (CERT-EU). It should enable the United Kingdom's participation in relevant activities of the Cooperation Group established under the Union's Directive on Security of Network and Information Systems and of the European Union Agency for Cybersecurity (ENISA).

##### **B. Irregular migration**

141. The envisaged partnership should envisage cooperation to tackle irregular migration, including its drivers and consequences, whilst recognising both the need to protect the most vulnerable and the United Kingdom's future status of a non-Schengen third country that does not provide for the free movement of persons. This cooperation should cover:
- a) cooperation with Europol to combat organised immigration crime in line with arrangements for the cooperation with third countries set out in the relevant Union legislation;
  - b) a dialogue on shared objectives and on cooperation, including in third countries and international fora, to tackle irregular migration upstream.

#### **PART IV: INSTITUTIONAL AND OTHER HORIZONTAL ARRANGEMENTS**

##### **1. STRUCTURE**

142. The envisaged partnership should be embedded in an overall governance framework covering all areas of economic and security cooperation, and, as appropriate, agreements and arrangements supplementing the envisaged partnership.
143. The envisaged partnership should allow for its periodical review.

##### **2. GOVERNANCE**

144. In order to ensure the proper functioning of the envisaged partnership, it should reaffirm the commitment to engage in regular dialogue and to establish robust,

efficient and effective arrangements for its management, supervision, implementation, review and development over time, and for the resolution of disputes and enforcement, in full respect of the autonomy of their respective legal orders.

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

#### **A. Strategic direction and dialogue**

146. The envisaged partnership should include dialogue at appropriate levels so as to provide strategic direction and discuss opportunities for cooperation in areas of mutual interest.
147. There should also be specific thematic dialogues at appropriate levels which should take place as often as necessary for the effective operation of the envisaged partnership.
148. The envisaged partnership should establish a dialogue between the European Parliament and the Parliament of the United Kingdom, where they see fit, in order for the legislatures to share views and expertise on issues related to the envisaged partnership.
149. The envisaged partnership should encourage civil society dialogue.

#### **B. Management, administration and supervision**

150. The envisaged partnership should establish a governing body responsible for managing and supervising the implementation and operation of the envisaged partnership, facilitating the resolution of disputes as set out below. It should take decisions and make recommendations concerning its evolution.
151. The governing body should comprise the Parties' representatives at an appropriate level, reach decisions by mutual consent, and meet as often as required to fulfil its tasks. If necessary, that body could also establish specialised sub-committees to assist it in the performance of its tasks.

#### **C. Interpretation**

152. In full respect of the autonomy of the Parties' legal orders, the envisaged partnership should be consistently interpreted and applied.

#### **D. Dispute settlement**

153. The envisaged partnership should include appropriate arrangements for dispute settlement and enforcement, including provisions for expedient problem-solving. To that end, it should include provisions to encourage the Parties to make every attempt to resolve any matter concerning the operation of the envisaged partnership through discussion and consultation, including in the framework of the governing body for formal resolution.
154. The governing body may, where applicable, agree to refer the dispute to an independent arbitration panel at any time, and either Party should be able to do so where the governing body has not arrived at a mutually satisfactory resolution within a defined period of time. The decisions of the independent arbitration panel should be binding on the Parties.

155. Should a dispute raise a question of interpretation of Union law, which may also be indicated by either Party, the arbitration panel should refer the question to the CJEU as the sole arbiter of Union law, for a binding ruling. The arbitration panel should decide the dispute in accordance with the ruling given by the CJEU.
156. Where a Party fails to take measures necessary to comply with the binding resolution of a dispute within a reasonable period of time, the other Party would be entitled to request financial compensation or take proportionate and temporary measures, including suspension of its obligations within the scope of the envisaged partnership. As provided for in Article 178(2) of the Withdrawal Agreement, the envisaged partnership should set out the conditions under which one Party, in case there is a persistence by the other Party in not complying with an arbitration panel ruling referred to in Article 173 of the Withdrawal Agreement, may suspend obligations arising from any part of the envisaged partnership as well as from supplementary agreements.

### **3. CLASSIFIED AND SENSITIVE NON-CLASSIFIED INFORMATION**

157. The envisaged partnership should provide for reciprocal guarantees for the handling and protection of the Parties' classified information.
158. Where necessary, the Parties should set out the terms for the protection of sensitive non-classified information provided and exchanged between them.

### **4. EXCEPTIONS AND SAFEGUARDS**

159. The envisaged partnership should provide for appropriate exceptions. These should include the disclosure of information related to the Parties' security interests.
160. The envisaged partnership should address the possibility for a Party to activate temporary safeguard measures that would otherwise be in breach of its commitments in case of circumstances of significant economic, societal or environmental difficulties. This should be subject to strict conditions and include the right for the other Party to rebalancing measures. The measures taken should be subject to independent arbitration.

## **IV. TERRITORIAL SCOPE**

161. Any agreement between the Union and the United Kingdom negotiated on the basis of these negotiating directives should be without prejudice to the Protocol on Ireland/Northern Ireland and to the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.
162. Any agreement between the Union and the United Kingdom negotiated on the basis of these negotiating directives will not include Gibraltar.

## **V. AUTHENTIC LANGUAGES**

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



## **VI. PROCEDURAL ARRANGEMENTS FOR THE CONDUCT OF THE NEGOTIATIONS**

164. The Commission should conduct the negotiations in continuous coordination and permanent dialogue with the Council and its preparatory bodies. In this respect, the Council and Coreper, assisted by [name of the special committee], should provide guidance to the Commission.
165. The Commission should, in a timely manner, consult and report to the preparatory bodies of the Council. To that end, the Council should organise before and after each negotiating session a meeting of the [name of the special committee]. The Commission should provide in a timely manner all necessary information and documents relating to the negotiations.
166. The Commission should, in a timely manner, keep the European Parliament fully informed of the negotiations.
167. The Commission should conduct the negotiations in cooperation with the High Representative of the Union for Foreign Affairs and Security Policy and in agreement with him for CFSP matters.