

PROTOCOL ON GIBRALTAR

The Union and the United Kingdom,

RECALLING that the United Kingdom is responsible for Gibraltar's external relations, and that Union law is applicable to Gibraltar to the extent provided in the 1972 Act of Accession by virtue of Article 355(3) TFEU,

RECALLING that this Protocol is to be implemented in accordance with the respective constitutional orders of the Kingdom of Spain and of the United Kingdom,

RECALLING that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement"), the law of the European Union and of Euratom in its entirety ceases, to apply to the United Kingdom, and therefore to Gibraltar, from the date of entry into force of the Withdrawal Agreement,

CONSIDERING that it is necessary to ensure an orderly withdrawal from the Union in relation to Gibraltar,

STRESSING that the orderly withdrawal of the United Kingdom from the Union in relation to Gibraltar implies that any potential negative effect on the close social and economic relations between Gibraltar and the surrounding area, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar in the Kingdom of Spain, is adequately addressed,

TAKING NOTE of the commitment of the United Kingdom in respect of Gibraltar to address the payment of benefits in a satisfactory manner by 31 December 2020,

AIMING at continuing to promote balanced economic and social development in the area, in particular in terms of labour conditions, and continuing to ensure the highest levels of environmental protection in accordance with Union law, as well as continuing to strengthen security for the inhabitants of the area, in particular through cooperation in police and customs matters,

ACKNOWLEDGING the benefits for the economic development of the area arising from the free movement of persons under Union law, which will continue to apply during the transition period,

REAFFIRMING in particular the ambition to protect public health, and highlighting the necessity to fight against the serious health, social, and economic consequences of smoking,

EMPHASISING also the need to combat fraud and smuggling and to protect the financial interests of all the parties concerned,

UNDERLINING that this Protocol is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to sovereignty and jurisdiction,

TAKING NOTE of the Memoranda of Understanding concluded between the Kingdom of Spain and the United Kingdom on [xx] November 2018 in relation to citizens' rights, tobacco and other products, cooperation on environmental matters and cooperation in police and customs matters, as well as the agreement reached on [xx] November 2018 to conclude a treaty on taxation and the protection of financial interests,

HAVE AGREED UPON the following provisions, which shall be annexed to the Withdrawal Agreement:

ARTICLE 1

Citizens' rights

1. The Kingdom of Spain ("Spain") and the United Kingdom in respect of Gibraltar shall closely cooperate with a view to preparing and underpinning the effective implementation of Part Two of the Withdrawal Agreement on citizens' rights, which fully applies, *inter alia*, to frontier workers residing in Gibraltar or in Spain, in particular in the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, and which, in Articles 24 and 25 provide for specific rights for frontier workers.
2. To that effect, the competent authorities shall exchange up-to-date information on a quarterly basis on persons covered by Part Two of the Withdrawal Agreement who reside in Gibraltar or in the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, including, in particular, frontier workers.
3. Spain and the United Kingdom shall establish a coordinating committee as a forum for regular discussion between the competent authorities to monitor matters relating to employment and labour conditions. That coordinating committee shall report to the Committee on issues related to the implementation of the Protocol on Gibraltar established by Article 165 of the Withdrawal Agreement ("Specialised Committee") on a regular basis.

ARTICLE 2

Air transport law

Union law on air transport which did not apply to the Gibraltar airport before 30 March 2019 shall only become applicable to the Gibraltar airport from the date established by the Joint Committee. The Joint Committee shall adopt the decision thereon upon notification by the United Kingdom and Spain that they have reached a satisfactory agreement on the use of the Gibraltar airport.

ARTICLE 3

Fiscal matters and protection of financial interests

1. Spain and the United Kingdom in respect of Gibraltar shall establish the forms of cooperation necessary to achieve full transparency in tax matters and in respect of the protection of financial interests of all the parties concerned, in particular by establishing an enhanced system of administrative cooperation to fight against fraud, smuggling and money laundering, and to resolve tax residence conflicts.

2. The international standards of the Group of Twenty (G20) and of the Organisation for Economic Co-operation and Development (OECD) relating to good fiscal governance, transparency, exchanges of information and harmful tax practices and in particular the economic substance criteria established by the OECD Forum on Harmful Tax Practices shall be complied with in Gibraltar, with a view to Gibraltar's participation in the OECD Inclusive Framework on base erosion and profit shifting (BEPS).

3. The United Kingdom shall ensure that its ratification of the Framework Convention on Tobacco Control, adopted in Geneva on 21 May 2003, and the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted in Seoul on 12 November 2012, is extended to Gibraltar by 30 June 2020.

Without prejudice to the first subparagraph, the United Kingdom shall ensure that a system of traceability and security measures relating to tobacco products that is equivalent to the requirements and standards of Union law is in force in Gibraltar by 30 June 2020. That system shall ensure reciprocal access to the information on traceability of cigarettes in Spain and Gibraltar.

4. In order to prevent and deter the smuggling of products subject to excise duties or special taxes, the United Kingdom shall ensure that, in respect of alcohol and petrol, a tax system which aims at preventing fraudulent activities involving those products is in force in Gibraltar.

ARTICLE 4

Environment protection and fishing

Spain and the United Kingdom shall establish a coordinating committee as a forum for regular discussion between the competent authorities of issues concerning in particular waste management, air quality, scientific research and fishing. The Union shall be invited to participate in the meetings of that coordinating committee. That coordinating committee shall report to the Specialised Committee on a regular basis.

ARTICLE 5

Cooperation in police and customs matters

Spain and the United Kingdom shall establish a coordination committee as a forum for monitoring and for coordination between the competent authorities of any questions related to cooperation in police and customs matters. The Union shall be invited to participate in the meetings of that coordination committee. That coordinating committee shall report to the Specialised Committee on a regular basis.

ARTICLE 6

Tasks of the Specialised Committee

The Specialised Committee shall:

- (a) facilitate the implementation and application of this Protocol;
- (b) discuss any point of relevance to this Protocol giving rise to a difficulty and raised by the Union or the United Kingdom;
- (c) examine the reports from the coordination committees referred to in this Protocol; and
- (d) make recommendations to the Joint Committee as regards the functioning of this Protocol.