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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Trade and Cooperation Agreement concluded between the European Union and the United Kingdom was signed on 30 December 2020, applied provisionally as of 1 January 2021 and entered into force on 1 May 2021.

In accordance with the negotiating directives of 25 February 2020 (Council Decision (EU, Euratom) 2020/266¹), the Trade and Cooperation Agreement does not include nor has any effect on Gibraltar. This does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar in line with the Declaration of the European Council and of the European Commission included in the minutes of the European Council (Article 50) meeting of 25 November 2018².

On 31 December 2020, Spain and the United Kingdom agreed on a political framework for a future Agreement in respect of Gibraltar between the European Union and the United Kingdom.

On 5 October 2021, the Council adopted the Decision authorising the opening of the negotiations for an agreement with the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar. The Commission was appointed as the Union negotiator. The Council Decision also included an addendum with the directives for the negotiation of such agreement ('negotiating directives').

The Commission conducted the negotiations in consultation with the Working Party on the United Kingdom of the Council and kept the European Parliament fully informed, notably via its United Kingdom Contact Group.

The negotiations were completed on 12 December 2025, after more than four years of negotiations. The negotiations could only be finalised at a very late stage due to the complex political and legal issues to be solved in the areas of movement of persons and goods covered by the Agreement.

As the future Agreement contains a provision on civil nuclear cooperation to which the European Atomic Energy Community is a party, a Recommendation for a Council decision on the approval of that provision is submitted together with this proposal under a separate procedure. For easy reference though, the provision on civil nuclear cooperation is kept in the body of the Agreement in respect of Gibraltar between the European Union and the United Kingdom of Great Britain and Northern Ireland.

The entry into application of the Agreement is a matter of special urgency. The Agreement foresees the removal of all physical barriers between the territory of the Union and Gibraltar. The European Union's new Entry/Exit System, replacing manual stamping of passports with digital recording of third country nationals entering the Schengen area, is currently in a progressive rollout with full operational

¹ Council Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership (OJ L 58, 27.2.2020, p. 53)

² EUCO XT 20017/18.

deployment expected at all external borders of the 29 participating countries by 10 April 2026. If the Agreement in respect of Gibraltar does not apply by 10 April 2026, fully-fledged border control will need to be put in place between the territory of the Union and Gibraltar. This will significantly disrupt individuals, businesses and other stakeholders operating in the area of Campo del Gibraltar and go against the very purpose of the Agreement, which is to create an area of shared prosperity to the benefit of both the Union and Gibraltar.

In light of these exceptional circumstances, the Commission proposes to apply the Agreement on a provisional basis for a short period from the date of full deployment of the Entry/Exit System until first day of the month following that in which Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

- **Consistency with existing policy provisions in the policy area**

The Trade and Cooperation Agreement established a new relationship between the Union and the United Kingdom following the withdrawal of the United Kingdom from the European Union and from the European Atomic Energy Community – without including Gibraltar.

The Agreement complements the Trade and Cooperation Agreement from that perspective and constitutes the last piece of the close partnership between the Union and the United Kingdom for which the European Council called following the withdrawal of the United Kingdom.

- **Consistency with other Union policies**

The Agreement fully respects the Treaties and preserves the integrity and the autonomy of the Union legal order. It will not require the Union to amend its rules, regulations or standards in any regulated area. It promotes the values, objectives, and interests of the Union, and ensures the consistency, effectiveness and continuity of its policies and actions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Substantive legal basis**

The proposed substantive legal basis for the Council Decision on conclusion is Article 217 TFEU. This legal basis is the most appropriate given the broad scope of the envisaged agreement and the fact that it complements, in respect of Gibraltar, the Trade and Cooperation Agreement.

Article 217 of the Treaty on the Functioning of the European Union (TFEU) provides for the possibility to establish an association between the Union and a third country.

Given that the main objective and component of the Agreement is association with a third country, the substantive legal basis is Article 217 TFEU.

- **Procedural legal basis**

In accordance with Article 218(6) TFEU, where the agreement relates to matters outside of the common foreign and security policy (CFSP), the Council is to adopt a decision concluding the agreement on a proposal by the Commission as negotiator.

Given that Article(s) 217 TFEU is the substantive legal basis, the Council is to adopt the decision concluding the agreement after obtaining the consent of the European Parliament, in accordance with Article 218(6), point (a) subpoint (i).

Pursuant to Article 218(8), second subparagraph, TFEU, the Council acts by unanimity when the agreement is an association agreement. In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve on the EU's behalf certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement.

Therefore, the procedural legal basis for the proposed decision on concluding the agreement is Article 218(6), second subparagraph, point (a) TFEU, Article 218(7) TFEU and Article 218(8), second subparagraph, TFEU.

- **Union competence**

Pursuant to Article 217 TFEU, the Union has competence to conclude association agreements with third countries.

- **Choice of the instrument**

This proposal for a Council decision is submitted in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of a decision concluding the agreement. There exists no other legal instrument that could be used in order to achieve the objective pursued by this proposal.

3. OTHER ELEMENTS

- **Implementation by bodies established under the Agreement**

Title V of Part One of the Agreement establishes a Cooperation Council that will oversee the attainment of the objectives of that Agreement and of any supplementing agreement. The Cooperation Council is comprised of representatives of the Union and of the United Kingdom who will meet at least once a year and will supervise and facilitate the implementation and application of the Agreement and of any supplementing agreement.

The Cooperation Council may adopt decisions in respect of all matters for which the Agreement or any supplementing agreement so provides. The Cooperation Council can only take its decisions and make recommendations by mutual agreement between the Union and the United Kingdom. It can in no way restrict the decision-making at Union level. The Union and the United Kingdom may, through the Cooperation Council or Specialised Committees, decide to amend certain aspects of the Agreement or of any supplementing agreement, only in those cases specifically provided therein. When the Parties approve such a decision, it has to be subject to their respective applicable internal requirements and procedures.

In the performance of its tasks, the Cooperation Council will be assisted by Specialised Committees.

The Agreement establishes the following Specialised Committees:

- (a) The Specialised Committee on Circulation of Persons;
- (b) The Specialised Committee on Economy and Trade;
- (c) The Specialised Committee on Aviation.

The Cooperation Council may establish or dissolve Specialised Committees.

The Agreement also provides for a role for the Cooperation Council in dispute settlement, which is addressed in Chapter 1 of Part Six of the Agreement.

- **Implementation and application of the Agreement in the Union**

In accordance with Article 216(2) TFEU, agreements concluded by the Union are binding upon the institutions of the Union and its Member States.

To guarantee compliance with the obligations under the Agreement, there are robust enforcement mechanisms. The Agreement provides the possibility for the Parties to take swift, autonomous and operational measures to protect their interests, including in particular in the areas of the level playing field (i.e. remedial measures, rebalancing measures), as well as, more generally, in cases of serious economic, societal or environmental difficulties of a sectorial or regional nature. It is important for the Union to be fully able to deploy these enforcement measures rapidly and effectively. For this purpose, the Commission should be empowered to suspend the implementation of obligations in accordance with Article 67, to take rebalancing measures in the area of anti-money laundering in accordance with Article 198(6), to take remedial measures in the area of state aid in accordance with Article 209(3), to take safeguard measures in the area of indirect taxation in accordance with Article 249 or to suspend the Agreement, to take the appropriate measures in accordance with Article 252 or to take remedial measures in the area of road transport in accordance with Article 284.

In accordance with the Treaties, the Commission will also act on behalf of the Union on all steps of the procedure regarding dispute settlement under Chapter I of Part Six of the Agreement.

- **Detailed explanation of the specific provisions of the Agreement**

The Agreement is premised on the recognition of democracy, rule of law and human rights, as well as the fight against climate change and countering proliferation of weapons of mass destruction. A breach of any of these essential elements allows the Parties to terminate or suspend the operation of the Agreement or any supplementing agreement in whole or in part. The Parties also affirm their commitment to applying Union *acquis* on personal data protection.

The Agreement aims at removing all physical barriers to the movement of persons and goods between the territory of the Union and Gibraltar and covers cooperation in fields necessary to establish an area of shared prosperity. It is without prejudice the positions on sovereignty and jurisdiction of Spain and the United Kingdom.

The Agreement consists of seven Parts (further divided into Titles and Chapters), three Protocols and a number of Annexes, as follows:

Part One (Common and Institutional Provisions) contains the common provisions setting out the basis for cooperation, principles of interpretation and definitions and the institutional framework. It highlights that the Agreement is without prejudice to the issues of sovereignty and jurisdiction over the territory of Gibraltar.

Part One outlines the essential elements of the relationship: safeguard of human rights and fundamental freedoms, democratic principles, rule of law including the United Kingdom's continued commitment to respect the European Convention on Human Rights, support for non-proliferation, fight against climate change, as elaborated in the United Nations Framework Convention on Climate Change process

and in particular in the Paris Agreement. It also recalls the Parties' commitment to promoting effective and rule-based multilateralism. It contains provisions ensuring that the United Kingdom's aligns to the Union's personal data protection rules over time. It also provides for rules governing the civil nuclear cooperation between the Parties. Furthermore, Part One contains two important horizontal principles: the removal of all barriers to the circulation of goods and persons, and the communication with Gibraltar through the United Kingdom, as Gibraltar remains a non-self-governing territory.

Part One also sets out the procedure for the United Kingdom to apply Union law where foreseen by the Agreement over time, and the institutional provisions for an overall governance framework covering all areas of cooperation. It establishes a governing body (Cooperation Council) responsible for managing and supervising the implementation and application of the agreement, facilitating the resolution of disputes, inspired by the Trade and Cooperation Agreement model, while ensuring a role for the European Court of Justice for the interpretation of Union law applied in the context of the Agreement. The Cooperation Council would be assisted by three specialised committees (the Committee on Circulation of Persons, the Committee on Economy and Trade as well as the Committee on Aviation) with specific powers and tasks based on the needs of each sector.

Part Two (Circulation of Persons) envisages a bespoke model which sets out the rules for the elimination of the existing border and the checks for the movement of persons between Gibraltar and the Schengen area. It establishes Schengen border crossing points at Gibraltar airport and port for the conduct of Schengen border control.

Part Two provides for the removal of the current physical infrastructure between Gibraltar and Spain. It ensures that external border control (checks and surveillance) takes place at Gibraltar airport and port, including adjacent waters, under the responsibility of Spain who will apply the relevant EU rules and have the necessary powers to apply those rules with limited exceptions, in particular concerning coercive actions on the basis of alerts in the Schengen Information System, which will have to be agreed with the United Kingdom in certain cases. In addition, in case of a European Arrest Warrant, the wanted person may choose to be refused entry instead of being arrested.

Although Schengen rules will be applied at the external borders, Gibraltar will not become part of the Schengen area. Part Two establishes a number of safeguard measures to ensure the integrity and security of the Schengen area and address irregular migration risks. The application of Schengen rules in Gibraltar will be subject to regular verification in the form of Schengen evaluations. Administrative arrangements between Spain and the United Kingdom will detail the relevant practical modalities for the application of this Part.

Part Two also provides for a series of additional safeguard measures:

- Rules for the issuance of residence permits in Gibraltar – with a veto for Spain;
- Rules for visas – with Spain being entrusted with the issuance of short stay visas for stays with main purpose Gibraltar where the first entry is in Gibraltar and with a special role in the issuance of exceptional external borders visas;

- Special rules on the minimum conditions under which legislation may allow for a right of residence in Gibraltar as well as for risk assessment and the imposition of travel restrictions on residents in Gibraltar in justified cases;
- Rules for the examination of applications for international protection – with a consultation role for Spain;
- Rules related to security and cooperation on law enforcement;
- Rules related to judicial cooperation in criminal matters and cooperation between criminal justice authorities – similar to what is included in the Trade and Cooperation Agreement;
- Specific rules for the implementation, application, evaluation and enforcement of the provisions on circulation of persons – including a specific evaluation mechanism after an initial four years of implementation, which may lead to the termination of the Agreement including upon request from Spain.

Finally, Part Two covers anti-money laundering and counter-terrorism financing, where Parties reiterated their commitments to supporting international efforts to prevent and combat money laundering and terrorist financing. It further ensures that the United Kingdom in respect of Gibraltar does not apply standards on preventing money laundering and terrorist financing lower than those applicable in the Union at the time of entry into force of the agreement.

Part Three (Economy and Trade) sets out the provisions to ensure the removal of the existing physical barriers between Gibraltar and the Union while guaranteeing an open and fair competition. It also contains provisions on transport by road, air and sea.

On **level playing field**, Part Three includes a robust framework of commitments to ensure open and fair competition and contribute to sustainable development. These commitments take into account the scope and depth of the Agreement, the overall relationship and the economic connectedness between the Union and Gibraltar. Union standards and international standards applied within the Union are upheld as a reference point. The Agreement provides for an adequate mechanism to ensure the enforcement of these commitments.

- On **State aid**, the Agreement ensures the application of relevant Union law by the authorities in Gibraltar to and in Gibraltar. It provides for mechanisms addressing the evolution of such rules over time in order to avoid distortion of trade or competition and provides for an effective enforcement mechanism;
- On **direct taxation**, the Agreement follows the model of the Trade and Cooperation Agreement as it envisages commitments for both parties to implement the principles of good governance, including the global standards on transparency and exchange of information, fair taxation and the OECD standards against base erosion and profit shifting. It also includes a joint declaration on countering harmful tax practices. In addition, it provides for commitments upholding levels of protection that refer to Union law and standards, as they stand at the time of signature of the Agreement;
- On **labour and social standards**, as in the Trade and Cooperation Agreement, the Agreement provides that Parties will uphold the high level of protection existing at the end of the transition period, with Union standards as reference points;

- On **environment and climate**, the Agreement commits the United Kingdom in respect of Gibraltar to upholding environmental and climate levels of protection equivalent to the levels in place in the Union over time. It includes commitments ensuring that the system of carbon pricing applying in Gibraltar will have an equivalent scope and effectiveness as the one in place in the Union over time. Furthermore, it provides that both parties will respect the internationally recognised environmental principles to which they have committed. It finally provides that cooperation in the field of environment could be underpinned by administrative arrangements between Spain and the United Kingdom in respect of Gibraltar;
- On other **instruments for trade and sustainable development**, the Agreement broadly corresponds to the commitments included in the Trade and Cooperation Agreement, while being commensurate to the relationship with the United Kingdom in respect of Gibraltar.

Regarding **customs and related issues**, the Agreement establishes a customs union between the Union and the United Kingdom, in respect of Gibraltar, which, together with the application of the relevant Union acquis in Gibraltar, should allow the removal of physical barriers (including any related formalities for goods moving between Gibraltar and the Union after the open-ended transition period) while protecting the integrity of the Union's Single Market and the Union's financial interests. It is accompanied by tax and customs cooperation and entire alignment of the indirect taxation system of Gibraltar with Union legislation after a transition period. During the transition period, the competent authorities within the Union will perform all customs related formalities on behalf of Gibraltar, while Gibraltar would levy its own transaction tax and excise-like taxes on import and production and excise duties, both in principle aligned to EU rates, after a transitory period of three years. With some exceptions, Gibraltar port and airport will be closed for commercial traffic, until the definitive period in which Gibraltar will also become part of the Union fiscal territory and will apply directly Union legislation on indirect taxation and on import and export. The Agreement also foresees appropriate checks and controls carried out by Spanish authorities or together by authorities of Spain and of the United Kingdom in respect of Gibraltar, use of the Spanish IT infrastructure, monitoring by the Union and Spanish authorities of some related activities by the competent authorities in respect of Gibraltar. Administrative arrangements between Spain and the United Kingdom in respect of Gibraltar will detail the relevant practical modalities for the application of this Part.

Regarding **transport**, the Agreement includes provisions ensuring road transport for goods and passengers similar to what is in the Trade and Cooperation Agreement. It includes an additional provision on maritime transport, providing access to EU ports and port services, in line with international standards. It also contains provisions on aviation related to the division of oversight and management responsibilities at Gibraltar airport. The Agreement outlines the authorised operations of each party airlines.

Part Four (Frontier Workers) sets out the provisions ensuring the rights of frontier workers. It offers a level of protection similar to that under the Withdrawal Agreement. The detailed social security provisions are included in a separate Protocol.

Regarding **Frontier Workers**, the Agreement ensures that Union citizens residing legally in Spain and United Kingdom nationals legally residing in Gibraltar³, and their respective family members, enjoy in Gibraltar and Spain respectively, a right to take up an activity as an employed person and to pursue such activity in accordance with the rules applicable in the United Kingdom in respect of Gibraltar and in Spain. It also includes provisions for workers that are posted under the agreement in the supply of services that are both locally produced and consumed in the contiguous border zone. Finally, it provides for social security coordination between Spain and the United Kingdom in respect of Gibraltar corresponding to the above mobility.

Part Five (Financial Provisions) contains provisions on a financial mechanism attached to the Agreement.

Such financial mechanism will promote cohesion between Gibraltar and the Campo de Gibraltar, including on matters of training and employment, will be funded by both parties, and will include measures for the protection of the Union's financial interests against fraud and other illegal activities. The specificities of the mechanism are to be established at a later stage by the Cooperation Council. The Union will meet its financial obligation through reallocation of existing funds granted to Spain. With the agreement of the Kingdom of Spain, the Spanish cohesion funds envelop will be used for the EU contribution to the mechanism.

Part Six (Dispute Settlement) contains provisions on dispute settlement and fulfilment of obligations, supervision and enforcement.

The Agreement establishes efficient and effective arrangements for its management, supervision, implementation and review, and for the resolution of disputes and enforcement, in full respect of the autonomy of the Parties' respective legal orders. It provides for the possibility of autonomous measures, including the suspension of the application of the Agreement, as well as of any supplementing agreements, in whole or in part in the event of a breach of essential elements or non-compliance with obligations in the areas of movement of persons and goods. It includes arrangements for dispute settlement by an independent arbitration panel and provides for the role of the European Court of Justice in disputes raising a question of interpretation on Union Law.

Part Seven (Final Provisions) covers various elements ranging from the relationship with other agreements, review, confidential information, classified information and sensitive non-classified information to termination and entry into force. The entry into force and operation of the Agreement is subject to the administrative arrangements between Spain and the United Kingdom in respect of Gibraltar as well certain measures foreseen by the Agreement being in place.

Two **Protocols** provide for **administrative cooperation and combating fraud in the field of Value Added Tax and excise duty and on mutual assistance for the recovery of claims relating to taxes and duties** and for **mutual administrative assistance in customs matters**. The Agreement also contains a **Protocol on the traceability, cooperation to fight smuggling of tobacco** and additional measures related to tobacco products.

³ With the exception of those acquiring a right of residence after the signature of the future agreement.

The Protocol on Social Security Coordination sets out a number of social security coordination measures aimed at protecting the social security entitlements of frontier workers as defined by the Agreement.

- **Text of the Agreement and notifications**

The text of the Agreement is submitted to the Council together with this proposal. The text of declarations is submitted together with this proposal. Since declarations were formulated at the stage of the signing, they should then be confirmed in the Council decision on the conclusion.

In accordance with the Treaties, it is for the Commission to proceed to make the notification provided for in Article 336 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(6) and 218(7) and Article 218(8), second subparagraph, thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The United Nations General Assembly Resolutions on decolonisation of the territory of Gibraltar (hereinafter “Gibraltar”) list Gibraltar as a ‘Non-Self-Governing Territory Administered by the United Kingdom of Great Britain and Northern Ireland’ in application of Chapter XI of the Charter of the United Nations.
- (2) In accordance with Article 774(3) of the Trade and Cooperation Agreement,⁴ and in line with the Declaration of the European Council and of the Commission on the territorial scope of future agreements included in the minutes of the European Council meeting of 25 November 2018, the Trade and Cooperation Agreement neither applies to Gibraltar nor has any effects in that territory. As provided for in that Declaration, ‘this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar’ and, ‘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’.
- (3) In accordance with Council Decision No (EU) ..., the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (‘the Agreement’) was signed on [...], subject to its conclusion at a later date, [and has been applied on a provisional basis from 10 April 2024 pending its entry into force].
- (4) The Agreement, or any activity or measure taken in application or as a result thereof, does not imply any modification of the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction in relation to Gibraltar.

⁴ The Trade and Cooperation Agreement concluded between the European Union and the United Kingdom was signed on 30 December 2020, applied provisionally as of 1 January 2021 and entered into force on 1 May 2021.

- (5) As the authorities of Gibraltar have a local character and exercise exclusively internal competences, any participation of these authorities in the application of this Agreement should be considered as conducted exclusively within the internal competences of Gibraltar, unless otherwise specifically provided for.
- (6) The Agreement establishes the basis for the removal of all physical barriers between the territory of the Union and Gibraltar, and the establishment of an area of shared prosperity, in respect of Gibraltar, in the adjacent territory of Spain, involving reciprocal rights and obligations, common actions and special procedures. The decision on the signing of the Agreement should therefore be based on the legal basis providing for the establishment of an association allowing the Union to enter into commitments in all areas covered by the Treaties.
- (7) The suppression of physical barriers between the territory of the Union and Gibraltar is without prejudice to the responsibilities of Spain over its external borders under European Union law.
- (8) The conclusion of the Agreement as regards matters falling under the competence of the European Atomic Energy Community is subject to a separate procedure.
- (9) The Commission, as provided for in Article 17(1) of the Treaty on European Union ('TEU'), is to represent the Union and to express the Union's positions as established by the Council in accordance with the Treaties. The Council is to exercise its policy-making and coordinating functions as provided for in Article 16(1) TEU by establishing the positions to be taken on the Union's behalf in the Cooperation Council and the Specialised Committees established by the Agreement. Furthermore, where the Cooperation Council or the Specialised Committees established by the Agreement are called upon to adopt acts having legal effects, the positions to be taken on the Union's behalf in those bodies are to be established in accordance with the procedure set out in Article 218(9) TFEU.
- (10) One or more Member States may request that the Commission representative be accompanied, as part of the Union delegation, by a representative of that or those Member States in a meeting of the Cooperation Council and Specialised Committees established by the Agreement.
- (11) The European Parliament is to be immediately and fully informed, as provided in Article 218(10) TFEU, in order to allow it to exercise fully its prerogatives in accordance with the Treaties.
- (12) The Kingdom of Spain, as the neighbouring Schengen State in charge of performing external border control at Gibraltar port and airport, may, after an evaluation of the implementation of the part of the Agreement on circulation of persons, request the Union to terminate the Agreement.
- (13) The authorities of the Kingdom of Spain should be the competent authorities within the Union for the purposes of the application of the customs related provisions of the Agreement, unless otherwise provided for.
- (14) The authorities of the Kingdom of Spain should provide the assessment of the functioning of the relevant bilateral administrative arrangements, which will be part of the evaluation by the Cooperation Council of the implementation of Part Two of the Agreement after a 4-year period.
- (15) Pursuant to Article 218(7) TFEU, it is appropriate to authorise the Commission to define the modalities for deciding on the positions to be taken, in consultation with

Spain, on the Union's behalf in the Specialised Committees established by the Agreement in order to ensure that the legal acts adopted by the Union in the fields covered by the Agreement are incorporated into the Agreement as soon as possible after their adoption and notification to the United Kingdom with a view to ensuring, to the extent possible, the simultaneous application of these legal acts in the Union and the United Kingdom in respect of Gibraltar.

- (16) It is also appropriate to authorise the European Commission, pursuant to Article 218(7) TFEU, to approve, in consultation with Spain, on the Union's behalf certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement in accordance with the provisions of the Agreement. The procedure of consultation of the Council regarding such modifications should be established.
- (17) With a view to enable the Union to take rapid and effective action to protect its interests in accordance with the Agreement, and in accordance with the conditions set out in the corresponding provisions of the Agreement, the Commission should be empowered to take, in consultation with Spain, remedial measures, such as the suspension of the Agreement or any supplementing agreement, in cases of breaches of certain provisions of the Agreement or non-fulfilment of certain conditions, notably in the areas of circulation of persons, State aid, indirect taxation and trade in goods, as well as to take appropriate remedial and rebalancing measures. The rights of the Council should be preserved in this context by a consultation procedure.
- (18) Whenever the Union is required to act in order to comply with the provisions of the Agreement, such action is to be taken in accordance with the provisions of the Treaties, while respecting the limits of the powers conferred upon each institution. It is therefore for the Commission to provide the United Kingdom with the information or notifications required in the Agreement, except where the Agreement refers to other specific institutions, bodies, offices and agencies of the Union and to consult the United Kingdom on specific matters. It is also for the Commission to represent the Union before the arbitration tribunal where a dispute has been submitted to arbitration in accordance with the Agreement.
- (19) The Agreement should be approved and the declarations attached to this Decision be made..
- (20) The Commission should proceed, on behalf of the Union, to the deposit of the instrument of approval provided for in Article 336 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement') is hereby approved.

The declarations attached to this Decision are hereby approved⁵.

⁵ The Declaration(s) is/are published in OJ L,, ELI

Article 2

- (1) The European Commission shall represent the Union with the Cooperation Council and the Specialised Committees established by the Agreement.
- (2) One or more Member States may request that the Commission representative be accompanied as part of the Union delegation, by a representative of that or those Member States in a meeting of the Cooperation Council or of a Specialised Committee in case particular matters to be addressed at that meeting are of specific interest to that or those Member States. In particular, the Kingdom of Spain may request that the Commission representative be accompanied by a representative of the Kingdom of Spain in all relevant meetings under this Agreement.
- (3) When the Commission represents the Union in the Cooperation Council and the Specialised Committees established by the Agreement, it shall inform the Council in a timely manner about the discussions and the outcome of the meetings and of acts adopted in those meetings, and, upon request, shall provide minutes and other documents relating to such meetings or procedure. The Commission shall also inform the European Parliament, as appropriate.

Article 3

The position to be taken, on behalf of the Union as regards decisions of the Specialised Committees established by the Agreement in view of the application of Union legal acts to the United Kingdom in respect of Gibraltar, subject to any technical adjustments needed, shall be adopted by the Commission in consultation with Spain.

Article 4

- (1) Any decision of the Union to take the following measures under the Agreement shall be taken by the Commission in consultation with Spain, in accordance with the conditions set out in the corresponding provisions of the Agreement:
 - (a) the suspension of the implementation of obligations in accordance with Article 67;
 - (b) the application of rebalancing measures as set out in Article 198(6);
 - (c) the application of remedial measures as set out in Article 209(3);
 - (d) the use of the safeguard procedure provided for in Article 249;
 - (e) the suspension of the Agreement or application of measures as set out in Article 252;
 - (f) the application of remedial measures as set out in Article 284.
- (2) The Commission shall fully inform the Council in a timely manner of its intention to adopt the proposed measures set out in paragraph 1 and take into account the possible views expressed. The Commission shall also inform the European Parliament, as appropriate.
- (3) The Commission in consultation with Spain may also adopt measures reinstating the rights and obligations under the Agreement as they existed prior to the adoption of measures provided in paragraph 1.

Article 5

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*