Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the Functioning of the European Union, hereinafter referred to as ‘the Member States', and

THE EUROPEAN UNION,

Of the one part, and

THE REPUBLIC OF KAZAKHSTAN,

Of the other part,

Hereinafter jointly referred to as ‘the Parties',

CONSIDERING the strong links between the Parties and their common values, and their wish to further strengthen and extend links established in the past through the implementation of the Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Kazakhstan, signed in Brussels on 23 January 1995, and the European Union — Central Asia Strategy for a New Partnership adopted by the European Council in June 2007 as well as the Republic of Kazakhstan's state programme ‘Path to Europe' adopted in 2008;

CONSIDERING the commitment of the Parties to the full implementation of the principles and provisions of the Charter of the United Nations (‘the UN Charter'), of the Universal Declaration of Human Rights, and of the Organisation for Security and Cooperation in Europe (OSCE), in particular of the Helsinki Final Act, as well as other generally recognised norms of international law;

CONSIDERING the strong commitment of the Parties to strengthen the promotion, protection and implementation of fundamental freedoms and human rights, and the respect for democratic principles, the rule of law, and good governance;

RECOGNISING the strong adherence of the Parties to the following principles in their cooperation in human rights and democracy: the promotion of shared goals, open and constructive political dialogue, transparency, and respect for international human rights standards;

CONSIDERING the commitment of the Parties to adhere to the principles of a free market economy;

RECOGNISING the growing importance of trade and investment relations between the European Union and the Republic of Kazakhstan;

CONSIDERING that the Agreement will further strengthen the close economic relationship between the Parties and create a new climate and better conditions for the further development of trade and investment between them, including in the field of energy;

CONSIDERING the objective of enhancing trade and investment, in all sectors, on an enhanced legal basis, in particular this Agreement and the Agreement Establishing the World Trade Organisation (‘the WTO Agreement');

CONSIDERING the commitment of the Parties to promote international peace and security and the peaceful settlement of disputes, notably by cooperating in an effective manner to that end within the framework of the UN and the OSCE;

CONSIDERING the willingness of the Parties to further develop regular political dialogue on bilateral and international issues of mutual interest;

CONSIDERING the commitment of the Parties to international obligations to fight against the proliferation of weapons of mass destruction and their means of delivery and to cooperate in the areas of non-proliferation, and nuclear safety and security;

CONSIDERING the commitment of the Parties to combat the illicit trade and the accumulation of small arms and light weapons and bearing in mind the adoption of the Arms Trade Treaty (‘the ATT') by the UN General Assembly;

CONSIDERING the importance of the active participation of the Republic of Kazakhstan in the implementation of the European Union — Central Asia Strategy for a New Partnership;

CONSIDERING the commitment of the Parties to combat organised crime and trafficking in human beings and to step up cooperation on counter-terrorism;

CONSIDERING the commitment of the Parties to step up their dialogue and cooperation on migration-related issues, with a comprehensive approach aiming at cooperation on legal migration and tackling irregular migration and trafficking in human beings, and recognising the importance of the readmission clause of this Agreement;

DESIROUS of ensuring balanced conditions in the bilateral trade relations between the European Union and the Republic of Kazakhstan;

CONSIDERING the commitment of the Parties to compliance with the rights and obligations arising from the membership of the World Trade Organization (‘the WTO'), and to the transparent and non-discriminatory implementation of those rights and obligations;

CONSIDERING the commitment of the Parties to respect the principle of sustainable development, including by promoting the implementation of multilateral international agreements and regional cooperation;

DESIROUS of enhancing mutually beneficial cooperation in all fields of mutual interest and strengthening its framework as appropriate;

RECOGNISING the need for enhanced energy cooperation, security of energy supply and facilitating the development of appropriate infrastructure, building on the Memorandum of Understanding on cooperation in the field of energy between the European Union and the Republic of Kazakhstan done in Brussels on 4 December 2006, and in the context of the Energy Charter Treaty;

RECOGNISING that all cooperation in the peaceful uses of nuclear energy is governed by the Cooperation Agreement between the European Atomic Energy Community and the Republic of Kazakhstan in the field of nuclear safety, signed in Brussels on 19 July 1999, and does not fall under this Agreement;

CONSIDERING the commitment of the Parties to improve the level of public health safety and protection of human health as a precondition for sustainable development and economic growth;

CONSIDERING the commitment of the Parties to enhanced people-to-people contacts, including through cooperation and exchanges in the fields of science and technology, innovation development, education and culture;

CONSIDERING that the Parties shall promote mutual understanding and convergence of their legislation and regulatory framework, in order to further strengthen mutually beneficial links and sustainable development;

NOTING that in case the Parties decided, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which were to be concluded by the European Union pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of such future agreements would not bind the United Kingdom and/or Ireland unless the European Union, simultaneously with the United Kingdom and/or Ireland as regards their respective previous bilateral relations, notifies the Republic of Kazakhstan that the United Kingdom and/or Ireland has/have become bound by such agreements as part of the European Union in accordance with Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. Likewise, any subsequent EU-internal measures which were to be adopted pursuant to the above mentioned Title V to implement this Agreement would not bind the United Kingdom and/or Ireland unless they have notified their wish to take part or accept such measures in accordance with Protocol No 21. Also noting that such future agreements or such subsequent EU-internal measures would fall within Protocol (No 22) on the position of Denmark annexed to the said Treaties,

HAVE AGREED AS FOLLOWS:

Title I. General Principles and Aims of this Agreement

Article 1. General Principles

Respect for democratic principles and human rights as laid down in the Universal Declaration of Human Rights, the OSCE Helsinki Final Act and the Charter of Paris for a New Europe, and other relevant international human rights instruments, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement.

The Parties reiterate their commitment to the principles of a free market economy, promoting sustainable development and economic growth.

The implementation of this Agreement shall be based on the principles of dialogue, mutual trust and respect, equal partnership, and mutual benefit and full respect for the principles and values enshrined in the UN Charter.

Article 2. Aims of this Agreement

1. This Agreement establishes an enhanced partnership and cooperation between the Parties within the limits of their respective competences, based on common interest and on the deepening of the relationship in all areas of its application.

2. This cooperation is a process between the Parties that contributes to international and regional peace and stability and to economic development, and is structured around principles that the Parties reaffirm also by their international commitments notably under the UN and the OSCE.

Article 3. Cooperation In Regional and International Organisations

The Parties agree to cooperate and exchange views in the framework of regional and international fora and organisations.

Title II. POLITICAL DIALOGUE; COOPERATION IN THE FIELD OF FOREIGN AND SECURITY POLICY

Article 4. Political Dialogue

The Parties shall further develop and strengthen effective political dialogue in all areas of mutual interest in order to promote international peace, stability and security, including in the Eurasian continent, on the basis of international law, effective cooperation within multilateral institutions and shared values.

The Parties shall cooperate with a view to strengthening the role of the UN and the OSCE, and to improve the efficiency of the relevant international and regional organisations.

The Parties shall deepen cooperation and dialogue on issues of international security and crisis management in order to respond to the current global and regional challenges and major threats.

The Parties undertake to strengthen cooperation on all subjects of common interest and in particular the observance of international law, strengthening respect for democratic principles, the rule of law, human rights and good governance. The Parties agree to work towards improving the conditions for further regional cooperation, notably with regard to Central Asia and beyond.

Article 5. Democracy and the Rule of Law

The Parties agree to cooperate in the promotion and effective protection of human rights and the rule of law, including through the relevant international human rights instruments.

Such cooperation shall be achieved through activities mutually agreed upon by the Parties, including by strengthening respect for the rule of law, further enhancing the existing human rights dialogue, further developing democratic institutions, promoting human rights awareness, and enhancing cooperation within the human rights bodies of the UN and the OSCE.

Article 6. Foreign and Security Policy

The Parties shall intensify their dialogue and cooperation in the area of foreign and security policy and shall address, in particular, issues of conflict prevention and crisis management, regional stability, non-proliferation, disarmament and arms control, nuclear security and export control of arms and dual-use goods.

Cooperation shall be based on common values and mutual interests, aiming to increase effectiveness and rapprochement of policy and to make use of bilateral, regional and international fora.

The Parties reaffirm their commitment to the principles of respect for territorial integrity, inviolability of borders, sovereignty and independence, as established in the UN Charter and the OSCE Helsinki Final Act, and their commitment to promote those principles in their bilateral and multilateral relations.

Article 7. Space Security

The Parties shall promote the enhancement of safety, security and sustainability of all space-related activities, and agree to work together at bilateral, regional and international levels with the aim of safeguarding peaceful uses of outer space. Both Parties note the importance of preventing an arms race in outer space.

Article 8. Serious Crimes of International Concern

The Parties reaffirm that the most serious crimes of concern to the international community as a whole should not go unpunished and that their prosecution should be ensured by taking measures at the domestic or international level, including through the International Criminal Court.

Giving due regard to preserving the integrity of the Rome Statute, the Parties agree to conduct a dialogue on, and shall seek to take steps towards universal adherence to, the Rome Statute in accordance with their respective laws, including provision of assistance for capacity building.

Article 9. Conflict Prevention and Crisis Management

The Parties shall enhance cooperation on conflict prevention, the settlement of regional conflicts and crisis management in order to create an environment of peace and stability.

Article 10. Regional Stability

The Parties shall intensify their joint efforts to promote stability and security in Central Asia as well as to improve the conditions for further regional cooperation, on the basis of the principles established by the UN Charter, the OSCE Helsinki Final Act and other relevant multilateral documents, to which both Parties adhere.

Article 11. Countering the Proliferation of Weapons of Mass Destruction

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

The Parties shall cooperate and contribute to countering the proliferation of WMD and their means of delivery through full compliance with and implementation of their respective international treaty obligations and other relevant international obligations in the field of disarmament and non-proliferation. The Parties agree that this provision constitutes an essential element of this Agreement.

Cooperation in this area is implemented, including by:

(a) further developing export control systems in respect of military and dual-use goods and technologies;

(b) establishing a regular political dialogue on the issues covered by this Article.

Article 12. Small Arms and Light Weapons

The Parties shall cooperate and ensure coordination, complementarity and synergy in their efforts to fight against the illicit trade in small arms and light weapons, including their ammunition, at all relevant levels, and agree to continue a regular political dialogue, including in the multilateral framework.

This cooperation shall be implemented by the Parties in full compliance with the existing international agreements and UN Security Council resolutions, as well as their commitments within the framework of other international instruments applicable in this area to which the Parties adhere. Both Parties are convinced in this regard of the value of the ATT.

Article 13. Counter-terrorism

The Parties agree to work together at bilateral, regional and international levels to prevent and combat terrorism in full accordance with the rule of law, international law, international human rights standards, humanitarian law and relevant UN decisions, including the UN Global Counter-Terrorism Strategy.

Cooperation between the Parties shall aim to:

(a) implement, as appropriate, UN resolutions, the UN Global Counter-Terrorism Strategy, and their commitments under other international conventions and instruments on countering terrorism;

(b) exchange information on planned and committed acts of terrorism, forms and methods of carrying these out, and terrorist groups that plan, commit or have committed a crime in the territory of another Party, in accordance with international law and domestic legislation;

(c) exchange experience in the prevention of all forms of terrorism, including public provocation on the internet to commit a terrorist offence, as well as experience with the means and methods of combating terrorism, experience in technical areas, and training, offered or paid by institutions, bodies and agencies of the European Union;

(d) intensify common efforts against financing of terrorism and exchange views about processes of radicalisation and recruitment; and

(e) exchange best practices in the area of protection of human rights in the fight against terrorism.

Title III. Trade and Business

Chapter 1. Trade In Goods

Article 14. Most-favoured-nation Treatment

1. Each Party shall accord most-favoured-nation treatment to goods of the other Party in accordance with Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994), including its interpretative notes, which are incorporated into and made part of this Agreement, mutatis mutandis.

2. Paragraph 1 shall not apply in respect of preferential treatment accorded by either Party to goods of another country in accordance with the GATT 1994.

Article 15. National Treatment

Each Party shall accord national treatment to goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, which are incorporated into and made part of this Agreement, mutatis mutandis.

Article 16. Import and Export Customs Duties

Each Party shall apply import and export customs duties in accordance with its WTO tariff commitments.

Article 17. Import and Export Restrictions

Neither Party may institute or maintain any prohibition or restriction other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, in accordance with Article XI of the GATT 1994, including its interpretative notes, which are incorporated into and made part of this Agreement, mutatis mutandis.

Article 18. Temporary Admission of Goods

Each Party shall grant the other Party exemption from import charges and duties on goods admitted temporarily, in the instances and according to the procedures stipulated by any international convention on the temporary admission of goods binding upon it. This exemption shall be applied pursuant to the legislation of the Party granting the exemption.

Article 19. Transit

The Parties agree that the principle of freedom of transit is an essential condition of attaining the objectives of this Agreement. In that regard, each Party shall provide for freedom of transit through its territory of goods consigned from or destined for the customs territory of the other Party in accordance with Article V of the GATT 1994, including its interpretative notes, which are incorporated into and made part of this Agreement, mutatis mutandis.

Article 20. Safeguard Measures

Nothing in this Agreement shall prejudice or affect the rights and obligations of either Party under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

Article 21. Special Agriculture Safeguard

Nothing in this Agreement shall prejudice or affect the rights and obligations of either Party under Article 5 (Special Safeguard Provisions) of the WTO Agreement on Agriculture.

Article 22. Anti-dumping and Countervailing Measures

1. Nothing in this Agreement shall prejudice or affect the rights and obligations of either Party under Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement').

2. Before final determination is made, the Parties shall ensure the disclosure of all essential facts under consideration which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of the GATT 1994 and Article 12.4 of the SCM Agreement. Disclosures shall allow interested parties sufficient time to make their comments.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during anti-dumping or countervailing investigations.

4. The provisions of this Article shall not be subject to the Dispute Settlement provisions in this Agreement.

Article 23. Pricing

Each Party shall ensure that undertakings or entities to which it grants special or exclusive rights or which it controls, and which sell goods on the domestic market and which also export the same product, maintain separate accounts so that the following shall be clearly ascertained:

(a) the costs and revenues associated with domestic and international activities; and

(b) full details of the methods by which costs and revenues are assigned or allocated to domestic and international activities.

4. These separate accounts shall be based on accounting principles of causality, objectivity, transparency and consistency, according to internationally recognised accounting standards, and be based on audited data.

Article 24. Exceptions

1. The Parties affirm that their existing rights and obligations under Article XX of the GATT 1994 and its interpretative notes shall apply to trade in goods covered by this Agreement, mutatis mutandis. To that end, Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that before taking any measures provided for in subparagraphs (i) and (j) of Article XX of the GATT 1994, the Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of supplying such information, the Party may apply measures under this Article on the good concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

3. The Republic of Kazakhstan may maintain certain measures inconsistent with Articles 14, 15 and 17 of this Agreement, identified in the Protocol on the Accession of the Republic of Kazakhstan to the WTO, until the expiration of the transition periods provided for those measures in that Protocol.

Chapter 2. Customs

Article 25. Customs Cooperation

1. The Parties shall strengthen cooperation in the area of customs in order to ensure a transparent trade environment, facilitate trade, enhance supply-chain security, promote safety of consumers, stem the flows of goods infringing intellectual property rights and fight smuggling and fraud.

2. In order to implement those objectives and within the limits of available resources, the Parties shall cooperate,

Inter alia, to:

(a) improve customs law, harmonise and simplify customs procedures, in accordance with international conventions and standards applicable in the field of customs and trade facilitation, including those developed by the European Union (including Customs Blueprints), the World Trade Organisation and the World Customs Organisation (in particular the Revised Kyoto Convention);

(b) establish modern customs systems, including modern customs clearance technologies, provisions for authorised economic operators, automated risk-based analysis and controls, simplified procedures for the release of goods, postclearance controls, transparent customs valuation, and provisions for customs-to-business partnerships;

(c) encourage the highest standards of integrity in the area of customs, in particular at the border, through the application of measures reflecting the principles set out in the Arusha Declaration of the World Customs Organisation;

(d) exchange best practices, and provide training and technical support for planning and capacity building and for ensuring the highest standards of integrity;

(e) exchange, where appropriate, relevant information and data whilst respecting the Parties' rules on the confidentiality of sensitive data and on personal data protection;

(f) engage in coordinated customs actions between the customs authorities of the Parties;

(g) establish, where relevant and appropriate, mutual recognition of authorised economic operators' programmes and customs controls, including equivalent trade facilitation measures;

(h) pursue, where relevant and appropriate, possibilities for interconnectivity of the respective customs transit systems.

3. The Cooperation Council shall establish a Subcommittee on Customs Cooperation.

4. A regular dialogue shall take place on the issues covered by this Chapter. The Cooperation Committee may establish rules for the conduct of such dialogue.

Article 26. Mutual Administrative Assistance

Without prejudice to other forms of cooperation envisaged in this Agreement, in particular in Article 25, the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

Article 27. Customs Valuation

The Agreement on the Implementation of Article VII of the GATT 1994 shall govern the customs valuation of goods in the trade between the Parties. Its provisions are hereby incorporated into and made part of this Agreement, mutatis mutandis.

Chapter 3. Technical Barriers to Trade

Article 28. Wto Agreement on Technical Barriers to Trade

The Parties affirm that in their relations they will respect the rights and obligations of the WTO Agreement on Technical Barriers to Trade (‘TBT Agreement') which is incorporated into and made part of this Agreement, mutatis mutandis.

Article 29. Technical Regulation, Standardisation, Metrology, Accreditation, Market Surveillance and Conformity Assessment

1. The Parties agree to:

(a) reduce the differences which exist between them in the fields of technical regulation, standardisation, legal metrology, accreditation, market surveillance and conformity assessment, including by encouraging the use of internationally agreed instruments in those fields;

(b) promote the use of accreditation in accordance with international rules in support of conformity assessment bodies and their activities; and

(c) promote the participation and, where possible, the membership of the Republic of Kazakhstan and its relevant bodies in European organisations the activity of which relates to standardisation, metrology, conformity assessment and related

functions.

2. The Parties aim to set up and maintain a process through which gradual alignment of their technical regulations, standards and conformity assessment procedures will be achieved.

3. For areas in which alignment has been achieved, the Parties may consider the negotiation of agreements on conformity assessment and acceptance of industrial products.

Article 30. Transparency

1. Without prejudice to the provisions of Chapter 13 (Transparency) of this Title, each Party shall ensure that its procedures for the development of technical regulations and conformity assessment procedures allow for public consultation of interested parties at an early appropriate stage when comments resulting from the public consultation can still be introduced and taken into account, except where this is not possible because of an emergency or a threat thereof related to safety, health, environmental protection or national security.

2. In accordance with Article 2.9 of the TBT Agreement, each Party shall allow a period for comments at an early appropriate stage following the notification of proposed technical regulations or conformity assessment procedures. Where a consultation process on proposed drafts of technical regulations or conformity assessment procedures is open to the public, each Party shall permit the other Party, or natural or legal persons located in the territory of the other Party, to participate on terms no less favourable than those accorded to natural or legal persons located in the territory of that Party.

3. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are publicly available.

Chapter 4. Sanitary and Phytosanitary Matters

Article 31. Objective

The objective of this Chapter is to set out principles applicable to sanitary and phytosanitary (SPS) measures and animal welfare issues in trade between the Parties. These principles shall be applied by the Parties in a manner which further facilitates trade, while preserving each Party's level of protection of human, animal or plant life or health.

Article 32. Principles

1. The Parties shall ensure that SPS measures are developed and applied on the basis of the principles of proportionality, transparency, non-discrimination and scientific justification.

2. A Party shall ensure that its SPS measures do not arbitrarily or unjustifiably discriminate between its own territory and the territory of the other Party to the extent that identical or similar conditions prevail. SPS measures shall not be applied in a manner which would constitute a disguised restriction on trade.

3. The Parties shall ensure that SPS measures, procedures or controls are implemented and requests for information are addressed by the relevant authorities of each Party without undue delay, and in a manner no less favourable to imported products than to like domestic products.

Article 33. Import Requirements

1. The import requirements of the importing Party shall be applicable to the entire territory of the exporting Party, subject to Article 35 of this Chapter. The import requirements set out in certificates are based on the principles of the Codex Alimentarius Commission (‘Codex'), the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC), unless the import requirements are supported by a science-based risk assessment conducted in accordance with the applicable international rules as provided for in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (‘the SPS Agreement').

2. The requirements set out in import permits shall not contain more stringent sanitary and veterinary conditions than the conditions laid down in the certificates under paragraph 1 of this Article.

Article 34. Equivalence

Upon request by the exporting Party and subject to a satisfactory evaluation by the importing Party, equivalence shall be

recognised by the Parties, following the relevant international procedures, in relation to an individual measure and/or groups of measures and/or systems applicable in general or to a sector or part of a sector.

Article 35. Measures Linked to Animal and Plant Health

1. The Parties shall recognise the concept of pest-free or disease-free areas and areas of low pest or disease prevalence in accordance with the SPS Agreement and the relevant standards, guidelines or recommendations of the Codex, the OIE and the IPPC.

2. When determining pest-free or disease-free areas and areas of low pest or disease prevalence, the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in such areas.

Article 36. Trade Facilitation

1. The Parties shall develop and apply trade facilitation tools on the basis of the recognition by the importing Party of the inspection and certification systems of the exporting Party.

2. Such trade facilitation tools aim at avoiding the inspection by the importing Party of each consignment or each exporting establishment in the territory of the exporting Party according to existing legislation. They may include an approval of an exporting establishment and the establishment of lists of the exporting establishments in the territory of the exporting Party based on guaranties given by the exporting Party.

Article 37. Inspections and Audits

Inspections and audits carried out by the importing Party in the territory of the exporting Party to evaluate the latter's inspection and certification systems shall be performed in accordance with the relevant international standards, guidelines and recommendations. The costs of inspections and audits shall be borne by the Party carrying out the audits and the inspections.

Article 38. Exchange of Information and Cooperation

1. The Parties shall discuss and exchange information on existing SPS and animal welfare measures and on their development and implementation. Such discussions and exchange of information shall, as appropriate, take into account the SPS Agreement and the standards, guidelines or recommendations of the Codex, the OIE and the IPPC.

2. The Parties agree to cooperate on animal and plant welfare through the exchange of information, expertise and experience with the objective of building up capacity in this field. Such cooperation shall be specific to the needs of a Party and be conducted with the aim of assisting each Party in complying with the other Party's legal framework.

3. The Parties shall establish a timely dialogue on SPS issues upon request by either Party to consider matters relating to SPS and other urgent issues covered by this Chapter. The Cooperation Committee may adopt rules for the conduct of such dialogues.

4. The Parties shall designate and regularly update the contact points for communication on matters covered by this Chapter.

Chapter 5. Trade In Services and Establishment

Section 1. General Provisions

Article 39. Objective, Scope and Coverage

1. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down the necessary arrangements in view of improving reciprocal conditions for trade in services and establishment.

2. Nothing in this Chapter shall be construed as imposing any obligation with respect to government procurement subject to the provisions of Chapter 8 (Government Procurement) of this Title.

3. The provisions of this Chapter shall not apply to subsidies granted by the Parties.

4. Consistent with the provisions of this Agreement, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.

5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the European Union or of the Republic of Kazakhstan, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

6. Nothing in this Chapter shall prevent the Parties from applying measures to regulate the entry of natural persons into, or their temporary stay in, their territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, their borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the provisions of this Chapter (1).

7. This Chapter does not apply to measures adopted or maintained by the Parties affecting trade in services and establishment in the audiovisual sector.

(1) The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under this Agreement.

Article 40. Definitions

For the purposes of this Chapter:

(a) ‘measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(b) ‘measures adopted or maintained by a Party' means measures taken by:

(i) central, regional or local governments or authorities of a Party; and

(ii) non-governmental bodies of a Party in the exercise of powers delegated by central, regional or local governments or authorities of a Party;

(c) ‘natural person of the European Union' or ‘natural person of the Republic of Kazakhstan' means a national of one of the Member States of the European Union or of the Republic of Kazakhstan according to their respective legislation;

(d) ‘juridical person' means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(e) ‘juridical person of a Party' means a juridical person of the European Union or of the Republic of Kazakhstan set up in accordance with the law of a Member State of the European Union or of the Republic of Kazakhstan, respectively, and having its registered office, its central administration, or its principal place of business in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of the Republic of Kazakhstan, respectively.

Should the juridical person set up in accordance with the law of a Member State of the European Union or of the Republic of Kazakhstan, have only its registered office or central administration in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of the Republic of Kazakhstan, respectively, it shall not be considered as a juridical person of the European Union or of the Republic of Kazakhstan, respectively, unless it engages in substantive business operations in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of the Republic of Kazakhstan, respectively;

(f) Notwithstanding point (e), with regard to international maritime transport, including intermodal operations involving a sea leg, shipping companies established outside the European Union or the Republic of Kazakhstan and controlled by nationals of a Member State of the European Union or of the Republic of Kazakhstan, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with the respective legislation in that Member State of the European Union or in the Republic of Kazakhstan and fly the flag of a Member State of the European Union or of the Republic of Kazakhstan;

(g) an ‘economic integration agreement' means an agreement substantially liberalising trade in services, including establishment, in accordance with the General Agreement on Trade in Services (GATS), in particular Articles V and V bis of the GATS, and/or containing provisions substantially liberalising establishment in other economic activities meeting, mutatis mutandis, the criteria of Articles V and V bis of the GATS in respect of such activities;

(h) ‘economic activities' shall include activities of an economic nature except economic activities performed in the exercise of governmental authority;

(i) ‘economic activities performed in the exercise of governmental authority' means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

(j) ‘operations' means the pursuit and the maintenance of economic activities;

(k) ‘subsidiary' of a juridical person means a juridical person which is effectively controlled by another juridical person of that Party (1);

(1) A juridical person is controlled by another juridical person if the latter has the power to appoint a majority of its directors or otherwise to legally direct its actions.

(l) ‘branch' of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that such third parties, although knowing that there will, if necessary, be a legal link with the parent body the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;

(m) ‘establishment' means any type of business or commercial presence, including

(i) the constitution, acquisition or maintenance of a juridical person (1); or

(ii) the creation or maintenance of a branch or representative office (2) within the territory of a Party for the purpose of performing an economic activity;

(n) ‘investor' of a Party means a natural or juridical person that seeks to perform or performs an economic activity through setting up an establishment;

(o) ‘services' includes any service (3) in any sector except services supplied in the exercise of governmental authority;

(p) ‘service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

(q) ‘services supplier' means any natural or juridical person that supplies a service;

(r) ‘supply of a service' includes the production, distribution, marketing, sale and delivery of a service.

(1) The terms ‘constitution' and ‘acquisition' of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(2) Representative offices of a juridical person of the other Party are not allowed to carry out an economic activity on a commercial basis in the territory of the Republic of Kazakhstan. The European Union reserves the right to reciprocate in this regard.

(3) For greater clarity, for the purpose of this chapter, services shall be deemed to be those listed in the WTO document MTN.GNS/W/120 in its up to date version.

Section 2. Establishment and Cross-border Supply of Services

Subsection 1. All Economic Activities

Article 41. Scope and Coverage

1. This Subsection applies to measures by the Parties affecting establishment in all economic activities and crossborder supply of services.

2. The Parties confirm their respective rights and obligations arising from their commitments under the GATS.

For greater certainty, in regard to services, the Parties' respective GATS schedules of specific commitments (4), including the reservations and lists of most-favoured-nation exemptions, shall be incorporated into and made part of this Agreement and shall apply.

(4) For the Republic of Kazakhstan the reference includes the Chapter on Services of the Protocol on the Accession of the Republic of Kazakhstan to the WTO.

Article 42. Progressive Improvement of Conditions for Establishment

1. The Cooperation Committee meeting in trade configuration shall make recommendations to the Parties for the further liberalisation of establishment in the context of this Agreement.

2. The Parties shall endeavour to avoid the adoption of any measure which renders the conditions for establishment more restrictive than the situation existing on the day preceding the date of signature of this Agreement.

Article 43. Progressive Improvement of Conditions for Cross-border Supply of Services

1. The Parties fully recognise the importance of liberalising the cross-border supply of services between the Parties.

2. The Cooperation Committee meeting in trade configuration shall make recommendations to the Parties for the further liberalisation of cross-border supply of services in the context of this Agreement.

Subsection 2. Economic Activities other Than Services

Article 44. Scope and Coverage

This Subsection applies to measures by the Parties affecting establishment in all economic activities other than services.

Article 45. Most-favoured-nation Treatment

1. Each Party shall grant to juridical persons of the other Party treatment no less favourable than that it accords to juridical persons of any third country with regard to their establishment.

2. Each Party shall grant to juridical persons of the other Party treatment no less favourable than that it accords to juridical persons of any third country with regard to the operation of juridical persons of the other Party established in the former Party's territory.

3. Any advantage, favour, privilege or immunity granted, in relation with local content requirements, by the Republic of Kazakhstan to juridical persons of a WTO member established in the Republic of Kazakhstan in the form of a juridical person shall be accorded immediately and unconditionally to juridical persons of the European Union established in the Republic of Kazakhstan in the form of a juridical person.

4. The treatment granted in accordance with paragraphs 1 and 2 shall not apply to treatment accorded by a Party pursuant to economic integration agreements, free trade agreements, agreements for the avoidance of double taxation and agreements primarily governing taxation matters, nor shall it be construed as extending to investment protection, other than the treatment deriving from Article 46, including investor-to-state dispute settlement procedures.

5. Notwithstanding paragraph 4, as regards strategic resources and objects, the Republic of Kazakhstan shall in no case accord to subsidiaries of juridical persons of the European Union established in the Republic of Kazakhstan in the form of a juridical person, less favourable treatment than that accorded after the date on which this Title starts to apply, to subsidiaries of juridical persons of any third country established in the Republic of Kazakhstan in the form of a juridical person.

Article 46. National Treatment

Subject to the Parties' reservations set out in Annex I,

(a) each Party shall grant to subsidiaries of juridical persons of the other Party established in the former Party's territory treatment no less favourable than that granted to that Party's own juridical persons with respect to their operations;

(b) the Republic of Kazakhstan shall grant to juridical persons and branches of the European Union treatment no less favourable than that accorded to juridical persons and branches of the Republic of Kazakhstan, respectively, in respect of their establishment and operations for economic activities other than services. National treatment granted by the Republic of Kazakhstan is without prejudice to the terms of the Protocol on the Accession of the Republic of Kazakhstan to the WTO.

Section 3. Temporary Presence of Natural Persons for Business Purposes

Article 47. Coverage and Definitions

1. This Section applies to measures by the Parties concerning the entry into, and temporary stay in, their territories of business visitors for establishment purposes, intra-corporate transferees, and contractual services suppliers in accordance with Article 39(5) and (6).

2. For the purposes of this Section:

(a) ‘business visitors for establishment purposes' means natural persons, employed in a senior position by a juridical person of a Party, who are responsible for setting up an establishment in the territory of the other Party. They do not offer or provide services or engage in any other economic activities than required for establishment purposes. They do not receive remuneration from a source located within the host Party;

(b) ‘intra-corporate transferees' means natural persons who have been employed by a juridical person of a Party or have been partners in it (1) for at least one year and who are temporarily transferred to an establishment that may be a subsidiary, branch or head company of the juridical person of a Party in the territory of the other Party.

The natural person concerned must belong to one of the categories as defined in the Parties' respective GATS schedules, which for the purposes of this Section shall apply to all economic activities;

(c) ‘contractual service supplier' means a natural person employed by a juridical person of a Party which itself is not an agency for placement and supply services of personnel, nor acting through such agencies, and which has no establishment in the territory of the other Party and which has concluded a bona fide contract (2) to supply services with a final consumer in the latter Party, requiring the presence on a temporary basis of its employees in that latter Party, in order to fulfil the contract to provide services;

(d) ‘qualifications' means diplomas, certificates and other evidence of formal qualification issued by an authority, designated pursuant to legislative, regulatory or administrative provisions, certifying successful completion of professional training.

(1) For greater clarity, the partners shall be part of the same juridical person.

(2) The service contract shall comply with the laws, regulations and legal requirements of the Party where the contract is executed.

Article 48. Intra-corporate Transferees and Business Visitors for Establishment Purposes

1. For services, the Parties reaffirm their respective obligations arising from their commitments under the GATS as regards the entry and temporary stay of intra-corporate transferees or business visitors for establishment purposes. The reservations listed therein apply (3).

2. For economic activities other than services and subject to the reservations set out in Annex II:

(a) each Party shall allow investors engaged in production of goods on the territory of the other Party to transfer intracorporate transferees, as defined in Article 47(2)(b), and business visitors for establishment purposes, as defined in Article 47(2)(a). The entry and temporary stay shall be permitted for a period of up to three years for intra-corporate transferees, and 90 days in any 12-month period for business visitors for establishment purposes;

(3) For greater clarity, the reservations include also the reservations in the definitions of the categories of intra-corporate transferees and business visitors for establishment purposes.

(b) neither Party shall maintain or adopt measures defined as limitations on the total number of natural persons that an investor may transfer as intra-corporate transferees or business visitors for establishment purposes in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

Article 49. Contractual Service Suppliers

1. The Republic of Kazakhstan shall allow the supply of services in its territory by juridical persons of the European Union through the presence of natural persons who are citizens of the Member States of the European Union, subject to the following conditions:

(a) natural persons entering the Republic of Kazakhstan shall possess:

(i) a university degree or an advanced technical qualification demonstrating knowledge of an equivalent level; and

(ii) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the law, regulations or requirements of the Republic of Kazakhstan;

(b) natural persons shall not receive remuneration for the provision of services, other than the remuneration paid by the juridical person of the European Union, during their stay in the Republic of Kazakhstan.

(c) natural persons entering the Republic of Kazakhstan shall have been employed by the juridical person of the European Union for at least the year preceding the date of submission of an application for entry into the Republic of Kazakhstan. In addition, the natural persons shall possess, at the date of submission of an application for entry into the Republic of Kazakhstan, at least five years professional experience in the sector of activity which is the subject of the contract;

(d) the Republic of Kazakhstan may apply the economic needs test and an annual quota for work permits reserved for contractual service suppliers of the European Union gaining access to the services market of the Republic of Kazakhstan. The total number of contractual service suppliers of the European Union entering the services market of the Republic of Kazakhstan shall not exceed 800 persons per year;

(e) after the expiration of a five-year period following the accession of the Republic of Kazakhstan to the WTO, the economic needs test shall not be applied (') . During the period when the Republic of Kazakhstan applies the economic needs test (2), the entry and temporary stay of natural persons within the Republic of Kazakhstan pursuant to the fulfilment of the contract shall be for a cumulative period of not more than four months in any 12-month period or for the duration of the contract, whichever is less. After the expiration of a five-year period following the accession of the Republic of Kazakhstan to the WTO, the entry and temporary stay shall be for a cumulative period of not more than six months in any 12-month period or for the duration of the contract, whichever is less. The juridical persons of the European Union shall be responsible for the timely departure of their employees from the territory of the Republic of Kazakhstan.

(1) All other requirements, laws and regulations regarding entry, stay and work shall continue to apply.

(2) For greater clarity, for the Republic of Kazakhstan, ‘economic needs test' means procedures undertaken by a juridical person of the Republic of Kazakhstan when attracting contractual service suppliers, whereby account must be taken of the admission of a foreign labour force based on the national labour market conditions. These conditions are fulfilled when after the publication of a vacancy announcement in the mass media and after a search for a competent person in the database of the competent authority, none of the applicants meets the requirements described in the vacancy. This should not take longer than one month. Only after this procedure the juridical person can finalise the procedure for hiring contractual service suppliers.

2. The Republic of Kazakhstan shall allow the supply of services into its territory by juridical persons of the European Union through the presence of natural persons if the service contract fulfils the following conditions:

(a) the contract to provide services:

(i) has been concluded directly between the juridical person of the European Union and the final consumer, which is a juridical person of the Republic of Kazakhstan;

(ii) requires the temporary presence on the territory of the Republic of Kazakhstan of employees of that juridical person in order to provide the service; and

(iii) complies with the laws, regulations and requirements of the Republic of Kazakhstan;

(b) the contract to provide services is concluded in one of the following sectors of activity which are included and defined in the Republic of Kazakhstan's GATS schedule of commitments:

(i) legal services

(ii) accounting and bookkeeping services

(iii) taxation services

(iv) architectural services

(v) engineering services

(vi) integrated engineering services

(vii) urban planning and landscape architecture services

(viii) computer and related services

(ix) advertising services

(x) market research services

(xi) management consulting services

(xii) services related to management consulting (xiii) technical testing and analysis services

(xiv) advisory and consulting services incidental to mining

(xv) related scientific and technical consulting services

(xvi) translation and interpretation services

(xvii) maintenance and repair of equipment, including transportation equipment, in the context of an after-sales services contract

(xviii) environmental services.

(c) Access accorded under this paragraph relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title in the territory of the Republic of Kazakhstan.

3. The European Union reaffirms its respective obligations arising from the commitments under the GATS as regards the entry and temporary stay of contractual service suppliers. The reservations listed therein apply (1).

(1) For greater clarity, reservations include also the reservations in the definitions of the categories.

Article 50. Most-favoured-nation Treatment

1. Treatment accorded by the European Union to contractual service suppliers of the Republic of Kazakhstan shall be no less favourable than that accorded to contractual service suppliers of any third country.

2. Treatment granted under other agreements concluded by the European Union with a third country which have been notified under Article V of the GATS or which benefit from the coverage of the European Union GATS list of most-favoured-nation exemptions, shall be excluded from the scope of paragraph 1. Treatment deriving from the harmonisation of regulations based on agreements concluded by the European Union providing for mutual recognition in accordance with Article VII of the GATS shall also be excluded from the scope of paragraph 1.

3. If the Republic of Kazakhstan grants more favorable treatment than that provided for in this Agreement to contractual service suppliers of any other WTO member, except to countries of the Commonwealth of Independent States (CIS) and countries which are parties to economic integration agreements with the Republic of Kazakhstan, that treatment shall be applied to contractual service suppliers of the European Union. Treatment deriving from the harmonisation of regulations based on agreements concluded by the Republic of Kazakhstan providing for mutual recognition in accordance with Article VII of the GATS shall also be excluded from this provision.

Article 51. Progressive Improvement of Conditions for Temporary Presence of Natural Persons for Business Purposes

The Cooperation Committee meeting in trade configuration shall make recommendations to the Parties for the further liberalisation of the temporary presence of natural persons for business purposes.

Section 4. Domestic Regulation

Article 52. Scope and Coverage

1. The disciplines set out in Article 53 shall apply to measures by the Parties relating to licensing and qualification procedures that affect:

(a) cross-border supply of services;

(b) establishment;

(c) the supply of a service through the presence of a natural person in the territory of the other Party in accordance with Section 3 of this Chapter.

2. The disciplines set out in Article 53 shall apply to all economic activities falling under the scope of this Chapter. For services, they shall apply to the extent of the relevant Party's specific commitments under the GATS (1). The disciplines do not apply to measures to the extent that they constitute limitations subject to scheduling under Article XVI or XVII of the GATS.

(1) For the Republic of Kazakhstan the reference includes the Section on Services of the Protocol on the Accession of the Republic of Kazakhstan to the WTO.

Article 53. Licensing and Qualification

1. Each Party shall ensure that licensing and qualification procedures for the purpose of obtaining an authorisation to supply a service or to establish are reasonable, clear and relevant to the underlying policy objectives, taking into account the nature of the requirements to be met and the criteria to be assessed, and do not in themselves constitute a restriction on the supply of services or the establishment.

2. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as applications submitted in paper format.

3. Authenticated copies should be accepted, where possible, in place of original documents.

4. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable period specified in its legislation or, in any event, without undue delay. Each Party shall endeavour to establish the normal timeframe for the processing of an application. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

5. Each Party shall ensure that licensing fees (1) are reasonable in terms of the costs incurred by the competent authority, and do not in themselves restrict the supply of the service or the establishment.

6. Where the competent authority considers that an application is incomplete or determines that it needs additional information, it shall, within a reasonable period of time:

(a) inform the applicant;

(b) to the extent practicable, identify the information required; and

(c) to the extent practicable, provide the opportunity to correct deficiencies.

7. If the competent authority rejects an application, it shall inform the applicant without undue delay and, to the extent practicable, in writing. The competent authority should inform the applicant, upon request, of the reasons for rejection of the application and, where possible, of any deficiencies that have been identified. It should inform the applicant of the procedures for appeal against the decision in accordance with the relevant legislation. The competent authority should permit an applicant to submit a new application in accordance with the relevant authority's established procedures, except where the relevant authority limits the number of licences or qualification determinations.

8. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing or authorisation procedure are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any services supplier or investor for which the licence or authorisation is required.

(1) Licensing fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Section 5. Sector Specific Provisions

Article 54. International Maritime Transport

1. This Article sets out the principles for the liberalisation of international maritime transport services. This Article is without prejudice to the rights and obligations deriving from each Party's GATS commitments.

2. For the purposes of this Article, 'international maritime transport' includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea leg, under a single transport document and, to this effect, including the right of international maritime transport suppliers to directly contract with providers of other modes of transport.

3. With respect to activities referred to in paragraph 4, undertaken by shipping agencies for the provision of services with regards to international maritime transport, each Party shall permit juridical persons of the other Party to establish subsidiaries or branches in its territory, under conditions of establishment and operation no less favourable than those accorded to its own subsidiaries or branches or to subsidiaries or branches of any third country, whichever are the better.

This paragraph does not apply to the establishment for the purpose of operating a fleet under the national flag of a Member State of the European Union or of the Republic of Kazakhstan.

4. Such activities include, but are not limited to:

(a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, whether these services are operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business agreements;

(b) purchase and use, on their own account or on behalf of their customers (and resale to their customers) of any transport and related services, including transport services by any inland mode, necessary for the supply of an intermodal service;

(c) preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;

(d) provision of business information by any means, including computerised information systems and electronic data interchange (subject to any non-discriminatory restrictions concerning telecommunications);

(e) setting up of any business arrangement with other shipping agencies, including participation of the company's stock and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the relevant provisions of this Agreement), with any locally established shipping agency;

(f) acting on behalf of the juridical persons, inter alia, in organising the call of the vessel or taking over cargoes when required.

5. In view of the existing level of liberalisation concerning the cross-border supply of services between the Parties in international maritime transport:

(a) the Parties shall apply effectively the principle of unrestricted access to the international markets and trades on a commercial and non-discriminatory basis;

(b) each Party shall grant to ships operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships or those of any third country, whichever are the better with regard to, inter alia, access to ports, the use of infrastructure and services of the ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

6. In applying the principles set out in paragraph 5, the Parties shall:

(a) not apply, as from the entry into force of this Agreement, any cargo-sharing provisions of bilateral agreements between any Member State of the European Union and the Republic of Kazakhstan;

(b) not introduce cargo-sharing clauses into future bilateral agreements with third countries, other than in those exceptional circumstances where liner shipping companies from one or other Party to this Agreement would not otherwise have an effective opportunity to ply for trade to and from the third country concerned;

(c) prohibit cargo-sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;

(d) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

7. Natural and juridical persons of the European Union providing international maritime transport services shall be free to provide international sea-river services in the inland waterways of the Republic of Kazakhstan and vice versa.

8. The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast water disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electricity supplies, emergency repair facilities, anchorage, berth and berthing services.

9. If the Republic of Kazakhstan grants more favourable treatment for maritime transport to any other WTO member, except for coastal states of the Caspian Sea and for CIS countries, those terms shall be applied to the natural and juridical persons of the European Union.

Article 54bis. Road, Rail, Inland Waterways and Air Transport

With a view to ensuring coordinated development of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in road, rail and inland waterways and, if applicable, in air transport may be dealt with by potential specific agreements negotiated between the Parties after the entry into force of this Agreement.

Section 6. Exceptions

Article 55. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment, including operations, or the cross-border supply of services, nothing in this Chapter shall be construed as preventing the adoption or enforcement by any Party of measures:

(a) necessary to protect public security or public morals or to maintain public order (1);

(1) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

(c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with this Title, including those relating to:

(i) the prevention of deceptive and fraudulent practices, or those necessary to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(f) inconsistent with Article 46, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party (1).

2. This Chapter shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of governmental authority.

(1) Measures aimed at ensuring the effective or equitable imposition or collection of direct taxes include measures taken by a Party under its taxation system which:
(i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
(v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in point (f) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

Section 7. Investment

Article 56. Review and Consultations

In order to identify any barriers to investment, the Parties shall jointly review the investment legal framework no later than three years after the date on which this Title starts to apply. On the basis of this review, they shall consider the opportunity to start negotiations to address such barriers, with a view to supplementing this Agreement, including with respect to general principles of investment protection.

Chapter 6. Capital Movements and Payments

Article 57. Current Account

Each Party shall authorise, in a freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund (IMF), as applicable, all payments and transfers on the current account of the balance-of-payments between the Parties.

Article 58. Movement of Capital

1. With regard to transactions on the capital and financial account of balance-of-payments and without prejudice to other provisions of this Agreement, the Parties undertake not to impose restrictions on the free movement of capital relating to direct investments made in accordance with the laws of the host country, to economic activities covered by Chapter 5 (Trade in Services and Establishment) of this Title and to the liquidation and repatriation of such invested capital and of any profit generated therefrom.

2. With regard to transactions on the capital and financial account of balance-of-payments not covered by paragraph 1, and without prejudice to other provisions of this Agreement, each Party shall ensure, in accordance with its laws, the free movement of capital relating to, inter alia:

(a) credits relating to commercial transactions, including the provision of services, in which a resident of a Party is participating;

(b) financial loans and credits; or

(c) capital participation in a juridical person with no intention of establishing or maintaining lasting economic links.

3. Without prejudice to other provisions of this Agreement, the Parties shall not introduce any new restrictions on the movement of capital between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them.

Article 59. Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on capital movements, nothing in this Chapter shall be construed as preventing the adoption or enforcement by either Party of measures:

(a) necessary to protect public security and public morals or to maintain public order; or

(b) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title, including those relating to:

(i) the prevention of criminal or penal offences, deceptive and fraudulent practices, or those necessary to deal with the effects of a default on contracts (bankruptcy, insolvency and protection of the right of creditors);

(ii) measures adopted or maintained to ensure the integrity and stability of a Party's financial system;

(iii) issuing, trading or dealing in securities, options, futures or other derivatives;

(iv) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(v) ensuring compliance with orders or judgements in juridical or administrative proceedings.

Article 60. Temporary Safeguard Measures with Regard to Capital Movements, Payments or Transfers

In exceptional circumstances of serious difficulties for the operation of monetary and exchange rate policy, in the case of the Republic of Kazakhstan, or for the operation of the economic and monetary union, in the case of the European Union, or threat thereof, safeguard measures that are strictly necessary may be taken by the concerned Party with regard to capital movements, payments or transfers for a period not exceeding one year. The Party which maintains or adopts such measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Chapter 7. Intellectual Property

Article 61. Objectives

The objectives of this Chapter are to:

(a) facilitate the production and commercialisation of innovative and creative products between the Parties; and

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Section 1. Principles

Article 62. Nature and Scope of Obligations

1. The Parties recall their obligation to ensure the adequate and effective implementation of the international agreements dealing with intellectual property to which they are parties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (‘the TRIPS Agreement'). The provisions of this Chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international agreements in the field of intellectual property.

2. For the purposes of this Agreement, the term ‘intellectual property' refers, inter alia, to all categories of intellectual property referred to in Articles 65 to 96.

3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property of 1883, as revised and amended (‘the Paris Convention').

4. This Chapter shall not prevent the Parties from applying provisions in their law providing for higher standards for the protection and enforcement of intellectual property rights, provided that those provisions do not contravene the provisions

of this Chapter.

Article 63. Transfer of Technology

1. The Parties agree to exchange views and information on their law and international practices on the protection and enforcement of intellectual property rights, affecting transfer of technology. This shall, in particular, include exchanges on measures to facilitate information flows, business partnerships, and voluntary licensing and subcontracting agreements. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as the domestic legal framework and the development of human capital.

2. When measures are taken with regard to technology transfer, the legitimate interests of the intellectual property right holders shall be protected.

Article 64. Exhaustion

Each Party shall apply a national or regional (1) exhaustion regime of intellectual property rights, in accordance with its respective domestic law, in respect of copy right and related rights, designs, and trademarks.

(1) The term ‘regional' refers to regional economic integration organisations that set up an internal market ensuring the free movement of goods and services.

Section 2. Standards Concerning Intellectual Property Rights

COPYRIGHT AND RELATED RIGHTS

Article 65. Protection Granted

Each Party shall comply with the rights and obligations set out in the following international agreements:

(a) the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention);

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention);

(c) the World Intellectual Property Organization (WIPO) Copyright Treaty;

(d) the WIPO Performances and Phonograms Treaty;

(e) the TRIPS Agreement.

Article 66. Authors

Each Party shall, as regards authors, provide for the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 67. Performers

Each Party shall, as regards performers, provide for the exclusive right to authorise or prohibit:

(a) the fixation (1) of their performances;

(b) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of

fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of fixations of their performances;

(d) the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, of fixations of their performances;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

(1) For the purposes of this Chapter, ‘fixation' means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

Article 68. Producers of Phonograms

Each Party shall, as regards phonogram producers, provide for the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) the distribution of their phonograms to the public, by sale or otherwise, including copies thereof;

(c) the making available of their phonograms to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 69. Broadcasting Organisations

Each Party shall, as regards broadcasting organisations, provide for the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts;

(b) the reproduction of fixations of their broadcasts;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 70. Broadcasting and Communication to the Public

Each Party shall provide for the right to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that that remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of that remuneration between them.

Article 71. Term of Protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for no less than 70 years after his death.

2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. The rights of performers shall expire no less than 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire no less than 50 years after the date of the first such publication or the first such communication to the public, whichever is the earlier.

4. The rights of producers of phonograms shall expire no less than 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire no less than 50 years after the date of

the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire no less than 50 years after the date of the first lawful communication to the public.

5. The rights of broadcasting organisations shall expire no less than 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or wireless means, including by cable or satellite.

6. The terms laid down in this Article shall be calculated from the first of January of the year following the event which gives rise to them.

7. The terms of protection may exceed the terms laid down in this Article.

Article 72. Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which are mainly directed at or enable the circumvention of any effective technological measures.

3. For the purposes of this Agreement, the expression ‘technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or related right as provided for by domestic law. Technological measures shall be deemed ‘effective' where the use of a work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.

Article 73. Protection of Rights-management Information

1. Each Party shall provide adequate legal protection against any person performing without authority any of the following acts:

(a) the removal or alteration of any electronic rights-management information;

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

If that person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or related right as provided for by domestic law.

2. For the purposes of this Chapter, the expression ‘rights-management information' means any information provided by right holders which identifies the work or other subject matter protected by copyright or related rights, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information. 3

3. Paragraph 1 shall apply when any of the items of information referred to in paragraph 2 is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter protected by copyright or related rights.

Article 74. Exceptions and Limitations

1. In accordance with the conventions and international agreements to which they are parties, each Party may provide for limitations or exceptions to the rights set out in Articles 66 to 70 only in certain special cases which do not conflict with a normal exploitation of the works or other subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction referred to in Articles 66 to 70, which are transient or incidental, which are an integral and essential part of a technological process, and the sole purpose of which is to enable:

(a) a transmission in a network between third parties by an intermediary, or

(b) a lawful use of a work or other subject matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 66 to 69.

Article 75. Resale Right

Each Party shall provide, for the benefit of the author of an original work of art who is a national of the other Party and for the benefit of his successor in title, a resale right, to be defined as an inalienable right which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for the resale of the work subsequent to the first transfer of the work by the author. The thresholds and the rates of the collection of the royalties shall be established according to the domestic law of the Party where the resale takes place (1).

(1) A Party may in accordance with domestic law limit the resale right to acts of resale involving dealers in works of art.

Article 76. Cooperation on Collective Management of Rights

The Parties shall take such reasonable measures as may be available to them to facilitate the establishment of arrangements between their respective collective management societies for the purpose of ensuring easier mutual access and delivery of works and other protected subject matter between the territories of the Parties, as well as the transfer of royalties between them for the use of such works or other protected subject matter. The Parties shall also take such reasonable measures as may be available to them to achieve a high level of rationalisation and transparency with regard to the execution of the tasks of their respective collective management societies.

TRADEMARKS

Article 77. International Agreements

Each Party shall:

(a) comply with the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and with the WIPO Trademark Law Treaty; and

(b) make all reasonable efforts to accede to the Singapore Treaty on the Law of Trademarks.

Article 78. Registration Procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final decision taken by the relevant competent trademark authority shall be duly reasoned and communicated in writing to the applicant who will have the opportunity to contest it before the competent trademark authority and to appeal it before a court.

2. Each Party shall provide for the possibility of right holders to oppose trademark applications or registrations. The proceedings in case of opposition shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trademark registrations.

Article 79. Well-known Trademarks

The Parties shall cooperate with the aim of making the protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and in Article 16(2) and (3) of the TRIPS Agreement, effective.

Article 80. Exceptions to the Rights Conferred by a Trademark

Each Party shall provide for limited exceptions to the rights conferred by a trademark, such as the fair use of descriptive terms, the use of geographical indications, or other limited exceptions, which take account of the legitimate interests of the owner of the trademark and of third parties.

GEOGRAPHICAL INDICATIONS

Article 81. Definition

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Article 82. Principles of the Protection of Geographical Indications

1. Each Party shall ensure adequate and indefinite protection of geographical indications, by way of a sui generis system of protection and in accordance with domestic law, as long as the geographical indication enjoys legal protection in the country of origin.

2. To that end, the Parties shall cooperate in the area of geographical indications on the basis of this Article, which complements the minimum standards set in the relevant provisions of the TRIPS Agreement.

3. Each Party shall ensure that its geographical indications protection system is open to registration of geographical indications of the other Party. Each Party shall provide for a publicly available electronic database of registered geographical indications.

4. In respect of the geographical indications protected in its respective territory, each Party shall prohibit and prevent:

(a) any direct or indirect commercial use of a registered name in respect of the products not covered by the registration in so far as:

(i) those products are comparable to the products protected under that name, or

(ii) such use exploits the reputation of the protected name;

(b) any misuse, imitation or evocation of a registered name, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as ‘style', ‘type', ‘method', ‘as produced in', ‘kind', ‘imitation' or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin; or

(d) any other practice liable to mislead the consumer as to the true origin of the good.

5. Each Party shall enforce the protection provided for in Articles 81 to 83, including upon request from an interested party, by appropriate administrative enforcement in accordance with domestic law.

6. Each Party shall ensure that the protected geographical indications may be used by any operator marketing a good conforming to the corresponding specification.

7. Each Party shall ensure that the names that they have protected according to domestic law do not become generic.

8. The Parties shall have no obligation to register a geographical indication where, in the light of a reputed or well-known trademark, registration is liable to mislead consumers as to the true identity of the good.

9. Without prejudice to this Article, each Party shall protect geographical indications also where a prior trademark exists. A ‘prior trademark' shall mean a trademark the use of which corresponds to one of the situations referred to in paragraph 4, which has been applied for, registered or established by use, if that possibility is provided for by domestic law, before the date on which the application for registration of the geographical indication is filed with the competent authority of that Party. Such prior trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the trademark law of the Party where it is registered or used.

Article 83. Negotiations

The Parties shall, no later than seven years after the date on which this Title starts to apply, commence negotiations with a view to concluding an agreement on the protection of geographical indications in their respective territories.

DESIGNS

Article 84. International Agreements

The European Union reaffirms its commitment to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs of 1999. The Republic of Kazakhstan shall make reasonable efforts to accede to it.

Article 85. Requirements for Protection of Registered Designs

1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer an exclusive right upon the holder of a registered design in accordance with domestic law. For the purposes of this Article, a Party may consider that a design having individual character is original.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, excluding maintenance, servicing or repair work, and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

Article 86. Rights Conferred by Registration

The holder of a registered design shall have the exclusive right to use it and to prevent any third party not having the holder's consent from, inter alia, making, offering for sale, selling, importing, exporting, stocking or using a product bearing or embodying the protected design when such acts are undertaken for commercial purposes.

Article 87. Protection Conferred to Unregistered Designs

The Republic of Kazakhstan shall, no later than seven years after the date on which this Title starts to apply, effectively provide for legal protection against copying unregistered designs, on the condition that the European Union has, no later than two years before the end of that seven-year period, provided adequate training for representatives of the authorised bodies, organisations and judges.

Article 88. Term of Protection

The duration of protection as from the date of the filing of the application shall amount to at least 10 years. Each Party may provide that the right holder may have the term of protection renewed for one or more periods of five years each, up to the maximum term of protection established according to domestic law.

Article 89. Exceptions

1. Each Party may provide for limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall neither extend to features of appearance dictated solely by technical functions of the product nor to features of appearance of a product that are necessary to ensure interoperability with another product (1).

3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

(1) In the European Union this provision does not apply to modular products.

Article 90. Relationship to Copyright

A design protected by a design right registered in a Party shall also be eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

PATENTS

Article 91. International Agreements

Each Party shall make all reasonable efforts to comply with Articles 1 to 16 of the Patent Law Treaty.

Article 92. Patents and Public Health

1. The Parties recognise the importance of the Declaration of the Ministerial Conference of the WTO on the TRIPS Agreement and Public Health, adopted on 14 November 2001. In interpreting and implementing the rights and obligations under this Chapter, each Party shall ensure consistency with that Declaration.

2. Each Party shall respect the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the Declaration referred to in paragraph 1.

Article 93. Supplementary Protection Certificates

1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on the market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on the market, as defined for that purpose by the relevant domestic law, may shorten the period of effective protection under the patent.

2. Each Party shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by a period of five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

Article 94. Protection of Data Submitted to Obtain an Authorisation to Put a Pharmaceutical Product on the Market (1)

1. Each Party shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and nonreliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

2. Each Party shall ensure that any information submitted to obtain an authorisation to put a pharmaceutical product, as referred to in Article 39(3) of the TRIPS Agreement, on the market remains undisclosed to third parties and benefits from a period of at least six years of protection against unfair commercial use starting from the date of the grant of a marketing authorisation in either Party.

To that end,

(a) during a period of at least six years starting from the date of the grant of a marketing authorisation, no person or entity, whether public or private, other than the person or entity who submitted such undisclosed data, shall be allowed to rely directly or indirectly on such data, without the explicit consent of the person or entity who submitted this data, in support of an application for the authorisation to put a pharmaceutical product on the market;

(b) during a period of at least six years starting from the date of the grant of a marketing authorisation, any subsequent application for the authorisation to put a pharmaceutical product on the market shall not be granted, unless the subsequent applicant submits his own data, or data used with authorisation of the holder of the first authorisation, meeting the same requirements as the first applicant. During this six-year period, products registered without submission of such data shall be removed from the market until the requirements are met.

(1) The term ‘pharmaceutical product' in this Chapter refers, in the case of the European Union, to medicinal products as defined in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

Article 95. Data Protection on Plant Protection Products and Rules on Avoidance of Duplicative Testing

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. Each Party shall recognise a temporary data protection right to the owner of a test or study report submitted for the first time to obtain a marketing authorisation for a plant protection product.

During the period of validity of the data protection right, the test or study report shall not be used for the benefit of any other person aiming to achieve a marketing authorisation for a plant protection product, except when the explicit consent of the owner is provided. This right shall be hereinafter referred to as ‘data protection'.

3. The test or study report shall:

(a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and

(b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

4. The term of data protection for plant protection products in a Party shall be 10 years starting on the date of the first authorisation in that Party. Longer periods may be granted by each Party in order to encourage the authorisation of, for instance, low risk plant protection products or minor uses.

5. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation.

6. The Parties shall lay down rules on the avoidance of duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

7. The prospective applicant and the holder or holders of the relevant authorisations shall make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant shall only be required to share the costs of information he is required to submit to meet the authorisation requirements.

8. Where the prospective applicant and the holder or holders of the relevant authorisations of plant protection products cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the prospective applicant shall inform the competent authority of the Party concerned.

9. The failure to reach agreement on the sharing of test and study reports involving vertebrate animals shall not prevent the competent authority of the Party concerned from using those reports for the purpose of the application of the prospective applicant.

The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under domestic law.

Article 96. Plant Varieties

The European Union reaffirms its commitment to the International Convention for the Protection of New Varieties of Plants (the UPOV Convention), to which the Republic of Kazakhstan shall make reasonable efforts to accede.

Section 3. Enforcement of Intellectual Property Rights

Article 97. General Obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement, in particular Part III thereof, and shall provide for the complementary measures, procedures and remedies set out in this Section, which are necessary to ensure the enforcement of the intellectual property rights (1).

2. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays. They shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

(1) For the purposes of Articles 98 to 110, the term ‘intellectual property rights' shall include at least the following rights: copyright; rights related to copyright; sui generis right of a database maker; rights of the creator of the topographies of a semiconductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; and trade names in so far as these are protected as exclusive rights by domestic law.

Article 98. Entitled Applicants

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) the holders of intellectual property rights in accordance with the provisions of domestic law;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of domestic law;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of domestic law;

(d) professional defence bodies or other persons which are recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of domestic law.

Article 99. Evidence

1. The judicial authorities of each Party shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has in substantiating its claims specified evidence which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject to the protection of confidential information.

2. Under the conditions referred to in paragraph 1, each Party shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 100. Measures for Preserving Evidence

1. Each Party shall ensure that even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a right holder who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Such measures may include the detailed description, with or without taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of those goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 101. Right of Information

1. Each Party shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities; or

(d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

(a) grant the right holder rights to receive more detailed information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) provide for the opportunity to refuse to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

Article 102. Provisional and Precautionary Measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject to, where appropriate, a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions and in accordance with domestic law, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery of goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, each Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may, in accordance with domestic law, order the precautionary seizure or arrest of the movable and/or immovable property of the alleged infringer, including the blocking of their bank accounts and other assets. To that end, the judicial authorities may order the provision of bank, financial or commercial documents, or appropriate access to the relevant information.

Article 103. Corrective Measures

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce, or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. The judicial authorities of each Party shall have the power to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 104. Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Each Party shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 105. Alternative Measures

Each Party, in accordance with domestic law, may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 103 and/or Article 104, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 103 and/or Article 104 if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 106. Damages

1. Each Party shall ensure that when the judicial authorities set the damages:

(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, including the moral prejudice caused to the right holder by the infringement; or

(b) they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not, knowingly or with reasonable grounds to know, engage in the infringing activity, each Party may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established, to the injured party.

Article 107. Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

Article 108. Publication of Judicial Decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

Article 109. Presumption of Authorship or Ownership

For the purposes of applying the measures, procedures and remedies provided for in this Section, it shall be sufficient for the name of an author of a literary or artistic work, in the absence of proof to the contrary and in order to be regarded as the author and consequently to be entitled to institute infringement proceedings, to appear on the work in the usual manner. This shall also apply, mutatis mutandis, to the holders of rights related to copyright with regard to their protected subject matter.

Article 110. Administrative Procedures

To the extent that any civil remedy may be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those provided for in the relevant provisions of this Section.

Article 111. Border Measures

1. When implementing border measures for the enforcement of intellectual property rights each Party shall ensure compliance with its obligations under the GATT 1994 and the TRIPS Agreement.

2. In order to ensure protection of intellectual property rights in the customs territory of each Party, the customs authorities, within the limits of their authority, shall adopt a range of approaches to identify shipments containing goods suspected of infringing intellectual property rights referred to in paragraphs 3 and 4. These approaches include risk-analysis techniques based, inter alia, on information provided by right holders, intelligence gathered and cargo inspections.

3. The customs authorities shall have the power to take measures, upon application by the right holder, to detain or suspend the release of goods under customs control which are suspected of infringing trademarks, copyright and related rights, or geographical indications.

4. The customs authorities of the Republic of Kazakhstan shall, no later than three years after the date on which this Title starts to apply, have the power to take measures, upon application by the right holder, to detain or suspend the release of goods under customs control which are suspected of infringing patents, utility models, industrial designs, topographies of integrated circuits or plant variety rights, on the condition that the European Union provides, before the end of the second year of this three-year period, adequate training for representatives of the authorised bodies, such as customs officials, prosecutors, judges and other personnel, as appropriate.

5. The customs authorities shall have the power to detain or suspend, upon their own initiative, the release of goods under customs control which are suspected of infringing trademarks, copyright and related rights, or geographical indications.

6. The customs authorities of the Republic of Kazakhstan shall, no later than five years after the date on which this Title starts to apply, have the power to detain or suspend, upon their own initiative, the release of goods under customs control which are suspected of infringing patents, utility models, industrial designs, topographies of integrated circuits or plant variety rights, on the condition that the European Union provides, no later than two years before the end of this five-year period, adequate training for representatives of authorised bodies, such as customs officials, prosecutors, judges and other personnel, as appropriate. 7

7. Notwithstanding paragraphs 3 to 6, there shall be no obligation to apply detention or suspension measures to imports of goods that have been put on the market in another country by, or with the consent of, the right holder.

8. The Parties agree to effectively implement Article 69 of the TRIPS Agreement in respect of international trade in goods suspected of infringing intellectual property rights. For that purpose, each Party shall be ready to establish and notify to the other Party a contact point in its customs administration in order to facilitate cooperation. Such cooperation may include exchanges of information regarding mechanisms for receiving information from right holders, best practices, and experiences with risk management strategies, as well as information to aid in the identification of shipments suspected of containing infringing goods.

9. The customs authorities of each Party shall be ready to cooperate, upon request from the other Party or upon their own initiative, in order to provide relevant available information to the customs authorities of the other Party, in particular with regard to goods in transit through the territory of a Party destined for, or originating in, the other Party.

10. Without prejudice to other forms of cooperation, the Protocol on Mutual Administrative Assistance in Customs Matters shall be applicable with regard to paragraphs 8 and 9 of this Article with respect to breaches of customs law relating to intellectual property rights.

11. Without prejudice to the powers of the Cooperation Council, the Subcommittee on Customs Cooperation referred to in Article 25(3) shall be responsible for ensuring the proper functioning and implementation of this Article. The Subcommittee on Customs Cooperation shall set the priorities and provide for adequate procedures for cooperation between the competent authorities of the Parties.

Section 4. Liability of Intermediary Service Providers

Article 112. Use of Intermediaries' Services

The Parties recognise that the services of intermediaries could be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the measures described in this Section concerning intermediary service providers, where those providers are in no way involved with the information transmitted.

Article 113. Liability of Intermediary Service Providers: ‘mere Conduit'

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

(a) does not initiate the transmission;

(b) does not select the receiver of the transmission; and

(c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission. 3

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with domestic law, of requiring the service provider to terminate or prevent an infringement.

Article 114. Liability of Intermediary Service Providers: ‘caching'

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

(a) the provider does not modify the information;

(b) the provider complies with conditions on access to the information;

(c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

(d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

(e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or an administrative authority, in accordance with domestic law, of requiring the service provider to terminate or prevent an infringement.

Article 115. Liability of Intermediary Service Providers: ‘hosting'

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or an administrative authority, in accordance with domestic law, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for a Party of establishing procedures governing the removal or disabling of access to information.

Article 116. No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 113 to 115, to monitor the information which they transmit or store, nor shall they impose a general obligation to actively seek facts or circumstances indicating illegal activity.

2. A Party may establish obligations for information society service providers to promptly inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service. A Party may also establish an obligation for information society service providers to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Article 117. Date of Application of Articles 112 to 116

The Republic of Kazakhstan shall fully implement the obligations provided for in Articles 112 to 116 within five years from the date on which this Title starts to apply.

Article 118. Cooperation

1. The Parties shall encourage the development of cooperation among trade or professional associations or organisations aimed at the protection and enforcement of intellectual property rights.

2. The Parties agree to cooperate with a view to supporting the implementation of the obligations undertaken under this Chapter. Areas of cooperation include, but are not limited to, the following activities:

(a) exchange of information on their respective legal frameworks concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences on legislative progress in those areas;

(b) exchange of experience on protection and enforcement of intellectual property rights;

(c) exchange of experience on protection and enforcement among customs, police, administrative and judiciary bodies and interested organisations; coordination to prevent exports of counterfeit goods;

(d) capacity building; and

(e) promotion and dissemination of information and knowledge on intellectual property rights in, inter alia, business circles and civil society; promotion of public awareness and knowledge of consumers and right holders.

Chapter 8. Government Procurement

Article 119. Definitions

For the purposes of this Chapter:

(a) ‘commercial goods or services' means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) ‘construction service' means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (‘CPCprov');

(c) ‘days' means calendar days;

(d) ‘electronic auction' means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject matter intellectual performances, such as the design of works, may not be the object of electronic auctions;

(e) ‘in writing' or ‘written' means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

(f) ‘limited tendering' means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) ‘measure' means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(h) ‘multi-use list' means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(i) ‘notice of intended procurement' means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(j) ‘open tendering' means a procurement method whereby all interested suppliers may submit a tender;

(k) ‘person' means a natural person or a juridical person;

(l) ‘procuring entity' means an entity covered under Parts 1 to 3 of Annex III;

(m) ‘qualified supplier' means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(n) ‘selective tendering' means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(o) ‘services' includes construction services, unless otherwise specified;

(p) ‘standard' means a document approved by a recognised body that provides for common and repeated use, rules,

guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

(q) ‘supplier' means a person or group of persons that provides or could provide goods or services;

(r) ‘technical specification' means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 120. Scope and Coverage

Application of this Chapter

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, ‘covered procurement' means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in Annex III; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value equals or exceeds the relevant threshold specified in Annex III, at the time of publication of a notice in accordance with Article 124;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage in paragraph 3 of this Article or in Annex III.

If the value of a procurement is uncertain, it shall be estimated in accordance with paragraphs 6 to 8.

3. Except where provided otherwise in Annex III, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

4. Annex III specifies for each Party the following information:

(a) in Part 1, the central government entities whose procurement is covered by this Chapter;

(b) in Part 2, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Part 3, all other entities whose procurement is covered by this Chapter;

(d) in Part 4, the goods covered by this Chapter;

(e) in Part 5, the services, other than construction services, covered by this Chapter;

(f) in Part 6, the construction services covered by this Chapter; and

(g) in Part 7, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under Annex III to procure in accordance with particular requirements, Article 122 shall apply mutatis mutandis to such requirements.

4. Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as ‘recurring contracts'), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, the basis for valuation under point (b) shall be used.

Article 121. General Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on international trade, nothing in this Chapter shall be construed as preventing a Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

Article 122. General Principles

Non-discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall unconditionally accord, to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and locally established suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, limited tendering and electronic auctions;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

5. A Party shall not, for the purposes of covered procurement, apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Measures Not Specific to Procurement

6. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Article 123. Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

2. Part 1 of Annex IV lists:

(a) the electronic or paper media in which each Party publishes the information described in paragraph 1 of this Article;

(b) the electronic or paper media in which each Party publishes the notices required by Article 124, Article 126(7) and Article 133(2); and

(c) the website address or addresses where each Party publishes its notices concerning awarded contracts pursuant to Article 133(2).

3. Each Party shall promptly notify the Cooperation Committee of any modification to the Party's information listed

In Part 1 of Annex IV. The Cooperation Committee shall regularly adopt decisions reflecting the modifications to Part 1 of Annex IV.

Article 124. Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Part 2 of Annex IV, except in the circumstances described in Article 130. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice. The notices shall, for procuring entities covered under Parts 1, 2 or 3 of Annex III, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Part 2 of Annex IV.

2. Except as otherwise provided for in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 126, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

(a) the subject matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Part 2 of Annex IV, as early as possible in each fiscal year, a notice regarding their future procurement plans (hereinafter referred to as ‘notice of planned procurement'). The notice of planned procurement should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Part 3 of Annex III may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 of this Article as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 125. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience where essential to meet the requirements of the procurement; and

(c) shall not impose the condition that, in order for a supplier of a Party to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of the other Party or that the supplier has prior experience in the territory of that Party, except when prior experience is essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds

Such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 126. Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article 124(2)(a), (b), (f), (g), (j) and (k) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in Article 124(2)(c), (d), (e),

(h) and (i) to the qualified suppliers that it notifies as specified in Article 128(3)(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers. 6

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

4. Multi-Use Lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) where published by electronic means, made available continuously, in the appropriate medium listed in Part 2 of Annex IV.

8. The notice provided for in paragraph 7 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice of the termination of use of the list will be given;

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article 128(2), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the

complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Entities covered under Part 3 of Annex III

12. A procuring entity covered under Part 3 of Annex III may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required under Article 124(2) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides, to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 124(2), to the extent such information is available.

13. A procuring entity covered under Part 3 of Annex III may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 of this Article to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 127. Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

The technical specifications must allow equal access of suppliers and must not have the effect of creating unjustified obstacles to the opening of procurement markets to competition.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as ‘or equivalent' in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as ‘or equivalent' in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply

technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether in paper format or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article 128. Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and

submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to not less than 10 days where:

(a) the procuring entity has published a notice of planned procurement as described in Article 124(4) at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 124(2), as is available;

(b) the procuring entity, for procurements of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable. 5 6

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by seven days in each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The use of the provisions of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than seven days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic

means, it may reduce the time period established in accordance with paragraph 3 to not less than seven days.

8. Where a procuring entity covered under Part 3 of Annex III has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than seven days.

Article 129. Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:

(a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 124(2); or

(b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 130. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 124, 125, 126, 127 (paragraphs 7 to 11), 128, 129, 131 and 132 only under any of the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified, where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of inter-changeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate

that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 131. Electronic Auctions

1. Procuring entities may use electronic auctions.

2. In open, limited or negotiated procedures, a procuring entity may decide that the award of a contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

The electronic auction shall be based:

(a) solely on prices when the contract is awarded to the lowest price; or

(b) on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most advantageous tender.

3. A procuring entity which decides to hold an electronic auction shall state that fact in the notice of intended procurement.

The specifications shall include, inter alia, the following details:

(a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the procurement;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with an electronic auction, a procuring entity shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer. The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most advantageous tender, as

indicated in the contract notice or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. A procuring entity shall close an electronic auction in one or more of the following manners:

(a) by indicating in the invitation to take part in the auction the date and time fixed in advance;

(b) when it receives no more new prices or new values which meet the requirements concerning minimum differences, by stating in the invitation to take part in the auction the time which it will allow to elapse after receiving the last submission before it closes the electronic auction;

(c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

8. When the procuring entity has decided to close an electronic auction in accordance with point (c) of paragraph 7, possibly in combination with the arrangements laid down in point (b) of that paragraph, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction a procuring entity shall award the contract in accordance with Article 132 on the basis of the results of the electronic auction.

10. Procuring entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as put up for tender in the published notice of intended procurement and defined in the specification.

Article 132. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

Article 133. Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, at the request of a supplier, shall do so in writing. Subject to Article 134(2) and (3), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Part 2 of Annex IV. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 130, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 130; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Article 134. Disclosure of Information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 135. Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may, in the context of a covered procurement, in which that supplier has, or has had, an interest, challenge:

(a) a breach of this Chapter; or

(b) where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter.

2. The procedural rules for all challenges pursuant to paragraph 1 shall be in writing and made generally available.

3. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which shall in no case be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

5. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

6. Where a body other than an authority referred to in paragraph 5 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

7. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as ‘participants') shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

8. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

9. The rapid interim measures referred to in point (a) of paragraph 8 may result in suspension of the procurement process. The procedures referred to in paragraph 8 may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

Article 136. Modifications and Rectifications to Coverage

1. A Party may propose a modification or rectification of the elements in Annex III which relate to that Party.

Modifications

2. When a Party proposes a modification, that Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding point (b) of paragraph 2, a Party need not provide compensatory adjustments if:

(a) the modification in question is negligible in its effect; or

(b) the modification covers an entity over which the Party has effectively eliminated its control or influence.

4. The other Party shall be deemed to have accepted the modification, including for the purposes of Chapter 14 (Dispute Settlement) of this Title, unless it objects in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 2 that:

(a) an adjustment proposed under point (b) of paragraph 2 is adequate to maintain a comparable level of mutually agreed coverage;

(b) the modification is negligible in its effect under point (a) of paragraph 3; or

(c) the modification covers an entity over which the Party has effectively eliminated its control or influence under point (b) of paragraph 3.

Rectifications

5. The following changes to Parts 1 to 3 of Annex III shall be considered a rectification, provided that they do not affect the mutually agreed coverage provided for in this Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed within the same Part of Annex III; and

(c) the separation of an entity into two or more entities, provided that all new entities are added to the same Part of Annex III as the original entity.

6. The Party proposing a rectification shall notify the other Party every two years, following the date on which this Title starts to apply. (1)

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification referred to in paragraph 6. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

The Cooperation Committee

8. If no objection is submitted regarding a proposed modification or rectification within the period provided for in paragraphs 4 and 7, the Cooperation Committee shall amend Annex III to reflect any such modification or rectification. The modification or rectification shall be effective from the day following the date of expiry of the period referred to in paragraphs 4 and 7.

9. If an objection to a proposed modification or rectification has been submitted, the Cooperation Committee shall discuss the matter. The Cooperation Committee may decide to approve a modification or rectification and amend Annex III accordingly.

(1) The European Union shall be deemed to have complied with this obligation if it notifies any rectifications to the Republic of Kazakhstan in parallel to the cycle of notifications in the framework of the WTO Agreement on Government Procurement.

Article 137. Transitional Period

This Chapter shall start to apply five years after the date on which this Title starts to apply. For the goods listed in Part 4 of Annex III and for the services covered under Part 6 of Annex III, this Chapter shall start to apply eight years after the date on which this Title starts to apply.

Chapter 9. Raw Materials and Energy

Article 138. Definitions

For the purposes of this Chapter:

(a) ‘raw materials' means substances used in the manufacture of industrial products, excluding energy goods, processed fishery products or agricultural products, but including natural rubber, raw hides and skins, wood and wood pulp, silk, wool, cotton and other vegetable textile inputs;

(b) ‘energy goods' means, based on the Harmonised Commodity Description and Coding System of the World Customs Organisation (HS) and the Combined Nomenclature of the European Union, natural gas, liquefied natural gas, liquefied petroleum gas (LPG) (HS 27.11), electricity (HS 27.16), crude oil and oil products (HS 27.09-27.10 and 27.13-27.15) and coal and other solid fuels (HS 27.01-27.04);

(c) ‘partnership' means any legal entity which is a commercial organisation under the jurisdiction or control of either Party such as, and not limited to, a corporation, trust, partnership, joint venture or association;

(d) ‘service supplier' means a service supplier as defined in point (q) of Article 40;

(e) ‘measure' means a measure as defined in point (a) of Article 40;

(f) ‘transport' means transmission and distribution of energy goods through the transmission pipelines for oil and oil products and high-pressure natural gas, high-voltage electricity transmission grids and lines, railways, roadways and other facilities handling the transport of energy goods;

(g) ‘unauthorised taking' means any activity consisting of unlawful taking of energy goods from the transmission pipelines for oil and oil products and high-pressure natural gas, high-voltage electricity transmission grids and lines, railways, roadways and other facilities handling the transport of energy goods;

(h) ‘emergency situation' means a situation causing a significant disruption or a physical interruption of supply of natural gas, oil or electric energy between the European Union and the Republic of Kazakhstan, including supply transiting through third countries or a situation of an exceptionally high demand for energy goods within the European Union or the Republic of Kazakhstan in which market measures are not sufficient and non-market measures have to be additionally introduced;

(i) ‘local content requirement' means:

(i) with respect to goods, a requirement for an enterprise to purchase or use goods of domestic origin or from a domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production;

(ii) with respect to services, a requirement which restricts the choice of the service supplier or the service supplied to the detriment of services or service suppliers of the other Party;

(j) ‘state owned enterprise' means any enterprise involved in a commercial activity over which a Party at central or subcentral level directly or indirectly owns more than 50 % of the enterprise's subscribed capital or of the votes attached to the shares issued by the enterprise;

(k) ‘juridical person' means a juridical person as defined in point (d) of Article 40;

(l) ‘juridical person of a Party' means a juridical person of a Party as defined in point (e) of Article 40.

Article 139. Price Regulation

1. The Parties aim for the price of the supply of raw materials or energy goods for industrial users, if regulated by the government of a Party, to recover costs and provide for reasonable profit.

2. If the price of raw materials or energy goods sold on the domestic market differs from the export price of the same product, the exporting Party shall, upon request of the other Party, provide information on such difference, excluding

transportation costs and export taxes.

Article 140. Trading and Export Monopolies

The Parties shall not maintain or establish a trading or export monopoly for raw materials or energy goods except when a Party exercises its priority (pre-emption) right to purchase raw and dry gas and gold.

Article 141. Access and Rights to Prospect, Explore and Produce Hydrocarbons (crude Oil and Natural Gas)

1. Nothing in this Agreement shall affect the full sovereignty of the Parties in accordance with international law over hydrocarbon resources located in their territory and their inland, archipelagic and territorial waters, as well as sovereign rights for the purposes of exploring for and exploiting hydrocarbon resources located in their Exclusive Economic Zones and continental shelf.

2. The Parties retain the right to determine the areas within their territory, inland, archipelagic and territorial waters, Exclusive Economic Zones and continental shelf to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons.

3. Whenever a sovereign decision of a Party, as described in paragraph 2, is taken, each Party shall ensure that the enterprises of the other Party are not discriminated against as regards the access and exercise of the rights to prospect, explore for and produce hydrocarbons, provided the enterprise in question is established as a juridical person in the territory of the host Party granting the access.

4. Each Party may require an enterprise which has been granted an authorisation for the exercise of the activities of prospecting, exploring for and producing hydrocarbons, to pay a financial contribution or a contribution in hydrocarbons.

5. The Parties shall take the necessary measures to ensure that licences or other authorisations, through which an enterprise is entitled to exercise the rights to prospect, explore for and produce hydrocarbons, are granted following a published procedure or an invitation to potentially interested applicants of the Parties to submit applications by means of a notice. The notice shall specify the type of licence or other authorisation, the relevant geographical area and the proposed date or time limit for granting a licence or other forms of authorisation.

6. Paragraphs 3 to 5 are without prejudice to the right of a state-owned enterprise to obtain access and rights to prospect, explore for and produce hydrocarbons by means of direct negotiations with its Party. When such a state-owned enterprise decides to transfer fully or partially its right to prospect, explore for and produce hydrocarbons, the obligations provided for in paragraphs 3 and 5 shall apply.

7. Article 53 shall apply to the licensing conditions and the licensing authorisation procedure.

Article 142. Conditions for Investment In Raw Materials and Energy Goods

In order to foster investment in the activities of prospecting, exploring for, extracting and mining of raw materials and energy goods, neither Party shall:

(a) maintain or adopt measures providing for local content requirements affecting the other Party's products, service suppliers, investors or investments unless otherwise provided for in the Protocol on the Accession of the Republic of Kazakhstan to the WTO and the GATS schedules of specific commitments of the European Union and its Member States;

(b) maintain or adopt measures whereby an enterprise from the other Party is obliged to transfer or to share intellectual property rights in order to sell products or services or to invest on that Party's territory. The Parties are not precluded from negotiating contracts with investors seeking rights to prospect, explore for, extract and mine raw materials and energy goods for such transfers on a voluntary basis, provided that they are made under market conditions and at a market price.

Article 143. Transit

1. The Parties shall take all necessary measures to facilitate the transit of energy goods, consistent with the principle of freedom of transit, and in accordance with Article 7(1) and (3) of the Energy Charter Treaty.

2. Each Party shall prohibit the unauthorized taking of raw materials and energy goods transited or transported through its territory by any entity subject to its control or jurisdiction and shall take all appropriate measures to address such

unauthorised taking.

Article 144. Interruption

1. Each Party shall take all possible measures to ensure that operators of main-line energy transit or transport pipelines and grids:

(a) minimise the risk of accidental interruption, reduction or stoppage of transit and/or transport;

(b) expeditiously restore the normal operation of such transit or transport, which has been accidentally interrupted, reduced or stopped.

2. A Party through the territory of which the energy goods are in transit or transport, or in the territory of which they are in receipt and storage as part of the transport/transit route, shall not, in the event of a dispute over any matter involving the Parties or one or more entities subject to the control or the jurisdiction of a Party, interrupt or reduce, or permit any entity subject to its control or jurisdiction to interrupt or reduce, the existing transit, transport, receipt and storage as part of the transport/transit route of energy goods, except where this is specifically provided for in a contract or other agreement governing such transit, transport, receipt and storage as part of the transport/transit route, prior to the conclusion of a dispute resolution procedure under the relevant contract or the dispute settlement procedure set out in Chapter 14 (Dispute Settlement) of this Title concerning emergency situations as defined in point (h) of Article 138.

3. A Party shall not be held liable for an interruption or reduction pursuant to this Article in force majeure situations or where that Party is unable to supply energy goods or ensure their transit as a result of actions attributable to a third country or an entity under the control or the jurisdiction of a third country.

Article 145. Access to High-voltage Electric Energy Transmission Grids and Lines

1. Each Party shall provide the enterprises of the other Party, established as juridical persons in the territory of the Party granting the access, with non-discriminatory access to high-voltage electric energy transmission grids and lines, which are partly or fully owned and regulated by the Party granting the access within the available capacities of such grids and lines. The access shall be allocated in a fair and equitable manner.

2. When applying measures relating to such transmission grids and lines, the Party shall ensure that the following principles are respected:

(a) all legal and regulatory measures on access and the transportation tariffs are fully transparent;

(b) the measures do not discriminate with respect to the origin of the electricity production within its territory and with respect to the destination of the electricity; and

(c) non-discriminatory transportation tariffs with respect to enterprises of the European Union and the Republic of Kazakhstan are applied.

Article 146. Regulatory Authorities for Electricity and Gas

1. Each Party shall designate and empower regulatory authorities to regulate the markets for electricity and gas on its territory. Those regulatory authorities shall be legally distinct and functionally independent from any other public authorities or market participants.

2. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.

3. A market participant affected by any decision of a regulatory authority shall have the right to appeal against that decision to an appeal body. If the appeal body is not independent of the parties involved or is not judicial in character, the decisions of the appeal body shall be subject to a review by an impartial and independent judicial authority. The decisions of the appeal body and the judicial authority shall set out the reasons therefor and shall be in writing. The Parties shall ensure that the final decision of the appeal body or the judicial authority, whichever is the final instance, is enforced effectively.

Article 147. Renewable Energy Sector

1. This Article shall apply to measures which may affect trade and investment between the Parties related to the generation of energy from renewable non-fossil sources, inter alia, wind, solar power and hydropower, but not to the products from

which such energy is generated.

2. Each Party shall:

(a) refrain from maintaining or adopting measures requiring the formation of partnerships with local companies, unless such partnerships are deemed necessary for technical reasons and the Party maintaining or adopting such measures can demonstrate such technical reasons upon request by the other Party;

(b) ensure that any rules concerning authorisation, certification and licensing procedures, if applicable, in particular with regard to equipment, plants and associated transmission network infrastructures, are objective, transparent and non-arbitrary and do not discriminate against applicants from the other Party;

(c) ensure that administrative charges in renewable energy sector, such as those paid by consumers, planners, architects, builders, equipment installers and suppliers, are transparent and limited in amount to the approximate cost of services rendered;

(d) ensure that the importation and the use of goods originating in the other Party, or the provision of goods by the other Party's suppliers, are subject to the provisions of Chapter 1 (Trade in Goods) of this Title;

(e) ensure that provision of services by the suppliers of the other Party are subject to Article 53;

(f) ensure that the terms, conditions and procedures for the connection and access to electric energy transmission grids are transparent and do not discriminate against suppliers of the other Party or against electric energy from renewable sources. The Parties shall ensure that appropriate grid and market-related measures are taken to minimise the curtailment (limitations) of electric energy produced from renewable energy sources;

(g) refrain from imposing or maintaining a requirement for:

(i) an enterprise of the other Party to purchase or use products of domestic origin or from any domestic source of the Party imposing the requirement, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(ii) the enterprise's purchases or use of imported products to be limited to the amount related to the volume or value of local products that it exports.

3. Where international or regional standards exist with respect to equipment and systems for the generation of energy from renewable and non-fossil sources, the Parties shall use those standards, or their relevant parts, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. For the purposes of applying this paragraph, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) shall be considered relevant international standard-setting bodies.

4. Where appropriate, the Parties shall specify technical regulations based on product requirements in terms of performance, including environmental performance, rather than on product design or description.

5. Nothing in this Article shall be construed as preventing the adoption or enforcement by either Party of measures necessary for the safe operation of the energy networks concerned, or the safety of energy supply, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the products, service suppliers or investors of the Parties where the same conditions prevail, or a disguised restriction on trade and investment between the Parties.

Article 148. Cooperation In Raw Materials and Energy Goods

1. Without prejudice to Articles 204 to 208, the Parties agree to strengthen cooperation and the promotion of mutual understanding between them in the field of trade in raw materials and energy goods.

2. The Parties recognise that respecting the principles of transparency and non-discrimination and ensuring that rules are not trade distortive is the best way to create an environment favourable to foreign direct investment in the production and trade of raw materials and energy goods. More generally, such an environment fosters the efficient allocation and efficient use of raw materials and energy goods.

3. Cooperation and the promotion of mutual understanding cover bilateral trade issues as well as issues of common interest stemming from international trade. Such issues include trade distortions impacting global markets, environment and development issues specifically linked to trade in raw materials and energy goods as well as corporate social responsibility

in accordance with internationally recognized standards such as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Cooperation and the promotion of mutual understanding include exchange of data and information on the regulatory framework of the raw materials and energy sectors. This shall not be construed as requiring the Parties to furnish any information, the disclosure of which they consider contrary to their respective security interests.

4. Either Party may request the organisation of an ad hoc meeting related to raw materials and energy goods or an ad hoc session on raw materials and energy goods during the Cooperation Committee meetings. The bilateral cooperation could additionally, if appropriate, be extended to the relevant plurilateral or multilateral fora in which both Parties participate.

Article 149. Early Warning Mechanism

1. The Parties establish an early warning mechanism to adopt practical measures aimed at preventing and rapidly reacting to an emergency situation or to a threat thereof.

2. The Parties shall jointly undertake actions for:

(a) an early evaluation of potential risks and problems related to the supply and demand of natural gas, oil or electric energy; and

(b) the prevention or rapid reaction in case of an emergency situation or a threat thereof.

3. If either Party becomes aware of an emergency situation or of a situation which in its opinion could lead to an emergency situation, that Party shall notify the other Party within the shortest possible time.

4. For the purposes of this Article, the Parties agree that the responsible bodies are the Member of the European Commission in charge of energy and the Minister of the Republic of Kazakhstan in charge of the respective energy matters.

5. Upon notification, the Parties shall provide each other with an assessment of the situation.

6. Either Party may request consultations within three calendar days of the notification to:

(a) elaborate a common evaluation of the situation;

(b) develop recommendations to eliminate the emergency situation and to minimise the impact of the emergency situation;

(c) create a Special Monitoring Group to, inter alia, monitor energy flows at the relevant points of the concerned infrastructure.

7. The Parties shall, if appropriate, cooperate with third countries to eliminate the threat of an emergency situation or to overcome the emergency situation.

8. In case the emergency situation persists, either Party may start an emergency dispute settlement procedure, in accordance with the special mechanism provided for in Chapter 14 (Dispute Settlement) of this Title.

9. The Parties shall refrain from any actions that may deepen or reinforce the emergency situation, as appropriate in a given situation, from the moment of the notification.

10. A Party shall not rely on, or introduce as evidence in dispute settlement procedures under this Agreement, the following:

(a) positions taken or proposals made by the other Party in the course of a procedure under this Article; or

(b) any indication from the other Party of its willingness to accept a solution to the emergency situation referred to in this Article.

11. The Cooperation Committee may develop, as necessary, detailed implementing provisions for the application of this Article.

Article 150. Exceptions

1. This Chapter is without prejudice to any exceptions, reservations or restrictions provided for in this Agreement.

2. This Chapter shall not apply to research and development projects or to demonstration projects carried out on a non-commercial scale.

3. Nothing in this Chapter shall be construed as preventing the adoption or enforcement by either Party of measures necessary for the safe operation of the energy infrastructure, including energy transport and the production facilities concerned, in the interest of national security or public safety, including the prevention of and reaction to an emergency situation, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the products, service suppliers or investors of the Parties where the same conditions prevail, or a disguised restriction on trade and investment between the Parties.

Chapter 10. Trade and Sustainable Development

Article 151. Context and Objectives

1. The Parties recall the Agenda 21 of the United Nations Conference on Environment and Development of 1992, the International Labour Organisation's (ILO) Declaration on Fundamental Principles and Rights at Work of 1998, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008 and the Outcome Document of the UN Conference on Sustainable Development of 2012, incorporated in Resolution 66/288 adopted by the UN General Assembly on 27 July 2012, entitled 'The Future We Want'.

2. The Parties reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations. The Parties shall strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

Article 152. Multilateral Environmental and Labour Standards and Agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems.

2. The Parties recognise that full and productive employment and decent work for all are key elements of sustainable development for all countries and a priority objective of international cooperation.

3. In that context, the Parties reaffirm their commitment to effectively implement in their law and practice the multilateral environmental agreements they are a party to and the ILO conventions ratified by the Member States of the European Union and the Republic of Kazakhstan, respectively.

Article 153. Right to Regulate and Levels of Protection

1. The Parties recognise the right of each Party to establish its own levels of domestic environmental and labour protection, and to adopt or modify its relevant law and policy accordingly, consistently with the internationally recognised standards and agreements referred to in Article 152. The Parties shall aim at high levels of environmental and labour protection.

2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in domestic environmental or labour law.

3. A Party shall not derogate from or, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour law, in order to encourage trade or investment.

Article 154. Trade and Investment Promoting Sustainable Development

1. The Parties reaffirm their commitment to enhance the contribution of trade to the goal of sustainable development in its economic, social and environmental dimensions. Accordingly, they agree to promote:

(a) trade and investment in environmental goods and services and in climate-friendly products and technologies;

(b) the use of sustainability assurance schemes, such as fair and ethical trade or eco-labelling; and

(c) corporate social responsibility practices.

2. The Parties shall exchange information on, and share experience in, their actions to promote coherence and mutual supportiveness between trade, social and environmental objectives. Furthermore, the Parties shall enhance their cooperation and dialogue on sustainable development issues that may arise in the context of their trade relations including

on relevant aspects set out in Title IV (Cooperation in the Area of Economic and Sustainable Development).

3. The cooperation and dialogue referred to in paragraph 2 of this Article shall involve relevant stakeholders, in particular social partners, as well as other civil society organisations, through the civil society cooperation established under Article 251.

4. The Cooperation Committee may adopt rules for such cooperation and dialogue.

Article 155. Dispute Settlement

Subsection 2 of Section 3 of Chapter 14 (Dispute Settlement) of this Title does not apply to disputes under this Chapter. For any such dispute, after the arbitration panel has delivered its final report pursuant to Articles 180 and 182, the Parties, taking the report into account, shall discuss suitable measures to be implemented. The Cooperation Committee shall monitor the implementation of any such measures and shall keep the matter under review, including through the mechanism referred to in Article 154(3).

Chapter 11. Competition

Article 156. Principles

The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices and state interventions, including subsidies, have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

Article 157. Antitrust and Mergers Legislation and Its Implementation

1. Each Party shall maintain in its territory comprehensive competition law which effectively addresses anticompetitive agreements, concerted practices and anti-competitive unilateral conduct of enterprises with dominant market power, and which provides effective control of concentrations.

2. Each Party shall maintain operationally independent authorities responsible and appropriately equipped for the effective enforcement of competition law as referred to in paragraph 1.

3. The Parties recognise the importance of applying their respective competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the enterprises concerned.

Article 158. State Monopolies, State Enterprises and Enterprises Entrusted with Special or Exclusive Rights or Privileges

1. Nothing in this Chapter prevents a Party from designating or maintaining state monopolies or state enterprises, or from entrusting enterprises with special or exclusive rights or privileges according to its law.

2. With regard to state monopolies, state enterprises and enterprises entrusted with special or exclusive rights or privileges involved in economic activities, each Party shall ensure that such enterprises are subject to competition law as referred to in Article 157. For the purposes of this Chapter, an economic activity consists in offering goods and services on a market. It does not include activities performed in the exercise of governmental authority, namely activities carried out neither on a commercial basis nor in competition with one or more economic operators.

3. The application of competition law as referred to in Article 157 should not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to the enterprises in question. Exceptions should be limited and transparent. Trade and investment should not be affected to such an extent that would undermine the objective of this Agreement.

Article 159. Subsidies

1. For the purposes of this Article, a ‘subsidy' is a measure which fulfils the conditions of Article 1 of the SCM Agreement, irrespective of whether it is granted to an enterprise for the production of goods or for the supply of services, and which is specific within the meaning of Article 2 of that Agreement.

2. Each Party shall ensure transparency in the area of subsidies. To that end, each Party shall report every two years from the date of application of this Title to the other Party on the legal basis, including the policy objective or the purpose of the subsidy, the duration or any other time limits, the form and, where possible, the amount or the budget and the recipient of

the subsidy granted by its government or a public body. Such report is deemed to have been provided if the relevant information is made available on a publicly accessible website or through the WTO notification mechanism.

3. If a Party considers that a subsidy granted by the other Party is negatively affecting the first Party's interests, the first Party may request consultations on the matter. The requested Party shall accord due consideration to such a request. The consultations should, in particular, aim at specifying the policy objective of the subsidy, whether the subsidy has an incentive effect and is proportionate, and any measures taken to limit the potential distortive effect on trade and investment of the requesting Party. (1)

4. In order to facilitate the consultations, the requested Party shall provide information on the subsidy in question within a period no longer than 90 days from the date of receipt of the request. If the requesting Party, after receiving information on the subsidy in question, considers that the subsidy in question negatively affects or may negatively affect the requesting Party's trade or investment interests in a disproportionate manner, the requested Party shall use its best endeavours to address the negative effects on the requesting Party's trade or investment interests caused by the subsidy in question.

5. Paragraphs 3 and 4 shall not apply to subsidies relating to fisheries and trade in goods covered by Annex 1 to the WTO Agreement on Agriculture.

Article 160. Dispute Settlement

The provisions of Chapter 14 (Dispute Settlement) of this Title shall not apply with respect to Articles 156 to 158 and Article 159(3) and (4).

(1) A subsidy is proportionate if its amount is limited to what is necessary to achieve the objective.

Article 161. Relationship with the WTO

The provisions of this Chapter are without prejudice to the rights and obligations of a Party under the WTO Agreement, in particular the SCM Agreement and the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 162. Confidentiality

When exchanging information under this Chapter, the Parties shall take into account the limitations imposed by the requirements of professional and business secrecy.

Chapter 12. State-owned Enterprises, State-controlled Enterprises and Enterprises Granted Special or Exclusive Rights or Privileges

Article 163. Definitions

For the purposes of this Chapter:

(a) ‘state-owned enterprise' means any enterprise involved in a commercial activity over which a Party at central or subcentral level owns more than 50 % of the enterprise's subscribed capital or the votes attached to the shares issued by the enterprise;

(b) ‘state-controlled enterprise' means any enterprise involved in a commercial activity over which a Party at central or sub-central level exercises or has the possibility of exercising decisive influence, directly or indirectly, by virtue of its financial participation therein or by the rules or practices on its functioning, or by any other means relevant to establish such decisive influence. Decisive influence on the part of a Party shall be presumed when a Party, directly or indirectly, can appoint more than half of the members of the enterprise's administrative, managerial or supervisory body;

(c) ‘enterprise granted special or exclusive rights or privileges' means any enterprise, public or private, involved in a commercial activity, that has been granted by a Party, at central or sub-central level, in law or in fact, special or exclusive rights or privileges. Such rights or privileges may include the right to act as a distributor, a network provider or another intermediary for the purchase or sale of a good or for the provision or receipt of a service. ‘Enterprises granted special or exclusive rights or privileges' covers monopolies involved in a commercial activity;

(d) a ‘monopoly' means an entity involved in a commercial activity, including a consortium, that in a relevant market in the

territory of a Party is designated at central or sub-central level as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(e) ‘special rights' means rights granted by a Party at central or sub-central level to a limited number of enterprises within a given geographical area or a product or service market the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area under substantially equivalent conditions. The granting of a licence or a permit to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right;

(f) ‘non-discriminatory treatment' means national treatment or most-favoured-nation treatment as set out in this Agreement, whichever is better;

(g) ‘in accordance with commercial considerations' means consistent with customary business practices of a privately held enterprise operating according to market economy principles in international trade;

(h) ‘designate' means to establish or authorise a monopoly, or to expand the scope of a monopoly, whether in law or in fact.

Article 164. Scope

1. The Parties confirm their rights and obligations under paragraphs 1 to 3 of Article XVII of the GATT 1994, the Understanding on the Interpretation of Article XVII of the GATT 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of the GATS and the Chapter on State-owned and State-controlled Enterprises and Enterprises with Special and Exclusive Privileges of the Protocol on the Accession of the Republic of Kazakhstan to the WTO, which are hereby incorporated into and made part of this Agreement and shall apply.

2. This Chapter does not apply to covered procurement by a Party or its procuring entities within the meaning of Article 120.

3. This Chapter shall apply to all economic activities covered by this Agreement. Services which are not listed in a Party's GATS schedule of specific commitments shall not be subject to the provisions of Articles 166 and 167.

Article 165.

1. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter prevents the Parties from establishing or maintaining state-owned or state-controlled enterprises or designating or maintaining monopolies or from granting enterprises special or exclusive rights or privileges.

2. Where an enterprise falls within the scope of application of this Chapter, the Parties shall not require or encourage such an enterprise to act in a manner inconsistent with this Agreement.

Article 166. Non-discrimination

Unless otherwise provided for in Article 142 or in a Party's GATS schedule of specific commitments or in a Party's reservations to national treatment set out in Annex I, each Party shall ensure in its territory that any enterprise satisfying the conditions set out in points (c) and (d) of Article 163 in its purchase or sale of a good or a service accords non-dis-criminatory treatment to a good of the other Party and/or to a service or a service supplier of the other Party.

Article 167. Commercial Considerations

Except to fulfil the purpose, such as a public service obligation, for which special or exclusive rights or privileges have been granted, or in the case of a state-owned or state-controlled enterprise to fulfil its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions of Article 166 and Chapter 11 (Competition) of this Title, each Party shall ensure that any enterprise referred to in points (a) to (d) of Article 163 acts in accordance with commercial considerations in the relevant territory in its purchases and sales of goods, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, as well as in its purchases or supply of services, including when those goods or services are supplied to or by an investment of an investor of the other Party.

Article 168. Pricing

Charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as supply and demand conditions, is not in itself inconsistent with Articles 166 and 167.

Article 169. Corporate Governance

1. The Parties shall ensure that enterprises referred to in points (a) to (d) of Article 163 observe high standards of transparency and corporate governance in accordance with the 2005 OECD Guidelines on Corporate Governance of State-Owned Enterprises. Further development of the policy of corporate governance in enterprises referred to in points (a) to (d) of Article 163 should be conducted in accordance with those Guidelines.

2. Each Party shall ensure that any regulatory body responsible for regulating enterprises referred to in points (a) to

(d) of Article 163 is legally distinct and functionally independent from, and not accountable to, any of the enterprises referred to in points (a) to (d) of Article 163.

3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner at all levels of government, be it central or local, and including on enterprises referred to in points (a) to (d) of Article 163. Exemptions shall be limited and transparent.

Article 170. Exchange of Information

1. A Party which has a reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise or enterprises referred to in points (a) to (d) of Article 163 of the other Party, may request that latter Party to supply information about the operations of its enterprise relating to the carrying out of the provisions of this Agreement. Such information may include organisational, corporate and financial information.

2. Each Party shall, at the request of the other Party, make available information concerning specific enterprises referred to in points (a) to (d) of Article 163 which do not qualify as small and medium-sized enterprises as defined in the law of the requested Party. Requests for such information shall indicate the enterprise, the products or services and markets concerned, and include indications that the enterprise is engaging in practices that hinder trade or investment between the Parties.

3. Each Party shall, at the request of the other Party, make available information concerning exemptions, nonconforming measures, immunities and any other measures, including more favourable treatment, applicable in the territory of the requested Party to any enterprise referred to in points (a) to (d) of Article 163. 4

4. Paragraphs 1 to 3 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises.

Chapter 13. Transparency

Article 171.

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Title. Each Party shall establish one or more enquiry points to provide to interested persons of the other Party, upon request, specific information on all such matters (1). The Parties shall notify each other of the enquiry points within three months of the date of application of this Title. Enquiry points need not be depositories of laws and regulations.

2. All laws, regulations, decrees, decisions and administrative rulings of general application of the Parties pertaining to or affecting any matter governed by this Title shall be published promptly in a manner that fulfils the applicable requirements of the WTO Agreement, including those of Article X of the GATT 1994, Article III of the GATS, and Article 63 of the TRIPS Agreement. The Parties shall update published resources, including websites, containing such measures, on a regular basis and make them readily available to interested persons. Such measures shall be available while they are in effect and for a reasonable period after they are no longer in effect.

3. The Parties shall publish all laws, regulations, decrees, decisions and administrative rulings of general application pertaining to or affecting any matter governed by this Title, prior to their adoption. The Parties shall provide a reasonable period of time, normally not less than 30 calendar days, for interested persons to comment to the responsible authorities before the relevant measure is finalised or submitted to the authorities responsible for its adoption. Any comments received during the period for comments will be taken into account.

4. No law, regulation, decree, decision or administrative ruling of general application of the Parties pertaining to or affecting

any matter governed by this Title shall become effective prior to publication.

5. Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, whether public or private.

6. Article 55 shall apply with respect to this Chapter.

(1) The enquiry point for the Republic of Kazakhstan is the enquiry point set up under the GATS Agreement.

Chapter 14. Dispute Settlement

Section 1. Objective and Scope

Article 172. Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arriving, where possible, at a mutually agreed solution.

Article 173. Scope of Application

This Chapter shall apply with respect to any dispute concerning the interpretation and application of this Title, except as otherwise provided.

Section 2. Consultations and Mediation

Article 174. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 173 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party, copied to the Cooperation Committee, identifying the measure at issue and the provisions referred to in Article 173 that it considers applicable.

3. The Party to which the request is made shall respond to the request for consultations within 10 days of the date of its receipt, unless otherwise provided for in this Agreement or agreed between the Parties.

4. The consultations shall be held within 30 days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 30 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, and in particular all information disclosed and positions taken by the Parties during the consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

5. Consultations on matters of urgency shall be deemed concluded within 15 days of the date of receipt of the request by the requested Party unless both Parties agree to continue consultations.

6. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or 4 of this Article, respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 176.

7. During consultations each Party shall provide sufficient factual information, so as to allow a complete examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

8. The consultations shall be deemed concluded within five working days of the date of receipt of the request for consultations, unless the Parties agree otherwise, when they concern emergency situations as defined in point (h) of Article 138.

Article 175. Mediation

Any Party may request the other Party to enter into a mediation procedure with respect to any measure adversely affecting trade or investment between the Parties pursuant to Annex VII.

Section 3. Dispute Settlement Procedures

Subsection 1. Arbitration Procedure

Article 176. Initiation of the Arbitration Procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 174, the Party that sought consultations may request the establishment of an arbitration panel in accordance with this Article.

2. The request for the establishment of an arbitration panel shall be made by means of a written request delivered to the other Party and the Cooperation Committee. The complaining Party shall identify in its request the measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 173 in a manner sufficient to present the legal basis for the complaint clearly.

Article 177. Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of delivery, to the Party complained against, of the written request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, each Party may, within five days from the expiry of the timeframe established in paragraph 2 of this Article, appoint an arbitrator from the sub-list of that Party contained in the list established under Article 196. If either Party fails to appoint an arbitrator, the arbitrator shall, upon request of the other Party, be selected by lot by the chair of the Cooperation Committee, or the chair's delegate, from the sub-list of that Party contained in the list established under Article 196.

4. Unless the Parties reach an agreement concerning the chairperson of the arbitration panel within the timeframe established in paragraph 2 of this Article, the chair of the Cooperation Committee or the chair's delegate shall, upon request of either Party, select by lot the chairperson of the arbitration panel from the sub-list of chairpersons contained in the list established under Article 196.

5. The chair of the Cooperation Committee, or the chair's delegate, shall select the arbitrators within five days of the request by either Party referred to in paragraph 3 or 4.

6. The date of establishment of the arbitration panel shall be the last date on which all three selected arbitrators have accepted their appointment according to the Rules of Procedure set out in Annex V.

7. Should any of the lists provided for in Article 196 not be established or not contain sufficient names at the time a request is made pursuant to paragraph 3 or 4 of this Article, the arbitrators shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties. 8

8. Unless the Parties agree otherwise, in respect of a dispute concerning emergency situations as defined in point (h) of Article 138 between the Parties, the second sentence of paragraph 3 and paragraph 4 of this Article shall apply without recourse to paragraph 2 of this Article, and the period in paragraph 5 of this Article shall be two days.

Article 178. Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall, within 10 days of its establishment, give a preliminary ruling on whether it deems the case to be urgent.

Article 179. Conciliation for Urgent Energy Disputes

1. In respect of a dispute concerning emergency situations as defined in point (h) of Article 138 either Party may request the chairperson of the arbitration panel to act as conciliator concerning any matter related to the dispute by making a request to the arbitration panel.

2. The conciliator shall seek an agreed resolution of the dispute or seek to agree a procedure to achieve such resolution. If

within 15 days of the date of his appointment the conciliator has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide on the terms and conditions to be observed from a date which he shall specify until the dispute is resolved.

3. The Parties and the entities under their control or jurisdiction shall respect recommendations made under paragraph 2 on the terms and conditions for three months following the conciliator's decision or until resolution of the dispute, whichever is earlier.

4. The conciliator shall respect the Code of Conduct for Members of Arbitration Panels and Mediators (‘Code of Conduct') set out in Annex VI.

Article 180. Reports of the Arbitration Panel

1. The arbitration panel shall deliver an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes.

2. Any Party may deliver a written request to the arbitration panel to review precise aspects of the interim report within 14 days of its receipt.

3. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its interim report and make any further examination it considers appropriate.

4. The final report of the arbitration panel shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 173 and the basic rationale behind any findings and conclusions that it makes. The final report shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the questions and observations of the Parties.

Article 181. Interim Report of the Arbitration Panel

1. The arbitration panel shall deliver an interim report to the Parties no later than 90 days after the date of establishment of the arbitration panel. When the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Cooperation Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to deliver its interim report. Under no circumstances should the interim report be delivered later than 120 days after the date of establishment of the arbitration panel.

2. In cases of urgency the arbitration panel shall make every effort to deliver its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. Any Party may deliver a written request to the arbitration panel to review precise aspects of the interim report pursuant to Article 180(2) within seven days of the delivery of the interim report.

3. In respect of a dispute concerning emergency situations as defined in point (h) of Article 138 between the Parties, the interim report shall be delivered within 20 days after the date of establishment of the arbitration panel, and any request pursuant to Article 180(2) shall be delivered within five days of the delivery of the interim report. The arbitration panel may also decide to dispense with the interim report.

Article 182. Final Report of the Arbitration Panel

1. The arbitration panel shall deliver its final report to the Parties and to the Cooperation Committee within 120 days of the date of establishment of the arbitration panel. When the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Cooperation Committee in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances should the final report be delivered later than 150 days after the date of establishment of the arbitration panel.

2. In cases of urgency, the arbitration panel shall make every effort to deliver its report within 60 days after the date of establishment of the arbitration panel. Under no circumstances should the final report be delivered later than 75 days after the date of establishment of the arbitration panel.

3. In respect of a dispute concerning emergency situations as defined in point (h) of Article 138, the arbitration panel shall deliver its final report within 40 days of the date of establishment of the arbitration panel.

Subsection 2. Compliance

Article 183. Compliance with the Final Report of the Arbitration Panel

The Party complained against shall take the necessary measures to comply promptly and in good faith with the final report of the arbitration panel.

Article 184. Reasonable Period of Time for Compliance

1. If immediate compliance is not possible, the Parties shall endeavour to agree on the period of time to comply with the final report. In such a case, the Party complained against shall, no later than 30 days after receipt of the final report of the arbitration panel, deliver a notification to the complaining Party and the Cooperation Committee of the time it will require for compliance (‘the reasonable period of time').

2. If there is disagreement between the Parties on the duration of the reasonable period of time, the complaining Party may, within 20 days of receipt of the notification referred to in paragraph 1 of this Article, request in writing that the arbitration panel established initially pursuant to Article 177 (‘the original arbitration panel') determine the length of the reasonable period of time. Such request shall be delivered simultaneously to the other Party and to the Cooperation Committee. The arbitration panel shall deliver its report to the Parties and to the Cooperation Committee within 20 days of the date of receipt of the request. 3

3. The Party complained against shall notify the complaining Party in writing of its progress in complying with the final report of the arbitration panel. This notification shall be provided in writing and delivered at least one month before the expiry of the reasonable period of time.

4. The reasonable period of time may be extended by mutual agreement of the Parties.

Article 185. Review of Any Measure Taken to Comply with the Final Report of the Arbitration Panel

1. The Party complained against shall notify the complaining Party and the Cooperation Committee of any measure that it has taken to comply with the final report of the arbitration panel. This notification shall be delivered before the end of the reasonable period of time.

2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 of this Article with the provisions referred to in Article 173, the complaining Party may deliver a written request to the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and explain how such measure is inconsistent with the provisions referred to in Article 173, in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel shall deliver its report to the Parties and to the Cooperation Committee within 45 days of the date of receipt of the request.

Article 186. Temporary Remedies In Case of Non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the final report of the arbitration panel before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under Article 185(1) is inconsistent with that Party's obligations under the provisions referred to in Article 173, the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for compensation.

2. If the complaining Party decides not to request an offer for compensation under paragraph 1 of this Article or, in case such request is made, if no agreement on compensation is reached within 30 days of the date of expiry of the reasonable period of time or of the delivery of the arbitration panel report under Article 18 5(2), the complaining Party shall be entitled, upon notification to the other Party and to the Cooperation Committee, to take appropriate measures at a level equivalent to the nullification or impairment (') caused by the violation. The notification shall specify such measures. The complaining Party may implement the measures at any moment after the expiry of a ten-day period from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.

3. If the Party complained against considers that the appropriate measures are not at a level equivalent to the nullification or impairment caused by the violation of that Party's obligations under the provisions referred to in Article 173, the Party complained against may deliver a written request to the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Cooperation Committee before the expiry of the ten-day period referred to

in paragraph 2 of this Article. The original arbitration panel shall deliver its report on the measures notified by the complaining Party to the Parties and to the Cooperation Committee within 30 days of the date of delivery of the request. The complaining Party shall not make the notified measures effective until the original arbitration panel has delivered its report. Such measure made effective after the delivery of the report shall be consistent with the arbitration panel report.

4. The measures made effective by the complaining Party and the compensation foreseen in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 191;

(b) the Parties have agreed that the measure notified under Article 18 5(1) brings the Party complained against in conformity with the provisions referred to in Article 173; or

(c) any measure that the arbitration panel under Article 185(2) has found to be inconsistent with the provisions referred to in Article 173 has been withdrawn or amended so as to bring it in conformity with those provisions.

F 1) 'Nullification and impairment' is interpreted as 'nullification and impairment' pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 187. Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies for Non-compliance

1. The Party complained against shall notify the complaining Party and the Cooperation Committee of the measure it has taken to comply with the final report of the arbitration panel following the application of compensation or the taking of an appropriate measure by the complaining Party pursuant to Article 186, as the case may be. With the exception of cases under paragraph 2 of this Article, the complaining party shall terminate the measure within 30 days from receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2 of this Article, the Party complained against may terminate the application of such compensation within 30 days from receipt of the notification that it has complied with the final report of the arbitration panel.

2. If the Parties do not reach an agreement on whether the Party complained against has complied with the final report of the arbitration panel within 30 days from receipt of the notification under paragraph 1 of this Article, the complaining Party shall deliver a written request to the original arbitration panel to rule on the matter. Such a request shall be delivered simultaneously to the other Party and to the Cooperation Committee. The arbitration panel report shall be delivered to the Parties and to the Cooperation Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that the Party complained against has complied with the final report of the arbitration panel, the complaining Party shall terminate the appropriate measure taken under Article 186 or the Party complained against shall terminate the compensation, as the case may be. If the arbitration panel rules that the Party complained against has not fully complied with the final report of the arbitration panel, the compensation or the appropriate measure taken pursuant to Article 186 shall be adapted in light of the arbitration panel report.

Article 188. Remedies for Urgent Energy Disputes

1. In respect of a dispute concerning emergency situations as defined in point (h) of Article 138 between the Parties, this Article shall apply.

2. By way of derogation from Articles 184, 185 and 186, the complaining Party may take appropriate measures to a level equivalent to the nullification or impairment caused by a Party failing to bring itself into compliance with the final report of the arbitration panel within 15 days of its release. Those measures may take effect immediately. Such measures may be maintained as long as the Party complained against has not complied with the final report of the arbitration panel.

3. Should the Party complained against dispute the existence of a failure to comply or the proportionality of the measure made effective by the complaining Party or its failure to comply, it may initiate proceedings under Article 186(3) and Article 187 which shall be examined expeditiously. The complaining Party shall be required to remove or adjust the measures only once the arbitration panel has ruled on the matter, and may maintain the measures pending the proceedings.

Subsection 3. Common Provisions

Article 189. Replacement of Arbitrators

If in an arbitration proceeding under this Chapter the original arbitration panel, or some of its members, are unable to

participate, withdraw, or need to be replaced because they do not comply with the requirements of the Code of Conduct set out in Annex VI, the procedure set out in Article 177 shall apply. The time limit for the delivery of the report may be extended for the time necessary for the appointment of a new arbitrator but for no longer than 20 days.

Article 190. Suspension and Termination of Arbitration and Compliance Procedures

The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months. The arbitration panel shall resume its work before the end of that period at the written request of both Parties or at the end of that period at the written request of either Party. The requesting Party shall notify the chair of the Cooperation Committee and the other Party accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings subject to Article 197.

Article 191. Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Cooperation Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

Article 192. Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure set out in Annex V and by the Code of Conduct set out in Annex VI.

2. Any hearing of the arbitration panel shall be open to the public unless otherwise provided for in the Rules of Procedure set out in Annex V.

Article 193. Information and Technical Advice

At the request of a Party, or on its own initiative, the arbitration panel may request any information it deems appropriate for the arbitration panel proceedings from any source, including the Parties involved in the dispute. The arbitration panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Natural or legal persons established in the territory of a Party may submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure set out in Annex V. Any information obtained under this Article shall be disclosed to each Party and submitted for their comments.

Article 194. Rules of Interpretation

Any arbitration panel shall interpret the provisions referred to in Article 173 in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention of 1969 on the Law of Treaties. The arbitration panel shall also take into account relevant interpretations of WTO panels and of the Appellate Body adopted by the WTO Dispute Settlement Body (hereinafter referred to as the ‘DSB'). The reports of the arbitration panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

Article 195. Decisions and Reports of the Arbitration Panel

1. The deliberations of the arbitration panel shall be confidential. The arbitration panel shall make every effort to take any decision by consensus. Nevertheless, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. In no case shall dissenting opinions of arbitrators be disclosed.

2. The reports of the arbitration panel shall be drafted without the presence of the Parties. The reports shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 173, and the basic rationale behind any findings and conclusions that it makes.

3. The reports of the arbitration panel shall be unconditionally accepted by the Parties. They shall not create any rights or obligations for natural or legal persons.

4. The Parties shall make the arbitration panel report publicly available, subject to the protection of confidential information as provided for in the Rules of Procedure set out in Annex V.

Section 4. General Provisions

Article 196. Lists of Arbitrators

1. The Cooperation Committee, on the basis of proposals made by the Parties, shall, no later than six months after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party and who may serve as chairperson of the arbitration panel. Each sub-list shall include at least five individuals. The Cooperation Committee will ensure that the list is always maintained at that level.

2. Arbitrators shall have specialised knowledge and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct set out in Annex VI.

3. The Cooperation Committee may establish additional lists of 15 individuals with knowledge and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the arbitration panel in accordance with the procedure set out in Article 177.

Article 197. Relation with Wto Obligations

1. Recourse to the dispute settlement provisions of this Title shall be without prejudice to any action in the WTO framework, including dispute settlement action. 2

2. However, a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under both this Agreement and the WTO Agreement in both fora. In such a case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum first selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of this Article:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes;

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 176(1).

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from applying temporary remedies for noncompliance under this Chapter.

Article 198. Time Limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to deliver their reports, shall be counted in calendar days, the first day being the day following the act or the fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time limit referred to in this Chapter, stating the reasons for that proposal.

Title IV. Cooperation In the Area of Economic and Sustainable Development

Chapter 1. Economic Dialogue

Article 199.

The Parties adhere to the principles of the free market economy ensuring sound macroeconomic policies and shall develop and strengthen regular economic dialogue aimed at further expanding and deepening mutually beneficial economic ties, as well as sustainable development and economic growth.

Article 200.

The Parties shall regularly review the status of bilateral cooperation and conduct regular exchange of information, expertise and best practices in the field of economic policies, economic and financial development and statistics.

Chapter 2. Cooperation In Public Finance Management, Including Public Audit and Internal Control

Article 201.

The Parties shall cooperate in the area of public finance management, including public audit and internal control, with the aim of further development of a sound public finance management system, compatible with the principles of economy, efficiency and effectiveness as well as transparency and accountability.

Cooperation shall include:

(a) promoting the implementation of acceptable and generally recognised international standards as well as convergence with good practices of the European Union in this area;

(b) exchange of information and experiences in this area.

Chapter 3. Cooperation In the Area of Taxation

Article 202.

The Parties shall strive to improve international cooperation in the area of taxation, notably in the area of facilitating the collection of legitimate tax revenues, and to develop measures in line with international standards for the effective implementation of the principles of good governance in the area of taxation, including transparency and exchange of information. The Parties shall strengthen dialogue and exchange experience with a view to avoiding harmful tax practices.

Chapter 4. Cooperation In the Area of Statistics

Article 203.

The Parties shall promote the harmonisation of statistical methods and practice, including the gathering and dissemination of statistics. The statistical cooperation shall focus on exchange of knowledge, fostering good practices and respect for the UN Fundamental Principles of Official Statistics and the European Statistics Code of Practice.

The European Union shall contribute to this end by rendering technical assistance to the Republic of Kazakhstan.

Chapter 5. Cooperation In the Area of Energy

Article 204.

The Parties shall continue and intensify their current cooperation on energy matters with the objective to enhance energy security, efficiency, sustainability, and competitiveness. The cooperation shall be based on a comprehensive partnership and shall be guided by the principles of mutual interest, reciprocity, transparency and predictability according to the principles of market economy and existing related multilateral and bilateral agreements.

Article 205.

Cooperation shall include, inter alia, the following areas:

(a) implementation of energy strategies and policies, elaboration of forecasts and scenarios, including global market conditions for energy products, as well as improvement of the statistical system in the energy sector;

(b) creation of an attractive and stable investment climate and the encouragement of mutual investments in the energy field on a non-discriminatory and transparent basis;

(c) effective cooperation with the European Investment Bank, the European Bank for Reconstruction and Development and other international financial institutions and instruments to support the energy cooperation between the Parties;

(d) enhancement of scientific and technical cooperation and exchange of information for the development of energy technologies with particular attention to energy efficient and environmentally friendly technologies, in accordance with Chapter 3 (Cooperation in Research and Innovation) of Title VI;

(e) management and technical training in the energy sector through, inter alia, facilitating exchange of trainees of specialised courses in higher education institutes in the European Union and the Republic of Kazakhstan as well as development of joint training programmes in accordance with good practices;

(f) extension of cooperation in multilateral energy fora, initiatives and institutions;

(g) cooperation in exchange of knowledge and experience as well as technology transfer in innovation, including in the areas of management and energy technologies.

Article 206. Hydrocarbon Energy

Cooperation in the field of hydrocarbon energy shall cover the following areas:

(a) modernisation and enhancement of existing, and development of future, energy infrastructures of common interest according to market principles, including those aimed at diversification of energy sources, suppliers and transportation routes and transport methods, as well the establishment of new generation capacity and the integrity, efficiency, safety and security of energy infrastructures, including electric power infrastructures;

(b) development of competitive, transparent and non-discriminatory energy markets in line with best practices through regulatory reforms;

(c) enhancement and strengthening of long-term stability and security of energy trade, including ensuring the predictability and stability of energy demand, on a non-discriminatory basis, while minimising environmental impacts and risks;

(d) promotion of a high level of environmental protection and sustainable development in the energy sector, including extraction, production, distribution and consumption;

(e) strengthening the safety of offshore hydrocarbon exploration and production activities, by means of exchange of experience in accident prevention, post-accident analysis, response and remediation policies, as well as best practices on liability and legal practice in case of a disaster.

Article 207. Renewable Energy Sources

Cooperation shall be pursued in the fields of:

(a) the development of renewable energy sources in an economic and environmentally sound manner, including cooperation on regulatory issues, certification and standardisation as well as on technological development;

(b) facilitating exchanges between the Republic of Kazakhstan and European institutions, laboratories and private sector entities, including through joint programmes, with the aim of implementing best practices towards creating the energy of the future and green economy;

(c) conducting joint seminars, conferences and training programmes, and exchanging information and open statistical data on a regular basis, as well as information on the development of renewable energy sources.

Article 208. Energy Efficiency and Energy Savings

Cooperation in the promotion of energy efficiency and energy savings, including in the coal sector, gas flaring (and the use of associated gas), buildings, appliances and transport, shall be pursued, inter alia, through:

(a) exchanging information about energy efficiency policies and legal and regulatory frameworks and action plans;

(b) facilitating the exchange of experiences and know-how in the field of energy efficiency and energy savings;

(c) initiating and implementing projects, including demonstration projects, for the introduction of innovative technologies and solutions in the field of energy efficiency and energy savings;

(d) training programmes and training courses in the field of energy efficiency in order to achieve the objectives of this Article.

Chapter 6. Cooperation In the Area of Transport

Article 209.

The Parties shall cooperate on:

(a) expanding and strengthening their transport cooperation in order to contribute to the development of sustainable transport systems;

(b) focusing on the social and environmental aspects of the transport systems;

(c) promoting efficient, safe and secure transport operations;

(d) enhancing the main transport links between their territories.

Article 210.

The cooperation referred to in this Chapter shall cover, among others, the following areas:

(a) exchange of best practices on transport policies;

(b) improvement of the movement of passengers and goods, increasing fluidity of transport flows by removing administrative, technical and other obstacles, aiming at closer market integration, improving transport networks and upgrading the infrastructure;

(c) information exchange and joint activities at regional and international level and implementation of applicable international agreements and conventions;

(d) exchange of best practices on safety and sustainable development of maritime transport.

The Republic of Kazakhstan shall bring its bilateral aviation agreements with the Member States of the European Union

In accordance with the legislation of the European Union.

Article 211.

A regular dialogue shall take place on the issues covered by this Chapter.

Chapter 7. Cooperation In the Area of Environment

Article 212.

The Parties shall develop and strengthen their cooperation on environmental issues, thereby contributing to sustainable development and good governance in environmental protection.

Cooperation shall be pursued in the following fields:

(a) environmental assessments, monitoring and control;

(b) environmental education and awareness raising, improving access to information, enhancing public participation in decision making and access to justice in environmental matters;

(c) legislation in the field of environmental protection;

(d) air quality;

(e) waste management;

(f) water quality management, including marine environment;

(g) integrated water resource management, including promotion of advanced water saving technologies;

(h) conservation and protection of biological and landscape diversity;

(i) sustainable forest management;

(j) industrial pollution and industrial emissions;

(k) classification and safe management of chemicals;

(l) initiatives of the European Union and the Republic of Kazakhstan in the area of green economy; and

(m) mutual exchange of experience regarding the policies for sustainable development of fisheries.

Article 213.

Cooperation in the field of environmental protection shall be carried out by mutual consent of the Parties in, among others, the following forms:

(a) exchange of technologies, scientific and technical information, and research activities in the field of environmental protection;

(b) exchange of experience in improvement of environmental legislation and methodologies.

Article 214.

The Parties shall pay special attention to the implementation of, and cooperation in, environmental issues in the framework of relevant multilateral environmental agreements and agree to intensify cooperation at regional level.

The Parties shall exchange experience in promoting integration of the environment into other sectors, including exchanging best practices, increasing knowledge and competence, environmental education and awareness raising in the areas referred to in this Chapter.

Chapter 8. Cooperation In the Area of Climate Change

Article 215.

The Parties shall develop and strengthen their cooperation to combat and to adapt to climate change. Cooperation shall be conducted considering the interests of the Parties on the basis of equality and mutual benefit and taking into account the interdependence existing between bilateral and multilateral commitments in this field.

Article 216.

Cooperation shall promote measures at domestic and international level, including in the following areas:

(a) mitigation of climate change;

(b) adaptation to climate change;

(c) market and non-market approaches to addressing climate change;

(d) research, development, demonstration, deployment and diffusion of new, safe and sustainable low-carbon and adaptation technologies;

(e) exchange of climate expertise and support for other sectors;

(f) awareness raising, education and training.

Article 217.

The Parties shall, inter alia, exchange information and expertise, implement joint research activities and exchanges of

information on cleaner technologies, implement joint activities at regional and international level, including with regard to multilateral environmental agreements applicable to the Parties, such as the UN Framework Convention on Climate Change, and joint activities in the framework of relevant agencies, as appropriate.

Chapter 9. Cooperation In the Area of Industry

Article 218.

The Parties shall develop and strengthen their cooperation on industry, including issues of development of effective incentives and favourable conditions for the further diversification and an increase in competitiveness of the manufacturing industry.

To that end, the Parties shall cooperate, including through the exchange of best practices and experience, in the following sectors:

(a) productivity and efficiency of resource use;

(b) public supporting measures for industry sectors, based on WTO requirements and other applicable rules of the Parties;

(c) implementation of the industrial policy within a context of deepening integration;

(d) tools to enhance the efficiency of the implementation of industrial policy;

(e) investment activity in the manufacturing industry, reduction of its energy consumption, as well as the exchange of experiences in the implementation of labour productivity policies;

(f) conditions for the development of new production technologies, high-tech industries, and knowledge and technology transfer, as well as further development of basic infrastructure and favourable environment for innovation clusters;

(g) investment and trade in mining and production of raw materials, with the objectives of promoting mutual understanding and transparency, improving the business environment, and promoting the exchange of information and cooperation in the area of non-energy mining, in particular metallic ores and industrial minerals;

(h) human resource capacity development in the manufacturing industry;

(i) promotion of business initiatives and industrial cooperation between enterprises of the European Union and the Republic of Kazakhstan.

This Agreement does not exclude greater industrial cooperation between the Parties, and separate arrangements may be concluded.

Chapter 10. Cooperation In the Area of Small and Medium-sized Enterprises

Article 219.

The Parties shall develop and strengthen their cooperation in the area of small and medium-sized enterprises (SMEs) to foster a business environment conducive to the successful development and creation of SMEs.

To that end, the Parties shall cooperate in the following fields:

(a) exchange of information on SME development policy;

(b) exchange of best practices on initiatives strengthening entrepreneurship as a key competence;

(c) promotion of better contacts between business associations of both Parties through closer dialogue;

(d) exchange of experience in supporting the capacity of SMEs to access international markets;

(e) exchange of experience in the area of improving the regulatory framework impact on SMEs;

(f) exchange of best practices on access to financing for SMEs.

Chapter 11. Cooperation In the Area of Company Law

Article 220.

The Parties recognise the importance of an effective set of rules and practices in the areas of company law and corporate governance, as well as in accounting and auditing, in a functioning market economy with a predictable and transparent business environment, and underline the importance of promoting regulatory convergence in this field.

The Parties shall cooperate on the following:

(a) exchange of best practices on ensuring availability of and access to information regarding the organisation and representation of registered companies in a transparent and easily accessible way;

(b) further development of corporate governance policy in line with international and particularly OECD standards;

(c) fostering the implementation and consistent application of International Financial Reporting Standards (IFRS) for the consolidated accounts of listed companies;

(d) the approximation of accounting rules and financial reporting, including as regards SMEs;

(e) the regulation and oversight of the auditor and accountant professions;

(f) international auditing standards and the Code of Ethics of the International Federation of Accountants (IFAC), with the aim of improving the professional level of auditors by means of observance of standards and ethical norms by professional organisations, audit organisations and auditors.

Chapter 12. Cooperation In the Area of Banking, Insurance and other Financial Services

Article 221.

The Parties agree on the importance of effective legislation and practices and to cooperate in the area of financial services with the objectives of:

(a) improving the regulation of financial services;

(b) ensuring effective and adequate protection of investors and consumers of financial services;

(c) contributing to the stability and integrity of the global financial system;

(d) promoting cooperation between different actors of the financial system, including regulators and supervisors;

(e) promoting independent and effective supervision.

The Parties shall promote regulatory convergence with recognised international standards for sound financial systems.

Chapter 13. Cooperation In the Area of Information Society

Article 222.

The Parties shall promote cooperation on the development of the information society to benefit citizens and businesses through the widespread availability of information and communication technologies (ICT) and through better quality of services at affordable prices. This cooperation shall aim at promoting the development of competition in, and openness of, ICT markets as well as encouraging investments in this sector.

Article 223.

Cooperation shall cover, inter alia, exchange of information and best practices on the implementation of information society initiatives, focusing notably on:

(a) developing an effective regulatory framework for the ICT sector;

(b) promoting broadband access;

(c) developing interoperable electronic services;

(d) ensuring data protection; and

(e) developing roaming services.

Article 224.

The Parties shall promote cooperation between the regulators in the field of ICT, including electronic communications, in the the European Union and Republic of Kazakhstan.

Chapter 14. Cooperation In the Area of Tourism

Article 225.

The Parties shall cooperate in the field of tourism with the aim of strengthening the development of a competitive and sustainable tourism industry as a generator of economic growth, empowerment, employment and exchanges in the tourism sector.

Article 226.

Cooperation shall be based on the following principles:

(a) respect for the integrity and interests of local communities, particularly in rural areas;

(b) the importance of preserving cultural and historical heritage; and

(c) positive interaction between tourism and environmental preservation.

Article 227.

Cooperation shall focus on the following topics:

(a) exchange of information, best practices, experience and know-how, including on innovative technologies;

(b) establishment of a strategic partnership between public, private and community stakeholders in order to support the sustainable development of tourism;

(c) promotion and development of tourism products and markets, infrastructure, human resources and institutional structures as well as the identification and elimination of barriers to travel services;

(d) development and implementation of efficient policies and strategies including appropriate legal, administrative and financial aspects;

(e) tourism training and capacity building in order to improve service standards; and

(f) development and promotion of tourism involving local population and other types of tourism in a sustainable manner.

Chapter 15. Cooperation In the Area of Agriculture and Rural Development

Article 228.

The Parties shall cooperate to promote agricultural and rural development, in particular through progressive convergence of policies and legislation.

Article 229.

Cooperation shall cover, among others, the following areas:

(a) facilitating the mutual understanding of agricultural and rural development policies;

(b) exchanging best practices in the planning, evaluation and implementation of agricultural and rural development policies;

(c) sharing knowledge and best practices with regard to rural development policies to promote social and economic well-being for rural inhabitants;

(d) promoting the modernisation and the sustainability of agricultural production;

(e) improving the competitiveness of the agricultural sector and the efficiency and transparency of the markets;

(f) exchanging experience in geographical indications for agricultural products and foodstuffs, in quality policies and their control mechanisms, in ensuring food safety and in the development of the production of organic agricultural products;

(g) disseminating knowledge and promoting extension services to agricultural producers;

(h) promoting cooperation in agro-industrial investments projects, in particular in the development of the livestock and crop sectors;

(i) exchanging experience in policies related to sustainable development of agribusiness and the processing and distribution of agricultural products.

Chapter 16. Cooperation on Employment, Labour Relations, Social Policy and Equal Opportunities

Article 230.

The Parties shall promote the development of dialogue and cooperate on promoting the ILO Decent Work Agenda, employment policy, living and working conditions and health and safety at work, social dialogue, social protection, social inclusion and anti-discrimination, as well as fair treatment of workers legally residing and working in the other Party.

Article 231.

The Parties shall pursue the goals covered by Article 230, including through cooperation and exchange of practices in the following areas:

(a) improving the quality of life and ensuring a better social environment;

(b) enhancing social inclusion and the level of social protection for all workers and modernising social protection systems in terms of quality, accessibility and financial sustainability;

(c) reducing poverty and enhancing social cohesion and the protection of vulnerable people;

(d) combating discrimination in employment and social affairs in accordance with each Party's obligations under international standards and conventions;

(e) promoting active labour market measures and improving efficiency of employment services;

(f) aiming at more and better jobs with decent working conditions;

(g) improving living and working conditions, as well as the level of protection of health and safety at work;

(h) enhancing gender equality by promoting the participation of women in social and economic life and ensuring equal opportunities between men and women in employment, education, training, economy, society and decision making;

(i) improving the quality of the labour law and ensuring a better protection for workers;

(j) enhancing and promoting social dialogue, including increasing the capacity of social partners.

Article 232.

The Parties reaffirm their commitments to effectively implement the applicable ILO conventions.

The Parties, taking into account the Ministerial Declaration of the UN Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006, recognise that full and productive employment and decent work for all are key elements of sustainable development.

The Parties shall encourage, in line with the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the

involvement of all relevant stakeholders, in particular social partners, in their respective social policy development and in the cooperation between the European Union and the Republic of Kazakhstan under this Agreement.

The Parties shall aim at enhancing cooperation on decent work, employment and social policy matters in all relevant fora and organisations.

Chapter 17. Cooperation In the Area of Health

Article 233.

The Parties shall develop their cooperation in the field of public health with a view to raising the level of protection of human health and reducing health inequalities, in line with common health values and principles, and as a precondition for sustainable development and economic growth.

Article 234.

Cooperation shall address the prevention and control of communicable and non-communicable diseases, including through exchange of health information, promoting a health-in-all-policies approach, cooperation with international organisations, in particular the World Health Organisation, and by promoting the implementation of international health agreements, such as the World Health Organisation Framework Convention on Tobacco Control of 2003 and the International Health Regulations.

Title V. Cooperation In the Area of Freedom, Security and Justice

Article 235. Rule of Law and Respect for Human Rights and Fundamental Freedoms

In their cooperation under this Title, the Parties shall attach particular importance to the promotion of the rule of law, including the independence of the judiciary, access to justice and the right to a fair trial, and respect for human rights and fundamental freedoms.

The Parties shall cooperate in strengthening the functioning of institutions, including law enforcement, prosecution, the administration of justice and the prevention of, and fight against, corruption.

Article 236. Legal Cooperation

The Parties shall develop cooperation in civil and commercial matters as regards the negotiation, ratification and implementation of relevant multilateral conventions on civil judicial cooperation and, in particular, the conventions of the Hague Conference on Private International Law.

The Parties shall enhance cooperation in criminal matters, including on mutual legal assistance. This may include, where appropriate and subject to applicable procedures, accession to, and implementation of, the Council of Europe conventions in criminal proceedings by the Republic of Kazakhstan, implementation of the relevant UN international instruments, and cooperation with Eurojust.

Article 237. Protection of Personal Data

The Parties shall cooperate in order to ensure a high level of protection of personal data, through the exchange of best practices and experience, taking into account European and international legal instruments and standards.

This may include, where appropriate and subject to applicable procedures, accession to, and implementation of, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol by the Republic of Kazakhstan.

Article 238. Cooperation on Migration, Asylum and Border Management

1. The Parties affirm the importance that they attach to management of migration flows. Cooperation shall be based on mutual consultation between the Parties and shall be implemented in accordance with the relevant legislation in force.

2. Within the framework of the cooperation to prevent and tackle irregular migration, the Parties agree that:

(a) the Republic of Kazakhstan shall readmit any of its nationals irregularly present on the territory of a Member State of the

European Union, upon request by the latter and without undue delay; and

(b) each Member State of the European Union shall readmit any of its nationals irregularly present on the territory of the Republic of Kazakhstan, upon request by the latter and without undue delay.

3. The Member States of the European Union and the Republic of Kazakhstan shall provide their nationals with appropriate identity documents for the purposes of paragraph 2 without further formalities other than those referred to in this Article and without undue delay. Where the person to be readmitted does not possess any documents or other proof of his nationality, the competent diplomatic and consular representations of the Member State concerned or the Republic of Kazakhstan shall, upon request by the Republic of Kazakhstan or the Member State concerned, make arrangements to interview that person in order to establish his nationality without further formalities and without undue delay.

4. The Parties agree to establish a comprehensive dialogue on relevant migration-related issues in line with the Global Approach to Migration and Mobility, inter alia, with a view to considering the possible negotiation of an agreement between the European Union and the Republic of Kazakhstan regulating the specific obligations for the Member States of the European Union and the Republic of Kazakhstan on readmission, including an obligation for the readmission of nationals of other countries and stateless persons, as well as with a view to considering possible negotiation, in parallel, of an agreement on visa facilitation for citizens of the European Union and of the Republic of Kazakhstan.

Article 239. Consular Protection

The Republic of Kazakhstan agrees that the diplomatic and consular authorities of any Member State of the European Union represented in the Republic of Kazakhstan shall provide protection to any national of a Member State of the European Union that does not have an accessible permanent representation in the Republic of Kazakhstan, on the same conditions as to nationals of that Member State of the European Union.

Article 240. Combating Money Laundering and Financing of Terrorism

The Parties shall cooperate in order to prevent the use of their financial and relevant non-financial sectors to launder the proceeds of criminal activities in general and drug offences in particular, as well as for the purpose of financing of terrorism, in accordance with international standards on combating money laundering and financing of terrorism, as adopted by the Financial Action Task Force. This cooperation extends to the recovery, seizure, confiscation and return of assets or funds derived from the proceeds of crime.

Cooperation shall allow exchanges of relevant information within the framework of the relevant legislation and international commitments of the Parties.

Article 241. Illicit Drugs

The Parties shall cooperate on a balanced and integrated approach to drug issues, notably on issues of illicit trafficking in narcotic drugs, psychotropic substances and their precursors. Drug policies and actions shall be aimed at reinforcing structures for tackling the supply of, and the demand for, illicit drugs, psychotropic substances and their precursors, through the enhancement of the coordination and strengthened cooperation between the competent authorities aiming at reducing trafficking in, the supply of, and the demand for illicit drugs, enhancing preventive measures, treatment and rehabilitation, and with due regard to human rights.

Cooperation shall also aim to reduce drug-related harm, to address the production and use of synthetic drugs and to achieve effective prevention of the diversion of drug precursors used for the illicit manufacture of drugs and psychotropic substances.

The Parties shall agree on the means of cooperation to attain those objectives. Actions shall be based on commonly agreed principles along the lines of the relevant international conventions and instruments and of the European Union — Central Asia Action Plan on Drugs.

Article 242. Fight Against Organised and Transnational Crime and Corruption

The Parties shall cooperate with the aim of preventing and fighting against all forms of organised, economic, financial and transnational criminal activities, including smuggling and trafficking in human beings, drug trafficking, firearms trafficking, embezzlement, fraud, counterfeiting, forging of documents, and public and private corruption, through full compliance with their existing international obligations in this field.

The Parties shall promote the enhancement of bilateral, regional and international cooperation among law enforcement bodies, including the exchange of best practices and possible cooperation with agencies of the European Union.

4. The Parties are committed to effectively implementing the relevant international standards, in particular those enshrined in the UN Convention against Transnational Organised Crime (UNTOC) of 2000 and its three Protocols, and the UN Convention against Corruption of 2003. Cooperation may include, where appropriate and subject to applicable procedures, accession to, and implementation of, Council of Europe relevant instruments on preventing and combating corruption by the Republic of Kazakhstan.

Article 243. Fight Against Cybercrime

The Parties shall strengthen cooperation, including through exchange of best practices, with the aim of preventing and combating criminal acts committed using electronic communications networks and information systems or against such networks and systems.

Title VI. Other Cooperation Policies

Chapter 1. Cooperation on Education and Training

Article 244.

The Parties shall cooperate in the field of education and training with a view to promoting the modernisation of the education and training systems in the Republic of Kazakhstan and convergence with policies and practices of the European Union. The Parties shall cooperate in order to promote lifelong learning and encourage cooperation and transparency at all levels of education and training. The Parties shall, furthermore, place emphasis on measures designed to foster inter-institutional cooperation, encourage mobility for students, academic and administrative staff, researchers and young people, and encourage the exchange of information and experience.

The Parties shall promote unified coordination of education system activity according to European and international standards and best practices.

Chapter 2. Cooperation In the Field of Culture

Article 245.

The Parties shall promote cultural cooperation that respects cultural diversity, in order to enhance mutual understanding and knowledge of their respective cultures.

The Parties shall endeavour to take appropriate measures to promote cultural exchanges and encourage joint initiatives in various cultural spheres.

The Parties shall consult and develop mutually beneficial cooperation in the framework of multilateral international treaties and international organisations, such as the United Nations Educational, Scientific and Cultural Organisation (Unesco). The Parties shall further exchange views on cultural diversity, aiming, inter alia, to promote the principles of the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 and implement projects under the International Decade for the Rapprochement of Cultures 2013 — 2022 proclaimed by the UN General Assembly.

The Parties shall promote joint activities, programmes and plans, as well as the exchange of best practices in the field of training and capacity building for artists and cultural professionals and organisations.

Chapter 3. Cooperation In Research and Innovation

Article 246.

The Parties shall promote cooperation:

(a) in all areas of civil research and scientific and technological development, on the basis of mutual benefit and subject to appropriate and effective protection of intellectual property rights; and

(b) to encourage the development of innovation.

Article 247.

Cooperation shall include:

(a) policy dialogue and the exchange of scientific and technological information;

(b) exchanging information and best practices regarding innovation and the commercialisation of research and development, including support instruments for technology-based business start-ups, cluster development and access to finance;

(c) facilitating adequate access to the respective research and innovation programmes of each Party;

(d) increasing the research capacity in research entities of the Republic of Kazakhstan and facilitating their participation in the Framework Programme for Research and Innovation of the European Union and in other potential initiatives financed by the European Union;

(e) developing and promoting joint projects for research and innovation;

(f) promoting the commercialisation of results obtained from joint research and innovation projects;

(g) facilitating new technology access to domestic markets of the Parties;

(h) arranging training activities and mobility programmes for scientists, researchers and other staff engaged in research and innovation activities in both Parties;

(i) facilitating, within the framework of applicable legislation, the free movement of research workers participating in activities covered by this Agreement and the cross-border movement of goods intended for use in such activities;

(j) other forms of cooperation in research and innovation, including through regional approaches and initiatives, on the basis of mutual agreement.

Article 248.

In carrying out the cooperation activities set out in Article 247, synergies should be sought with regional and other activities carried out within the broader framework of financial cooperation between the European Union and the Republic of Kazakhstan as set out in Articles 261 and 262.

Chapter 4. Cooperation In the Media and Audiovisual Fields

Article 249.

The Parties shall promote cooperation in the media and audiovisual fields, including through exchange of information and training for journalists and other media, cinema and audiovisual professionals.

Article 250.

The Parties shall exchange information and best practices in promoting the independence and professionalism of the media, based on the standards set in the applicable international conventions, including those of Unesco and the Council of Europe, where appropriate.

Chapter 5. Civil Society Cooperation

Article 251. The Parties Shall Continue and Strengthen Their Dialogue, In the Form of Meetings and Consultations, and Shall Cooperate

On the role of civil society, with the following objectives:

(a) to strengthen contacts and exchange information and experience between all sectors of civil society in the European Union and in the Republic of Kazakhstan, enabling civil society representatives from a Party to become acquainted with the processes of consultation and dialogue with public institutions and social partners used by the other Party, with a view, in particular, to further engaging civil society in the public policy-making process;

(b) to ensure the involvement of civil society in the relations between the European Union and the Republic of Kazakhstan, in particular in implementing this Agreement;

(c) to encourage greater capacity building, independence and transparency in civil society and to support its role in the economic, social and political development of the Parties.

The Parties shall support the development of relations between non-governmental organisations from the European

Union and the Republic of Kazakhstan.

The Parties shall give support to the respective institutions and non-governmental organisations which implement activities in the area of human rights. The Parties shall share all relevant information on cooperation programmes, formally and regularly, at least once a year.

Chapter 6. Cooperation In the Field of Sport and Physical Activity

Article 252.

The Parties shall promote cooperation in the field of sport and physical activity in order to help develop a healthy lifestyle among all age groups, to promote the social functions and educational values of sport, and to fight against threats to sport such as doping, racism, and violence. The cooperation shall include, in particular, the exchange of information and good practices.

Chapter 7. Cooperation In the Area of Civil Protection

Article 253.

The Parties recognise the need to manage both domestic and global natural and man-made disaster risks.

In order to increase the resilience of their societies and infrastructure, the Parties affirm their intention to improve prevention, mitigation, preparedness and response measures to natural and man-made disasters and to cooperate, as appropriate, at bilateral and multilateral political levels in order to improve global disaster risk-management outcomes.

Cooperation, subject to the availability of sufficient resources, shall support:

(a) the interaction of competent bodies, other organisations and individuals that carry out activities in the field of civil protection;

(b) the coordination of mutual assistance, if requested, in case of disasters;

(c) the exchange of experience in raising awareness of populations on disaster preparedness;

(d) training, retraining, skills upgrading and specialist training in the field of civil protection and in using early warning systems.

Chapter 8. Cooperation In Space Activities

Article 254.

The Parties shall promote, where appropriate, long-term cooperation in the areas of civil space research and development. The Parties shall pay particular attention to initiatives envisaging complementarity of their respective space activities.

Article 255.

The Parties may cooperate in the areas of satellite navigation, earth observation, space research and other areas in accordance with the interests of the Parties.

Chapter 9. Cooperation In the Area of Consumer Protection

Article 256.

The Parties shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection.

Cooperation may comprise, when appropriate:

(a) exchanging best practices in consumer policy, including product quality and safety requirements, and organising a market surveillance system and an information exchange mechanism;

(b) promoting the exchange of experience in consumer protection systems, including consumer legislation and its enforcement, consumer product safety, raising consumer awareness and empowerment, and consumer redress;

(c) providing training activities for administration officials and other consumer interest representatives;

(d) encouraging the development of independent consumer organisations and contact between consumer representatives.

Chapter 10. Regional Cooperation

Article 257.

The Parties shall promote mutual understanding and bilateral cooperation in the field of regional policy with the objective of improving living conditions and increasing the participation of all regions in the social and economic development of the Parties.

Article 258.

The Parties shall support and strengthen the involvement of local and regional level authorities in regional cooperation, in accordance with existing international agreements and arrangements, in order to develop capacity building measures and to promote the strengthening of regional economic and business networks.

Article 259.

The Parties shall strengthen and encourage the development of regional cooperation elements of the areas covered by this Agreement, inter alia, transport, energy, communication networks, culture, education, research, tourism, water resources and environment, civil protection and other areas which have a bearing on regional cooperation.

Chapter 11. Cooperation In the Field of Civil Service

Article 260.

1. The Parties shall facilitate the exchange of experience and knowledge in implementing international best practices within public and civil services and in capacity building for public and civil servants and their professional development and training.

2. The Parties shall facilitate dialogue on measures aimed at improving the quality of public services and on joint efforts to promote multilateral cooperation within the framework of the regional civil service hub in the Republic of Kazakhstan.

3. In the framework referred to in paragraph 2, the Parties shall cooperate, inter alia, through facilitating:

(a) the exchange of experts;

(b) the organisation of seminars; and

(c) the organisation of training activities.

Title VII. Financial and Technical Cooperation

Article 261.

The Parties shall continue and intensify current financial and technical cooperation, based on a comprehensive partnership and principles of mutual interest, reciprocity, transparency, predictability and mutual protection of the interests of the Parties.

To achieve the objectives of this Agreement, the Republic of Kazakhstan may receive financial assistance from the European Union in the form of grants and loans, possibly in partnership with the European Investment Bank and other international financial institutions.

Financial assistance may be provided in accordance with the relevant regulations governing the multi-annual financial framework of the European Union (1), notably in the form of exchanges of experts, conducting research, organising fora, conferences, seminars and training courses, grants in support of development and implementation programmes and projects. The Financial Regulation (2) and Implementing Rules (3) shall apply to financing by the European Union.

Financial assistance shall be based on annual action programmes established by the European Union, following consultations with the Republic of Kazakhstan.

The European Union and the Republic of Kazakhstan may co-finance programmes and projects. The Parties shall coordinate programmes and projects on financial and technical cooperation and shall exchange information on all sources of assistance.

Aid effectiveness, as laid down in the OECD Paris Declaration on Aid Effectiveness, the 'Backbone Strategy on Reforming Technical Cooperation' of the European Union, the reports of the European Court of Auditors, and the lessons learnt from implemented and ongoing cooperation programmes of the European Union in the Republic of Kazakhstan, shall be the basis for the delivery of financial assistance of the European Union to the Republic of Kazakhstan.

(1) In particular Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44) and Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the European Union's instruments for financing external action (OJ L 77, 15.3.2014, p. 95)

(2) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the European Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

(3) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the European Union (OJ L 362, 31.12.2012, p. 1).

Article 262.

The Parties shall implement financial and technical assistance in accordance with the principles of sound financial management and cooperate in the protection of the financial interests of the European Union and of the Republic of Kazakhstan. The Parties shall take effective measures to prevent and fight irregularities (4), fraud, corruption and any other illegal activities to the detriment of the budget of the European Union and the budget of the Republic of Kazakhstan, by means of mutual legal and other assistance, in the fields covered by this Agreement.

Any further agreement or financing instrument to be concluded between the Parties during the implementation of this Agreement shall provide for specific financial cooperation clauses covering on-the-spot inspections and controls.

(4) As defined in Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, 'irregularity' shall mean any infringement of a provision of law of the European Union, this Agreement or ensuing agreements and contracts resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the European Union, or by an unjustified item of expenditure.

Article 263.

To make optimum use of available resources, the Parties commit themselves to ensuring that the contributions of the European Union are made in close coordination with contributions from other sources, third countries and international financial institutions.

Article 264. Prevention

The Parties shall check regularly that operations financed by funds of the European Union and co-financed by funds of the Republic of Kazakhstan have been properly implemented and shall take all appropriate measures to prevent irregularities, fraud, corruption, and any other illegal activities to the detriment of the funds of the European Union and the co-financing funds of the Republic of Kazakhstan. The Parties shall inform each other of any preventive measures taken.

Article 265. Communication

The Parties shall inform each other, notifying in particular the European Anti-Fraud Office and the competent authorities of the Republic of Kazakhstan, of suspected or actual cases of fraud, corruption, or any other irregularities in connection with the implementation of the funds of the European Union and co-financing funds of the Republic of Kazakhstan.

The Parties shall inform each other of any measures taken in relation to this Article.

Article 266. On-the-spot Inspections

On-the-spot inspections with respect to financial assistance of the European Union shall be prepared and conducted by the European Anti-Fraud Office in close cooperation with the competent authorities of the Republic of Kazakhstan, in accordance with the legislation of the Republic of Kazakhstan.

Within the framework of this Agreement, the European Anti-Fraud Office shall be authorised to carry out on-the-spot inspections in order to protect the financial interests of the European Union, in accordance with Council Regulation (Euratom, EC) No 2185/96 (1) and Regulation (EU, Euratom) No 883/2013 (2) of the European Parliament and of the Council.

(1) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the European Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

(2) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

Article 267. Investigation and Prosecution

The competent bodies of the Republic of Kazakhstan shall investigate and prosecute, in accordance with the legislation of the Republic of Kazakhstan, suspected and actual cases of fraud, corruption and any other illegal activities to the detriment of funds of the European Union and co-financing funds of the Republic of Kazakhstan. Where appropriate, and upon formal request, the European Anti-Fraud Office may assist the competent authorities of the Republic of Kazakhstan in this task.

Title VIII. Institutional Framework

Article 268. Cooperation Council

1. The Cooperation Council is hereby established. It shall supervise and regularly review the implementation of this Agreement. It shall meet once a year at ministerial level. It shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of this Agreement.

2. For the purpose of attaining the objectives of this Agreement, the Cooperation Council shall take decisions within the scope of this Agreement, in the cases provided for therein. Such decisions shall be binding upon the Parties, who shall take appropriate measures to implement the decisions taken. The Cooperation Council may also make recommendations. It shall adopt its decisions and recommendations by agreement between the Parties following the completion of their respective internal procedures.

3. The Cooperation Council shall have the power to update or amend the Annexes to this Agreement, based on consensus between the Parties, without prejudice to any specific provisions under Title III (Trade and Business).

4. The Cooperation Council may delegate any of its powers to the Cooperation Committee, including the power to take binding decisions.

5. The Cooperation Council shall be composed of representatives of the Parties.

6. The Cooperation Council shall be chaired alternately by a representative of the European Union and a representative of the Republic of Kazakhstan.

7. The Cooperation Council shall establish its rules of procedure.

8. Either Party may refer any dispute relating to the implementation or interpretation of this Agreement to the Cooperation Council, in accordance with Article 278.

Article 269. Cooperation Committee and Specialised Subcommittees

1. A Cooperation Committee is hereby established. It shall assist the Cooperation Council in the performance of its duties.

2. The Cooperation Committee shall be composed of representatives of the Parties, in principle at senior civil servant level.

3. The Cooperation Committee shall be chaired alternately by a representative of the European Union and a representative of the Republic of Kazakhstan.

4. The Cooperation Committee shall take decisions in the cases provided for in this Agreement and in the areas in which the Cooperation Council has delegated powers to it. Those decisions shall be binding upon the Parties, who shall take appropriate measures to implement the decisions taken. The Cooperation Committee shall adopt its decisions by agreement between the Parties, following the completion of their respective internal procedures. Its responsibilities shall include preparing meetings of the Cooperation Council.

5. The Cooperation Committee may meet in a special composition to address relevant issues related to Title III (Trade and Business).

6. The Cooperation Council may decide to set up specialised subcommittees or any other bodies that can assist it in carrying out its duties and shall determine the composition and duties of such subcommittees or bodies and how they shall function.

7. In its rules of procedure, the Cooperation Council shall determine the duties and functioning of the Cooperation Committee and of any subcommittee or body set up by the Cooperation Council.

Article 270. Parliamentary Cooperation Committee

1. The Parliamentary Cooperation Committee is hereby established. It shall consist of Members of the European Parliament, on the one hand, and of Members of the Parliament of the Republic of Kazakhstan, on the other, and shall be a forum for them to meet and exchange views. It shall meet at intervals which it shall itself determine.

2. The activity of the Parliamentary Cooperation Committee shall aim to develop mutually beneficial and effective parliamentary cooperation between the European Parliament and the Parliament of the Republic of Kazakhstan.

3. The Parliamentary Cooperation Committee shall establish its rules of procedure.

4. The Parliamentary Cooperation Committee shall be presided over alternately by the European Parliament and the Parliament of the Republic of Kazakhstan, in accordance with the provisions to be laid down in its rules of procedure.

5. The Parliamentary Cooperation Committee may request information regarding the implementation of this Agreement from the Cooperation Council, which shall then supply the Committee with the requested information.

6. The Parliamentary Cooperation Committee shall be informed of the decisions and recommendations of the Cooperation Council.

7. The Parliamentary Cooperation Committee may make recommendations to the Cooperation Council.

Title IX. General and Final Provisions

Article 271. Access to Courts and Administrative Organs

Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have

access, free of discrimination and under similar conditions as their own natural and legal persons, to their competent courts and administrative organs to defend their individual and property rights.

Article 272. Delegation of Authority

Unless otherwise specified in this Agreement, each Party shall ensure that a person that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government, such as the power to grant import or export licences or licences for other economic activities, to approve commercial transactions or impose quotas, fees or other charges, acts, in the exercise of that authority, in accordance with that Party's obligations as set out under this Agreement.

Article 273. Restrictions In Case of Balance-of-payments and External Financial Difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or where there is a threat thereof, it may adopt or maintain safeguard or restrictive measures which affect movements of capital, payments or transfers.

2. The measures referred to in paragraph 1 shall:

(a) not treat a Party less favourably than a non-Party in like situations;

(b) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(c) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In the case of trade in goods, a Party may adopt or maintain restrictive measures in order to safeguard its balance-of-payments or external financial position. Such measures shall be in accordance with the GATT 1994 and the Understanding on the Balance of Payment Provisions of the GATT 1994.

4. In the case of trade in services, a Party may adopt restrictive measures in order to safeguard its balance-of-payments or external financial position. Such measures shall be in accordance with the GATS.

5. Any Party maintaining or having adopted restrictive measures referred to in paragraphs 1 and 2 of shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

6. Where restrictions are adopted or maintained under this Article, consultations shall be held promptly in the Cooperation Committee, if such consultations are not otherwise taking place outside the scope of this Agreement.

7. The consultations shall assess the balance-of-payments or external financial difficulties that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

8. The consultations shall address the compliance of any restrictive measures with paragraphs 1 and 2.

9. In such consultations, all statistical findings and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments shall be accepted by the Parties and conclusions shall be based on the assessment by the IMF of the balance-of-payments and the external financial position of the Party concerned.

Article 274. Measures Related to Essential Security Interests

Nothing in this Agreement shall be construed:

(a) as requiring any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

(b) as preventing any Party from taking any action which it considers necessary for the protection of its essential security

interests:

(i) connected with the production of or trade in arms, munitions or war material;

(ii) relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iv) relating to government procurement indispensable for national security or for defence purposes; or

(v) taken in time of war or other emergency in international relations; or

(c) as preventing any Party from taking any action in pursuance of obligations it has accepted for the purpose of maintaining international peace and security.

Article 275. Non-discrimination

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

(a) the arrangements applied by the Republic of Kazakhstan in respect of the European Union and its Member States shall not give rise to any discrimination between the Member States of the European Union or their natural or legal persons;

(b) the arrangements applied by the European Union or its Member States in respect of the Republic of Kazakhstan shall not give rise to any discrimination between natural or legal persons of the Republic of Kazakhstan.

2. Paragraph 1 shall be without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to taxpayers who are not in identical situations as regards their place of residence.

Article 276. Taxation

1. This Agreement shall only apply to taxation measures in so far as such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall be construed as preventing the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements for the avoidance of double taxation, other tax arrangements or domestic fiscal legislation.

Article 277. Fulfilment of Obligations

1. The Parties shall take any measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained.

2. The Parties shall consult each other promptly through appropriate channels, at the request of either Party, in order to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

3. Each Party shall refer to the Cooperation Council any dispute related to the interpretation or implementation of this Agreement in accordance with Article 278.

4. The Cooperation Council may settle a dispute in accordance with Article 278 and by means of a binding decision.

Article 278. Dispute Settlement

1. When a dispute arises between the Parties concerning the interpretation or implementation of this Agreement, either Party shall submit to the other Party and to the Cooperation Council a formal request that the matter in dispute be resolved. By way of derogation, disputes concerning the interpretation or implementation of Title III (Trade and Business) shall be exclusively governed by Chapter 14 (Dispute Settlement) of Title III (Trade and Business).

2. The Parties shall endeavour to resolve the dispute by entering into good faith consultations within the Cooperation Council as provided for in Article 268 with the aim of reaching a mutually acceptable solution as soon as possible. Consultations on a dispute can also be held at meetings of the Cooperation Committee or any other relevant subcommittee or body set up on the basis of Article 269, as agreed between the Parties or at the request of either Party. Consultations may also be held in writing.

3. The Parties shall provide the Cooperation Council, the Cooperation Committee or any other relevant subcommittee or body with all information required for a thorough examination of the situation.

4. A dispute shall be deemed to be resolved when the Cooperation Council has taken a binding decision to settle the matter as provided for in Article 277, or when it has declared that the dispute has reached an end.

5. All information disclosed during the consultations shall remain confidential.

Article 279. Appropriate Measures In Case of Non-fulfilment of Obligations

1. If the matter is not resolved within three months of the date of notification of a formal request for a dispute settlement in accordance with Article 278, and if the complaining Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures, except in the case of disputes concerning the interpretation or implementation of Title III (Trade and Business).

2. By way of derogation from paragraph 1 of this Article, any Party may immediately take appropriate measures with regard to this Agreement in accordance with international law in case of:

(a) denunciation of this Agreement not sanctioned by the general rules of international law within the meaning of Article 60(3) of the Vienna Convention of 1969 on the Law of Treaties; or

(b) violation by the other Party of any of the essential elements of this Agreement referred to in Articles 1 and 11 of this Agreement.

In those cases, the appropriate measure shall be notified immediately to the other Party. At the request of the other Party, consultations shall be held for a period of up to 20 days. After this period, the measure shall apply.

3. In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement and are proportionate to the nature and gravity of the breach. Those measures shall be notified immediately to the Cooperation Council and shall be the subject of immediate consultations, during which each Party has the right to remove the violation in question.

Article 280. Public Access to Official Documents

The provisions of this Agreement shall be without prejudice to the application of the relevant legislation of the Parties regarding public access to official documents.

Article 281. Entry Into Force, Provisional Application, Duration and Termination

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify the General Secretariat of the Council of the European Union through diplomatic channels of the completion of the procedures necessary for that purpose.

2. Title III (Trade and Business), unless otherwise specified therein, shall apply as of the date of the entry into force referred to in paragraph 1, provided that the Republic of Kazakhstan has become a Member of the WTO by that date. In case the Republic of Kazakhstan becomes a Member of the WTO after the date of entry into force of this Agreement, Title III (Trade and Business), unless otherwise specified therein, shall apply as of the date the Republic of Kazakhstan has become a Member of the WTO.

3. Notwithstanding paragraphs 1 and 2, the European Union and the Republic of Kazakhstan may apply this Agreement provisionally in whole or in part, in accordance with their respective internal procedures and legislation, as applicable.

4. The provisional application begins on the first day of the first month following the date on which:

(a) the European Union has notified the Republic of Kazakhstan of the completion of the necessary procedures, indicating, where relevant, the parts of this Agreement that shall be provisionally applied; and

(b) the Republic of Kazakhstan has notified the European Union of the ratification of this Agreement.

5. Title III (Trade and Business) of this Agreement, unless otherwise specified therein, shall apply provisionally as of the date of provisional application referred to in paragraph 4, provided that the Republic of Kazakhstan has become a Member of the WTO by that date. In case the Republic of Kazakhstan becomes a Member of the WTO after the date of the provisional application of this Agreement but before its entry into force, Title III (Trade and Business), unless otherwise specified therein,

shall apply provisionally as of the date the Republic of Kazakhstan has become a Member of the WTO.

6. For the purposes of the relevant provisions of this Agreement, including the Annexes and Protocols thereto, any reference in such provisions to the ‘date of entry into force of this Agreement' shall be understood to also refer to the date from which this Agreement is provisionally applied in accordance with paragraphs 4 and 5.

7. Upon the entry into force of this Agreement, the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed in Brussels on 23 January 1995 and in force from 1 July 1999, shall be terminated.

During the period of the provisional application, in so far as the provisions of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed in Brussels on 23 January 1995 and which entered into force on 1 July 1999, are not covered by the provisional application of this Agreement, they continue to apply.

8. This Agreement replaces the Agreement referred to in paragraph 7. References to that Agreement in all other agreements between the Parties shall be construed as referring to this Agreement.

9. This Agreement is concluded for an unlimited period, with the possibility of termination by either Party by means of a written notification delivered to the other Party through diplomatic channels. The termination shall take effect six months after receipt by a Party of the notification to terminate this Agreement. Such termination shall not affect ongoing projects commenced under this Agreement prior to the receipt of the notification.

10. Either Party may terminate the provisional application by means of a written notification delivered to the other Party through diplomatic channels. The termination shall take effect six months after receipt by a Party of the notification to terminate the provisional application of this Agreement. Such termination shall not affect ongoing projects commenced under this Agreement prior to the receipt of the notification.

Article 282.

Existing agreements between the Parties relating to specific areas of cooperation falling within the scope of this Agreement shall be considered part of their overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework.

Article 283.

1. The Parties may by mutual consent amend, revise, and expand this Agreement with a view to enhancing the level of cooperation.

2. The Parties may complement this Agreement by concluding specific international agreements between them in any area falling within its scope. Such specific international agreements between the Parties shall be an integral part of their overall bilateral relations, as governed by this Agreement and shall form part of a common institutional framework.

Article 284. Annexes and Protocols

Annexes and Protocols to this Agreement shall form an integral part thereof.

Article 285. Definition of the Parties

For the purposes of this Agreement, the term ‘the Parties' shall mean the European Union or its Member States, or the European Union and its Member States, in accordance with their respective powers, of the one part, and the Republic of Kazakhstan, of the other part.

Article 286. Territorial Application

This Agreement shall apply to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties, and to the territory of the Republic of Kazakhstan.

Article 287. Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish, Kazakh and Russian languages, each text being equally authentic.

IN WITNESS WHEREOF, the respective representatives have signed this Agreement.

Done at Astana on the twenty first day of December in the year two thousand and fifteen.

FOR THE KINGDOM OF BELGIUM

This signature also commits the French Community, the Flemish Community, the German-speaking Community, the Walloon Region, the Flemish Region and the Brussels-Capital Region.

FOR THE REPUBLIC OF BULGARIA,

FOR THE CZECH REPUBLIC,

FOR THE KINGDOM OF DENMARK,

FOR THE FEDERAL REPUBLIC OF GERMANY,

FOR THE REPUBLIC OF ESTONIA,

FOR IRELAND,

FOR THE HELLENIC REPUBLIC,

FOR THE KINGDOM OF SPAIN,

FOR THE FRENCH REPUBLIC,

FOR THE REPUBLIC OF CROATIA,

FOR THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

FOR THE REPUBLIC OF LATVIA,

FOR THE REPUBLIC OF LITHUANIA,

FOR THE GRAND DUCHY OF LUXEMBOURG,

FOR HUNGARY,

FOR THE REPUBLIC OF MALTA,

FOR THE KINGDOM OF THE NETHERLANDS,

FOR THE REPUBLIC OF AUSTRIA,

FOR THE REPUBLIC OF POLAND,

FOR THE PORTUGUESE REPUBLIC,

FOR ROMANIA,

FOR THE REPUBLIC OF SLOVENIA,

FOR THE SLOVAK REPUBLIC,

FOR THE REPUBLIC OF FINLAND,

FOR THE KINGDOM OF SWEDEN,

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

FOR THE EUROPEAN UNION

FOR THE EUROPEAN ATOMIC ENERGY COMMUNITY,

FOR KAZAKHSTAN

ANNEX I. RESERVATIONS IN ACCORDANCE WITH ARTICLE 46

A. RESERVATIONS BY THE REPUBLIC OF KAZAKHSTAN

The Republic of Kazakhstan reserves the right to maintain or adopt any measure inconsistent with national treatment commitments as set out below:

1. Subsurface sector

1. 1. Use of surface and subsurface in the Republic of Kazakhstan is subject to establishment in the form of a juridical person of the Republic of Kazakhstan (i.e. subsidiary company).

1. 2. The State has a priority right to purchase the subsurface use right (or a part thereof) and/or an object related to subsurface use rights.

2. Strategic resources and objects

The Republic of Kazakhstan may refuse to permit juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan to carry out transactions on the use of strategic resources and/or purchase of strategic objects in the Republic of Kazakhstan, if such use or purchase may lead to a concentration of rights with one person or group of persons from the same countries. The compliance with this condition is also mandatory with respect to affiliates as defined in the relevant legislation of the Republic of Kazakhstan (') . The Republic of Kazakhstan may establish limits on ownership rights and transfer of ownership rights for strategic resources and objects of the Republic of Kazakhstan based on national security interests.

3. Real estate

3. 1. Juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan cannot privately own lands used for farming/agricultural production or forest planning purposes. Juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan may be granted the right of temporary land use for farming/agricultural production purposes for a period of up to 10 years, renewable.

3. 2. Private ownership of land plots located in the border zone, in the borderland and within seaports of the Republic of Kazakhstan is prohibited for juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan.

3. 3. Lease-holding of land plots for agricultural purposes adjacent to the State border of the Republic of Kazakhstan is restricted for juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan.

3. 4. The right of permanent land use cannot be granted to juridical persons controlled by natural or juridical persons of the European Union and their branches established in the territory of the Republic of Kazakhstan.

4. Fauna

4. 1. Access to and use of the biological resources and fishing grounds situated in the maritime and internal waters coming under the sovereignty or within the jurisdiction of the Republic of Kazakhstan is restricted to fishing vessels flying the flag of the Republic of Kazakhstan and registered in the territory of the Republic of Kazakhstan unless otherwise provided for. Fishing vessels owned by subsidiaries of juridical persons of the European Union established in the form of a juridical person of the Republic of Kazakhstan shall not be prohibited from flying the flag of the Republic of Kazakhstan.

4. 2. The priority in granting usage of wildlife in a particular area or water zone is given to juridical persons of the Republic of Kazakhstan.

(h Article 64 of Law No 415 of 13 May 2003 on joint stock companies of the Republic of Kazakhstan and Article 12 of Law No 220-I of 22 April 1998 on limited liability companies and additional liability companies of the Republic of Kazakhstan.

5. Establishment requirements for licensing purposes

Companies producing goods subject to licensing due to important reasons of public health, safety or national security shall be established in the form of a juridical person of the Republic of Kazakhstan.

6. Continental shelf

Limitations may be introduced within the continental shelf of the Republic of Kazakhstan.

B. RESERVATIONS BY THE EUROPEAN UNION

The European Union reserves the right to maintain or adopt any measure inconsistent with national treatment commitments differentiated by its Member States, where applicable, as set out below.

1. Mining and quarrying including the extraction of oil and natural gas

In some Member States of the European Union restrictions may apply; the European Union may apply restrictions to juridical persons controlled by natural or juridical persons of the Republic of Kazakhstan which account for more than 5 % of the European Union's oil or natural gas imports.

2. Production of petroleum products, gas, electricity, steam, hot water and heat

In some Member States of the European Union restrictions may apply; the European Union may apply restrictions to juridical persons controlled by natural or juridical persons of the Republic of Kazakhstan which account for more than 5 % of the European Union's oil or natural gas imports.

3. Fishing

Access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or within the jurisdiction of the Member States of the European Union is restricted to fishing vessels flying the flag of a Member State of the European Union and registered in European Union territory unless otherwise provided for.

4. Acquisition of real estate including land

In some Member States of the European Union, restrictions may apply to the acquisition of real estate, including land, by juridical persons controlled by natural or juridical persons of the Republic of Kazakhstan.

5. Agriculture including hunting

In some Member States of the European Union, national treatment is not applicable to juridical persons controlled by natural or juridical persons of the Republic of Kazakhstan which wish to undertake an agricultural enterprise; the acquisition of vineyards by juridical persons controlled by natural or juridical persons of the Republic of Kazakhstan is subject to notification or, as necessary, authorisation.

6. Aquaculture activities

National treatment does not apply to aquaculture activities in the territory of the European Union.

7. Extraction and processing of fissionable and fusionable materials or materials from which they are derived In some Member States of the European Union restrictions may apply.

ANNEX II. LIMITATIONS APPLIED BY THE REPUBLIC OF KAZAKHSTAN IN ACCORDANCE WITH ARTICLE 48(2)

A juridical person of the European Union attracting intra-corporate transferees (ICTs) in a non-services sector must be engaged in production of goods (1).

Employment of ICTs as managers and specialists shall meet the requirements of economic needs test (2). Upon expiration of a five-year period after the Republic of Kazakhstan's accession to the WTO, economic needs test shall not be applied (3).

The number of ICTs is limited to 50 % of the total number of executives, managers and specialists within each category in companies with a minimum of three individuals.

The entry and temporary stay of ICTs of the Party shall be permitted for three years, based on the permits, annually issued by the authorised body.

(1) Attraction of ICTs within subsurface use contracts will be performed in accordance with the Protocol on the Accession of the Republic of Kazakhstan to the WTO.

(2) Work permit is issued only after search of appropriate candidates in the database of the competent authority and publication of vacancy announcement in mass media is completed. These procedures shall take no longer than one month. Permission for the ICT shall be granted after these procedures have been completed unless the company has identified a local candidate who meets its needs.

(3) All other requirements, laws and regulations regarding entry, stay and work shall continue to apply.

ANNEX V. RULES OF PROCEDURE FOR ARBITRATION UNDER CHAPTER 14 (DISPUTE SETTLEMENT) OF TITLE III (TRADE AND BUSINESS)

General provisions

1. In Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement and under these rules:

(a) ‘adviser' means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceeding;

(b) ‘arbitrator' means a member of an arbitration panel established under Article 177 of this Agreement;

(c) ‘assistant' means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;

(d) ‘complaining Party' means any Party that requests the establishment of an arbitration panel under Article 176 of this Agreement;

(e) ‘Party complained against' means the Party that is alleged to be in violation of the provisions referred to in Article 173 of this Agreement;

(f) ‘arbitration panel' means a panel established under Article 177 of this Agreement;

(g) ‘epresentative of a Party' means an employee or any person appointed by a Party for the purposes of a dispute under this Agreement;

(h) ‘day' means a calendar day;

(i) ‘working day' means a day other than a public holiday, Saturday and Sunday.

2. The Parties shall share the expenses derived from organisational matters, including the remuneration and the

Expenses of the arbitrators.

Notifications

3. The request for consultations and the request for the establishment of an arbitration panel shall be delivered to the other Party by electronic communication, facsimile transmission, registered post, courier, or any other means of telecommunication that provides a record of the sending thereof.

4. Each Party to the dispute and the arbitration panel shall deliver any document other than the request for consultations and the request for the establishment of an arbitration panel by e-mail and by facsimile transmission, registered post, courier, or any other means of telecommunication that provides a record of the sending thereof to the other Party and, where relevant, to each of the arbitrators. Unless proven otherwise, an e-mail message shall be deemed to be delivered on the date of its sending. If any of the supporting documents is confidential or too big to be sent by e-mail, the Party sending the document may provide that document in another electronic format to the other Party and, where relevant, to each of the arbitrators within one day of the delivery of the e-mail. In those cases the Party delivering the document shall inform by e-mail the other Party and, where relevant, each of the arbitrators of the sending of the document and indicate its content.

5. All notifications shall be addressed to the Government of the Republic of Kazakhstan and to the Directorate-General for Trade of the European Commission, respectively. Within 30 days of the start of the application of Title III (Trade and Business) of this Agreement, the Parties shall exchange the details for the electronic communications pursuant to rules 3

and 4 of these Rules of Procedure. Any change of e-mail addresses or other electronic communications shall be notified without delay to the other Party and the arbitration panel, where applicable.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by the prompt delivery of a new document clearly indicating the changes.

7. If the last date for delivery of a document falls on a Saturday, Sunday or a public holiday for the European Union or for the Republic of Kazakhstan, the last date for delivery shall be the next working day. When a document is delivered to a Party on a day which is a holiday for that Party, the document shall be deemed delivered on the next working day. The date of receipt of a document shall be deemed to be the same date as the date of its delivery.

Commencing the arbitration

8. (a) If pursuant to Article 177 of this Agreement or to rules 19, 20 or 47 of these Rules of Procedure, any member

Of the arbitration panel is selected by lot, the drawing of lots shall be carried out at a time and place decided by the complaining Party and promptly communicated to the Party complained against. The Party complained against may, if it so chooses, be present during the drawing of lots. In any event, the drawing of lots shall be carried out with whichever Party/Parties is/are present.

(b) If, pursuant to Article 177 of this Agreement or to rules 19, 20 or 47 of these Rules of Procedure, any member of the arbitration panel is selected by lot and there are two chairs of the Cooperation Committee, both chairs, or their delegates, or one chair alone in cases where the other chair or his delegate does not accept to participate in the drawing of lots, shall perform the selection by lot.

(c) The Parties shall notify the selected arbitrators of their appointment.

(d) An arbitrator who has been appointed according to the procedure established in Article 177 of this Agreement shall confirm his availability to serve as a member of the arbitration panel to the Cooperation Committee within five days of the date in which he was informed of his appointment.

(e) Unless the Parties to the dispute agree otherwise, the Parties shall hold a meeting with the arbitration panel in person or by other means of communication within seven days of the establishment of the arbitration panel. The Parties and the arbitration panel shall determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and the expenses to be paid to the arbitrators. The remuneration and the expenses shall be in accordance with WTO standards.

9. (a) Unless the Parties agree otherwise within five days from the date of selection of the arbitrators, the terms of

Reference of the arbitration panel shall be:

'to examine, in the light of the relevant provisions of the Agreement invoked by the parties to the dispute, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 173 and to deliver a report in accordance with Articles 180, 181, 182 and 195 of this Agreement.'

(b) The Parties must notify the agreed terms of reference to the arbitration panel within three days of their agreement.

Initial submissions

10. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the initial written submission.

Working of arbitration panels

11. The chairperson of the arbitration panel shall preside over all its meetings. An arbitration panel may delegate to the chairperson the authority to make administrative and procedural decisions.

12. Unless otherwise provided for in Chapter 14 (Dispute Settlement) of Title III (Trade and Business of this Agreement, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

13. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

14. The drafting of any report shall remain the exclusive responsibility of the arbitration panel and must not be delegated.

15. Where a procedural question arises that is not covered by the provisions of Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement and Annexes V to VII to this Agreement, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

16. When the arbitration panel considers that there is a need to modify any of the time limits for its proceedings other than the time limits set out in Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties to the dispute in writing of the reasons for the change or adjustment and of the period of time or adjustment needed.

Replacement

17. If an arbitrator is unable to participate in an arbitration proceeding under Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement, withdraws from it, or must be replaced because of non-compliance with the requirements of the Code of Conduct set out in Annex VI to this Agreement, a replacement shall be selected in accordance with Article 177 of this Agreement and rule 8 of these Rules of Procedure.

18. Where a Party to the dispute considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party shall deliver notification to the other Party to the dispute within 15 days of the date on which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

19. Where a Party to the dispute considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties to the dispute shall consult and, if they agree on the need to replace the arbitrator, select a new arbitrator in accordance with Article 177 of this Agreement and rule 8 of these Rules of Procedure.

If the Parties to the dispute fail to agree on the need to replace an arbitrator, any Party to the dispute may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with Article 177 of this Agreement and rule 8 of these Rules of Procedure.

20. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they agree on the need to replace the chairperson, select a new chairperson in accordance with Article 177 of this Agreement and rule 8 of these Rules of Procedure.

If the Parties fail to agree on the need to replace the chairperson, either Party may request that such matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons referred to in Article 196(1) of this Agreement. His name shall be drawn by lot by the chair of the Cooperation Committee, or the chair's delegate. The decision by the so selectedperson on the need to replace the chairperson shall be final.

If the so selected person decides that the original chairperson does not comply with the requirements of the Code of Conduct, he shall select a new chairperson by lot among the remaining pool of individuals from the sub-list of chairpersons referred to under Article 196(1) of this Agreement. The selection of the new chairperson shall be carried out within five days of the date of the decision referred to in this paragraph.

21. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18, 19 and 20 of these Rules of Procedure.

Hearings

22. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties to the dispute and the other members of the arbitration panel, and shall confirm this in writing to the Parties to the dispute. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the Republic of Kazakhstan and in Astana if the complaining Party is the European Union.

24. The arbitration panel may convene additional hearings if the Parties so agree.

25. All arbitrators shall be present during the entirety of any hearings.

26. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

(a) representatives of the Parties to the dispute;

(b) advisers to the Parties to the dispute;

(c) administrative staff, interpreters, translators and court reporters; and

(d) arbitrators' assistants.

Only the representatives and advisers of the Parties to the dispute may address the arbitration panel.

27. No later than five days before the date of a hearing, each Party to the dispute shall deliver to the arbitration panel a list of names of the persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers attending the hearing.

28. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

(a) argument of the complaining Party

(b) argument of the Party complained against

Rebuttal Argument

(a) argument of the complaining Party

(b) counter-reply of the Party complained against

29. The arbitration panel may direct questions to either Party to the dispute at any time during the hearing.

30. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties to the dispute. The Parties to the dispute may comment on the transcript and the arbitration panel may consider those comments.

31. Each Party to the dispute may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

Questions in writing

32. The arbitration panel may, at any time during the proceedings, address questions in writing to one Party or both Parties to the dispute. Each Party to the dispute shall receive a copy of any questions put by the arbitration panel.

33. A Party to the dispute shall deliver a copy of its written response to the arbitration panel's questions to the other Party to the dispute. Each Party to the dispute shall have the opportunity to provide written comments on the other Party's reply, to be delivered within five days of the date of receipt of such reply.

Confidentiality

34. Each Party to the dispute and its advisers shall treat as confidential any information submitted to the arbitration panel by the other Party to the dispute which that Party has designated as confidential. Where a Party to the dispute submits a confidential version of its written submissions to the arbitration panel, the Party shall also, upon request of the other Party, and no later than 15 days after the date of either the request or the submission, whichever is later, deliver a non-confidential summary of the information contained in its submissions that could be disclosed to the public, and an explanation as to why the non-disclosed information is confidential. Nothing in these Rules of Procedure shall preclude a Party to the dispute from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential information. The Parties to the dispute and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session.

Non-confidential version of the arbitration panel report

35. If the arbitration panel report contains information designated as confidential by a Party, the arbitration panel shall prepare a non-confidential version of the report. The Parties shall be given the opportunity to comment on the non-confidential version and the arbitration panel shall take their comments into account when producing the final non-confidential version of the report.

Ex parte contacts

36. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.

37. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties to the dispute in the absence of the other arbitrators.

Amicus curiae submissions

38. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party to the dispute who are independent from the governments of the Parties to the dispute, provided that they are delivered within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 pages typed at double space and that they are directly relevant to a factual or a legal issue under consideration by the arbitration panel.

39. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment, the nature of its activities, its legal status, general objectives and the source of its financing, and shall specify the nature of the interest that the person has in the arbitration panel proceeding. It shall be drafted in the languages chosen by the Parties to the dispute in accordance with rules 42 and 43 of these Rules of Procedure.

40. The arbitration panel shall list in its report all the submissions it has received that conform to rules 38 and 39 of these Rules of Procedure. The arbitration panel shall not be obliged to address in its report the arguments made in such submissions. Any such submission shall be delivered to the Parties to the dispute for their comments. The comments of the Parties to the dispute shall be delivered within 10 days of receipt of the submission, and any such comments shall be taken into consideration by the arbitration panel.

Urgent cases

41. In the cases of urgency referred to in Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement, the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these Rules of Procedure as appropriate and shall notify the Parties of such adjustments.

Translation and interpretation

42. During the consultations referred to in Article 174 of this Agreement, and no later than the meeting referred to in rule 8(e) of these Rules of Procedure, the Parties to the dispute shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

43. If the Parties to the dispute are unable to agree on a common working language, each Party shall make its written submissions in its chosen language. In such a case, that Party shall provide at the same time a translation in the language chosen by the other Party, unless its submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

44. Arbitration panel reports shall be issued in the language or languages chosen by the Parties to the dispute.

45. Any Party to the dispute may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.

46. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred in the translation of an arbitration panel report shall be borne equally by the Parties to the dispute.

Other procedures

47. These Rules of Procedure are also applicable to procedures established under Articles 174, 184(2), 185(2), 186(3) and 187(2) of this Agreement. However, the time limits laid down in these Rules of Procedure shall be adjusted by the arbitration panel in line with the special time limits provided for the adoption of a report by the arbitration panel in those other procedures.

ANNEX VI. CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS UNDER CHAPTER 14 (DISPUTE SETTLEMENT) OF TITLE III (TRADE AND BUSINESS)

Definitions

1. In this Code of Conduct:

(a) ‘arbitrator' means a member of an arbitration panel effectively established under Article 177 of this Agreement;

(b) ‘candidate' means an individual whose name is on the list of arbitrators referred to in Article 196 of this Agreement and who is under consideration for selection as a member of an arbitration panel under Article 177 of this Agreement;

(c) ‘assistant' means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

(d) ‘proceeding', unless otherwise specified, means an arbitration panel proceeding under Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement;

(e) ‘staff', in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;

(f) ‘mediator' means a person who conducts a mediation procedure in accordance with Annex VII to this Agreement.

Responsibilities to the process

2. Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former arbitrators must comply with the obligations established in rules 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of his selection as an arbitrator under Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To that end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or arbitrator shall communicate, in writing, matters concerning actual or potential violations of this Code of Conduct only to the Cooperation Committee for consideration by the Parties.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in rule 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceedings. The arbitrator shall disclose such interests, relationships or matters by informing the Cooperation Committee, in writing, for consideration by the Parties.

Duties of arbitrators

6. Upon confirmation of his selection, an arbitrator shall be available to perform and shall perform his duties thoroughly and expeditiously throughout the course of the proceedings, with fairness and diligence.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary for an arbitration panel report, and shall not delegate this duty to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his assistant and staff are aware of, and comply with, rules 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. An arbitrator shall not engage in ex parte contacts concerning the proceedings.

Independence and impartiality of arbitrators

10. An arbitrator shall be independent and impartial, avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamour and loyalty to a Party or fear of criticism.

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his duties.

12. An arbitrator shall not use his position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that he is in a position to be influenced by others.

13. An arbitrator shall not allow financial, business, professional, personal, or social relationships or responsibilities to influence his conduct or judgement.

14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former arbitrators

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or report of the arbitration panel.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interests of others.

17. An arbitrator shall not disclose an arbitration panel report or parts thereof prior to its publication in accordance with Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement.

18. An arbitrator or a former arbitrator shall not disclose the deliberations of an arbitration panel, or any arbitrator's view at any time.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his expenses, as well as the time and expenses of his assistant and staff.

Mediators

20. The disciplines described in this Code of Conduct as applying to arbitrators or former arbitrators shall apply, mutatis mutandis, to mediators.

ANNEX VII. MEDIATION MECHANISM UNDER CHAPTER 14 (DISPUTE SETTLEMENT) OF TITLE III (TRADE AND BUSINESS)

1. Objective

The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

Section A. Procedure Under the Mediation Mechanism

2. Request for Information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request for information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days of receipt of the request, deliver a written response containing its comments on the information contained in the request.

2. When the responding Party considers it will not be able to deliver a response within 20 days of receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

3. Initiation of the Procedure

1. A Party may request that the Parties enter into a mediation procedure at any time, by means of a written request

delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

(a) identify the specific measure at issue;

(b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

2. The mediation procedure may only be initiated by mutual agreement of the Parties. When a request is made pursuant to paragraph 1, the Party to which the request is made shall accord sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days of its receipt.

4. Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator within 15 days of the delivery of the acceptance referred to in Article 3(2) of this Annex.

2. In the event that the Parties are unable to agree on the mediator within the time frame laid down in paragraph 1 of this Article, either Party may request the chair of the Cooperation Committee, or the chair's delegate, to select the mediator by lot from the list established under Article 196(1) of this Agreement. Representatives of both Parties shall be invited, with sufficient advance notice, to be present when the lots are drawn. In any event, the drawing of lots shall be carried out with the Party/Parties that is/are present.

3. The chair of the Cooperation Committee, or the chair's delegate, shall select the mediator within five days of the request made pursuant to paragraph 2.

4. Should the list referred to in Article 196(1) of this Agreement not be established at the time a request is made pursuant to Article 3 of this Annex, the mediator shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.

5. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall, in an impartial and transparent manner, assist the Parties in bringing clarity to the measure and its possible effects on trade, and in reaching a mutually agreed solution.

7. The Code of Conduct for Members of Arbitration Panels and Mediators set out in Annex VI to this Agreement shall apply to mediators, mutatis mutandis.

8. Rules 3 to 7 (Notifications) and 42 to 46 (Translation and interpretation) of the Rules of Procedure for Arbitration set out in Annex V to this Agreement shall apply, mutatis mutandis.

5. Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver a detailed, written description of its concerns to the mediator and to the other Party, in particular of the operation of the measure at issue and its effects on trade. Within 20 days of the receipt of this description, the other Party may deliver written comments on the description. Either Party may include any information that it deems relevant in its description or comments.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible effects on trade. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions.

6. The mutually agreed solution or the interim solution may be adopted by means of a decision of the Cooperation Committee. Mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information a Party has designated as confidential.

7. On request of the Parties, the mediator shall deliver a draft factual report to the Parties, providing a brief summary of: (i) the measure at issue; (ii) the procedures followed; and (iii) any mutually agreed solution reached, including possible interim solutions. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received within that period, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated by:

(a) the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

(b) mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or

(d) a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

Section B. Implementation

6. Implementation of a Mutually Agreed Solution

1. Where the Parties reach agreement on a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing Party shall notify the other Party, in writing, of any steps or measures taken to implement the mutually agreed solution.

Section C. General Provisions

7. Confidentiality and Relationship to Dispute Settlement

1. Unless the Parties agree otherwise, and without prejudice to Article 5(6) of this Annex, all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public the fact that mediation is taking place.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement, or any other agreement.

3. Consultations under Chapter 14 (Dispute Settlement) of Title III (Trade and Business) of this Agreement are not required before initiating the mediation procedure. However, a Party should normally avail itself of the other relevant cooperation or consultation provisions provided for in this Agreement before initiating the mediation procedure.

4. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information gathered under Article 5(2) of this Annex;

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

5. A mediator may not serve as a member of a panel in a dispute settlement proceeding under this Agreement or under the WTO Agreement involving the same matter for which he has been a mediator.

8. Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

9. Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.

2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The remuneration of the mediator shall be in accordance with that provided for a chairperson of an arbitration panel in accordance with rule 8(e) of the Rules of Procedure set out in Annex V to this Agreement.