The European Union and the Republic of Kazakhstan Partnership and Cooperation Agreement

Establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part.

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community, and the Treaty establishing the European Atomic Energy Community, hereinafter referred to as "Member States", and THE EUROPEAN COMMUNITY, THE EUROPEAN COAL AND STEEL COMMUNITY, AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as "the Community", of the one part,

AND THE REPUBLIC OF KAZAKHSTAN of the other part,

CONSIDERING the links between the Community, its Member States and the Republic of Kazakhstan and the common values that they share;

RECOGNIZING that the Community and the Republic of Kazakhstan wish to strengthen these links and to establish partnership and cooperation which would strengthen and widen the relations established in the past in particular by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Cooperation, signed on 18 December 1989;

CONSIDERING the commitment of the Community and its Member States and of the Republic of Kazakhstan to strengthening the political and economic freedoms which constitute the very basis of the partnership,

CONSIDERING the commitment of the Parties to promote international peace and security as well as the peaceful settlement of disputes and to cooperate to this end in the framework of the United Nations and the Conference on Security and Cooperation in Europe,

CONSIDERING the firm commitment of the Community and its Member States and of the Republic of Kazakhstan to the full

implementation of all principles and provisions contained in the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Follow-Up Meetings, the Document of the CSCE Bonn Conference on Economic Cooperation, the Charter of Paris for a New Europe and the CSCE Helsinki Document 1992 "The Challenges of Change",

CONFIRMING the attachment of the Community and its Member States and of the Republic of Kazakhstan to the European Energy Charter,

CONVINCED of the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy,

BELIEVING that full implementation of this Partnership and Cooperation Agreement will both depend on and contribute to continuation and accomplishment of the political, economic and legal reforms in the Republic of Kazakhstan, as well as the introduction of the factors necessary for cooperation, notably in the light of the conclusions of the CSCE Bonn Conference,

DESIROUS of encouraging the process of regional cooperation in the areas covered by this agreement with neighbouring countries in order to promote the prosperity and stability of the region,

DESIROUS of establishing and developing regular political dialogue on bilateral and international issues of mutual interest,

TAKING ACCOUNT of the Community's willingness to provide for economic cooperation and technical assistance as appropriate,

BEARING IN MIND the economic and social disparities between the Community and the Republic of Kazakhstan,

RECOGNIZING that one of the major aims of this Agreement should be to facilitate the elimination of these disparities through Community assistance to the development and restructuring of the Kazakh economy,

BEARING IN MIND the utility of the Agreement in favouring a gradual rapprochement between the Republic of Kazakhstan and a wider area of cooperation in Europe and neighbouring regions and its progressive integration into the open international system,

CONSIDERING the commitment of the Parties to liberalize trade, based on the principles contained in the General Agreement on Tariffs and Trade (GATT),

CONSCIOUS of the need to improve conditions affecting business and investment, and conditions in areas such as establishment of companies, labour, provision of services and capital movements, and of the desirability of moving towards granting of national treatment for each others companies,

CONVINCED that this Agreement will create a new climate for economic relations between the Parties and in particular for the development of trade and investment, which are essential to economic restructuring and technological modernization,

DESIROUS of establishing close cooperation in the area of environment protection taking into account the interdependence existing between the Parties in this field,

DESIROUS to establish a close cooperation in particular in the area of energy and civil nuclear safety,

BEARING IN MIND the intention of the Parties to develop their cooperation in the field of space research in view of the complementarity of their activities in this area,

DESIROUS of establishing cultural cooperation and improving the flow of information,

Have agreed as follows:

Title I.

Article 1.

A Partnership is hereby established between the Community and its Member States of the one part, and the Republic of Kazakhstan of the other part. The objectives of this partnership are:

- To provide an appropriate framework for the political dialogue between the Parties allowing the development of political

relations,

- To promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable economic development,

- To provide a basis for legislative, economic, social, financial, civil, scientific, technological and cultural cooperation,

- To support Kazakh efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy.

Title II. General Principles

Article 2.

Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of partnership and of this Agreement.

Article 3.

The Parties consider that it is essential for the future prosperity and stability of the region of the former Soviet Union that the newly independent states which have emerged from the dissolution of the Union of Soviet Socialist Republics, hereinafter called "Independent States", should maintain and develop cooperation among themselves in compliance with the principles of the Helsinki Final Act and with international law and spirit of good neighbourly relations and will make every effort to encourage this process.

Article 4.

A regular political dialogue shall be established between the Parties which they intend to develop and intensify. It shall accompany and consolidate the rapprochement between the Community and the Republic of Kazakhstan, support the political and economic changes underway in that country and contribute to the establishment of new forms of cooperation. The political dialogue:

- Will strengthen the links of the Republic of Kazakhstan with the Community and its Member States, and thus with the community of democratic nations as a whole. The economic convergence achieved through this Agreement will lead to more intense political relations;

- Will bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability.

Article 5.

At Ministerial level, political dialogue shall take place within the Cooperation Council established in Article 76 and on other occasions by mutual agreement.

Article 6.

Other procedures and mechanisms for political dialogue shall be set up by the Parties, and in particular in the following forms:

- Regular meetings at senior official level between representatives of the Community and its Member States on the one hand, and representatives of the Republic of Kazakhstan on the other hand;

- Taking full advantage of diplomatic channels between the parties including appropriate contacts in the bilateral as well as the multilateral field such as United Nations, CSCE meetings and elsewhere;

- Any other means, including the possibility of expert meetings which would contribute to consolidating and developing this dialogue.

Article 7.

Political dialogue at parliamentary level shall take place within the framework of the Parliamentary Cooperation Committee established in Article 81.

Title III. Trade In Goods

Article 8.

1. The Parties shall accord to one another most-favoured-nation treatment in all areas in respect of:

- Customs duties and charges applied to imports and exports, including the method of collecting such duties and charges;

- Provisions relating to customs clearance, transit, warehouses and transhipment;

- Taxes and other internal charges of any kind applied directly or indirectly to imported goods;

- Methods of payment and the transfer of such payments;

- The rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market.

2. The provisions of paragraph 1 shall not apply to:

- Advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area;

- Advantages granted to particular countries in accordance with the GATT and with other international arrangements in favour of developing countries;

- Advantages accorded to adjacent countries in order to facilitate frontier traffic.

3. The provisions of paragraph 1 shall not apply, during a transitional period expiring on the date of the Republic of Kazakhstan acceding to the GATT or on 31 December 1998, whichever is earlier, to advantages defined in Annex I granted by the Republic of Kazakhstan to other states which have emerged from the dissolution of the USSR.

Article 9.

1. The Parties agree that the principle of free transit is an essential condition of attaining the objectives of this Agreement.

In this connection each Party shall secure unrestricted transit via or through its territory of goods originating in the customs territory or destined for the customs territory of the other Party.

2. The rules described in Article V, paragraphs 2, 3, 4 and 5 of the GATT are applicable between the two parties.

3. The rules contained in this Article are without prejudice to any special rules relating to specific sectors, in particular such as transport, or products agreed between the Parties.

Article 10.

Without prejudice to the rights and obligations stemming from international conventions on the temporary admission of goods which bind both Parties, each Party shall furthermore 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 other international convention on this matter binding upon it, in conformity with its legislation. Account shall be taken of the conditions under which the obligations stemming from such a convention have been accepted by the Party in question.

Article 11.

1. Goods originating in the Republic of Kazakhstan shall be imported into the Community free of quantitative restrictions without prejudice to the provisions of Articles 13, 16 and 17 of this Agreement and to the provisions of Articles 77, 81, 244, 249 and 280 of the Act of Accession of Spain and Portugal to the European Community.

2. Goods originating in the Community shall be imported into the Republic of Kazakhstan free of all quantitative restrictions and measures of equivalent effect without prejudice to Articles 13, 16 and 17 of this Agreement.

Article 12.

Goods shall be traded between the Parties at market-related prices.

Article 13.

1. Where any product is being imported into the territory of one of the Parties in such increased quantities and under such conditions as to cause or threaten to cause injury to domestic producers of like or direct competitive products, the Community or the Republic of Kazakhstan, whichever is concerned, may take appropriate measures in accordance with the following procedures and conditions.

2. Before taking any measures, or in cases to which paragraph 4 applies as soon as possible thereafter, the Community or the Republic of Kazakhstan as the case may be shall supply the Cooperation Council with all relevant information with a view to seeking a solution acceptable to both Parties as provided for in Title IX.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Cooperation Council on actions to avoid the situation, the Party which requested consultations shall be free to restrict imports of the products concerned to the extent and for such time as is necessary to prevent or remedy the injury, or to adopt other appropriate measures.

4. In critical circumstances where delay would cause damage difficult to repair, the Parties may take the measures before the consultations, on the condition that consultations shall be offered immediately after taking such action.

5. In the selection of measures under this Article, the Contracting Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

6. Nothing in this Article shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT, the Agreement on implementation of Article VI of the GATT, the Agreement related on interpretation and application of Articles VI, XVI and XXIII of the GATT or related internal legislation.

Article 14.

The Parties undertake to consider development of the provisions in this Agreement on trade in goods between them, as circumstances allow, including the situation arising from the accession of the Republic of Kazakhstan to the GATT. The Cooperation Council may make recommendations on such developments to the Parties which could be put into effect, where accepted, by virtue of agreement between the Parties in accordance with their respective procedures.

Article 15.

The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of natural resources; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 16.

This Title shall not apply to trade in textile products falling under Chapters 50 to 63 of the Combined Nomenclature. Trade in these products shall be governed by a separate agreement, initialled on 15 October 1993 and applied provisionally since 1 January 1993.

Article 17.

1. Trade in products covered by the Treaty establishing the European Coal and Steel Community shall be governed by the provisions of this Title, with the exception of Article 11 and upon entry into force, by the provisions of an agreement on quantitative arrangements concerning exchanges of ECSC steel products.

2. A contact group on coal and steel matters shall be set up, comprising representatives of the Community on the one hand, and representatives of the Republic of Kazakhstan on the other.

The contact group shall exchange, on a regular basis, information on all coal and steel matters of interest to the Parties.

Article 18.

Trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between the European Atomic Energy Community and the Republic of Kazakhstan.

Part IV. Provisions Affecting Business and Investment

Chapter I. Labour Conditions

Article 19.

1. Subject to the laws, conditions and procedures applicable in each Member State, the Community and the Member States shall endeavour to ensure that the treatment accorded to nationals of the Republic of Kazakhstan, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.

2. Subject to the laws, conditions and procedures applicable in the Republic of Kazakhstan, the Republic of Kazakhstan shall endeavour to ensure that the treatment accorded to nationals of a Member State, legally employed in the territory of the Republic of Kazakhstan shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.

Article 20.

The Cooperation Council shall examine which joint efforts can be made to control illegal immigration taking into account the principle and the practice of readmission.

Article 21.

The Cooperation Council shall examine which improvements can be made in working conditions for business people consistent with the international commitments of the Parties, including those set out in the document of the CSCE Bonn Conference.

Article 22.

The Cooperation Council shall make recommendations for the implementation of Articles 19, 20 and 21.

Chapter II. Conditions Affecting the Establishment and Operation of Companies

Article 23.

1. The Community and its Member States shall grant for the establishment of Kazakh companies in their territories treatment no less favourable than that accorded to companies of any third country, and this in conformity with their legislation and regulations.

- Without prejudice to the reservations listed in Annex II, the Community and its Member States shall grant to subsidiaries of Kazakh companies established in their territories a treatment no less favourable than that granted to any Community companies, in respect of their operation, and this in conformity with their legislation and regulations.

- The Community and its Member States shall grant to branches of Kazakh companies established in their territories a treatment no less favourable than that accorded to branches of companies of any third country, in respect of their operation, and this in conformity with their legislation and regulations.

2. Without prejudice of the provisions of Articles 34 and 85, the Republic of Kazakhstan shall grant to Community companies and their branches treatment no less favourable than that accorded to companies of the Republic of Kazakhstan and their branches or to any third country companies and their branches, whichever is the better, in respect of their establishment and operations, as defined in Article 25, on its territory and this in conformity with its legislation and regulations.

Article 24.

1. The provisions of Article 23 shall not apply to air transport, inland waterways transport and maritime transport.

2. However, in respect of activities undertaken by shipping agencies for the provision of international maritime transport services, including intermodal activities involving a sea leg, each Party shall permit to the companies of the other Party their commercial presence in its territory in the form of subsidiaries or branches, under conditions of establishment and operation no less favourable than those accorded to its own companies or to subsidiaries or branches of companies of any third country, whichever are the better.

Such activities include, but are not limited to:

- 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 arrangements;

- Purchase and use, on their own account or on behalf of their customers (and to resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of an integrated service;

- Preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;

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

- Setting up of any business arrangement, including participation in 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;

- Acting on behalf of the companies, organizing the call of the ship or taking over cargoes when required.

Article 25.

For the purpose of this Agreement:

- A "Community company" or a "Kazakh company" respectively shall mean a company set up in accordance with the laws of a Member State or of the Republic of Kazakhstan respectively and having its registered office or central administration, or principal place of business in the territory of the Community or the Republic of Kazakhstan respectively. However, should the company be set up in accordance with the laws of a Member State or the Republic of Kazakhstan respectively, the company shall be considered a Community or Kazakh company respectively if its operations possess a real and continuous link with the economy of one of the Member States or the Republic of Kazakhstan respectively.

- "Subsidiary" of a company shall mean a company which is effectively controlled by the first company.

- "Branch" of a company shall mean 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 the latter, 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.

- "Establishment" shall mean the right of Community or Kazakh companies as referred to in point (a) to take up economic activities by means of the setting up of subsidiaries and branches in the Republic of Kazakhstan or in the Community respectively.

- "Operation" shall mean the pursuit of economic activities.

- "Economic activities" shall mean activities of an industrial, commercial and professional character.

With regard to international maritime transport, including intermodal operations involving a sea leg, nationals of the Member States or of the Republic of Kazakhstan established outside the Community or the Republic of Kazakhstan respectively, and shipping companies established outside the Community or the Republic of Kazakhstan and controlled by nationals of a Member State or nationals of the Republic of Kazakhstan respectively, shall also be beneficiaries of the provisions of this Chapter and Chapter III if their vessels are registered in that Member State or in the Republic of Kazakhstan respectively in accordance with their respective legislation.

Article 26.

1. Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the obligations of a Party under the Agreement.

2. Nothing in the Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 27.

The provisions of this Agreement shall not prejudice the application by each Party of any measure necessary to prevent the circumvention of its measures concerning third country access to its market, through the provisions of this Agreement.

Article 28.

1. Notwithstanding the provisions of Chapter I of this Title, a Community company or a Kazakh company established in the territory of the Republic of Kazakhstan or the Community respectively shall be entitled to employ, or have employed by one of its subsidiaries or branches, in accordance with the legislation in force in the host country of establishment, in the territory of the Republic of Kazakhstan and the Community respectively, employees who are nationals of Community Member States and the Republic of Kazakhstan respectively, provided that such employees are key personnel as defined in paragraph 2, and that they are employed exclusively by companies, or branches. The residence and work permits of such employees shall only cover the period of such employment.

2. Key personnel of the abovementioned companies herein referred to as "organizations" are "intra-corporate transferees" as defined in (c) in the following categories, provided that the organization is a legal person and that the persons concerned have been employed by it or have been partners in it (other than majority shareholders), for at least the year immediately preceding such movement:

1. Persons working in a senior position with an organization, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- Directing the establishment or a department or subdivision of the establishment,

- Supervising and controlling the work of other supervisory, professional or managerial employees,

- Having the authority personally to hire and fire or recommend hiring, firing or other personnel actions;

2. Persons working within an organization who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. The assessment of such knowledge may reflect, apart from knowledge specific to the establishment, a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

3. An "intra-corporate transferee" is defined as a natural person working within an organization in the territory of a Party, and being temporarily transferred in the context of pursuit of economic activities in the territory of the other Party; the organization concerned must have its principal place of business in the territory of a Party and the transfer be to an establishment (branch, subsidiary) of that organization, effectively pursuing like economic activities in the territory of the other Party.

Article 29.

1. The Parties shall use their best endeavours to avoid taking any measures or actions which render the conditions for the establishment and operation of each other's companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement.

2. The provisions of this Article are without prejudice to those of Article 37: the situations covered by such Article 37 shall be solely governed by its provisions to the exclusion of any other.

3. Acting in the spirit of partnership and cooperation and in the light of the provisions of Article 43 the Government of the Republic of Kazakhstan shall inform the Community of its intentions to submit new legislation or adopt new regulations which may render the conditions for the establishment or operation in the Republic of Kazakhstan of subsidiaries and branches of Community companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement. The Community may request the Republic of Kazakhstan to communicate the drafts of such legislation or regulations and to enter into consultations about those drafts.

4. Where new legislation or regulations introduced in the Republic of Kazakhstan would result in rendering the conditions for operation of subsidiaries and branches of Community companies established in the Republic of Kazakhstan more restrictive than the situation existing on the day of signature of the Agreement, such legislation or regulations shall not apply during three years following the entry into force of the relevant act to those subsidiaries and branches already established in the Republic of Kazakhstan at the time of entry into force of the relevant act.

Chapter III. Cross Border Supply of Services between the Community and the Republic of Kazakhstan

Article 30.

1. The Parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the supply of services by Community or Kazakh companies who are established in a Party other than that of the person for whom the services are intended taking into account the development of the services sectors in the Parties.

2. The Cooperation Council shall make recommendations for the implementation of paragraph 1.

Article 31.

The Parties shall cooperate with the aim of developing a market oriented service sector in the Republic of Kazakhstan.

Article 32.

1. The Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a commercial basis:

- The above provision does not prejudice the rights and obligations arising from the United Nations Convention on a Code of Conduct for Liner Conferences, as applicable to one or other Contracting Party to this Agreement. Non-conference lines will be free to operate in competition with a conference as long as they adhere to the principle of fair competition on a commercial basis;

- The Parties affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trade.

2. In applying the principles of paragraph 1, the Parties shall:

- Not apply, as from entry into force of this agreement, any cargo sharing provisions of bilateral agreements betweeen any Member States of the Community and the former Soviet Union;

- 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;

- Prohibit cargo sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;

- Abolish upon entry into force of this Agreement, all unilateral measures, administrative, technical and other obstacles which could have restrictive or discriminatory effects on the free supply of services in international maritime transport.

Each Party shall grant, inter alia, no less favourable treatment, for the ships operated by nationals or companies of the other Party, than that accorded to a Party's own ships, with regard to access to ports open to international trade, the use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

3. Nationals and companies of the Community 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.

Article 33.

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

Chapter IV. General Provisions

Article 34.

1. The provisions of this Title shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not apply to activities which in the territory of either Party are connected, even occasionally, with the exercise of official authority.

Article 35.

For the purpose of this Title, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of the Agreement. The above provision does not prejudice the application of Article 34.

Article 36.

Companies which are controlled and exclusively owned by kazakh companies and community companies jointly shall also be beneficiaries of the provisions of chapters ii, iii and iv.

Article 37.

Treatment granted by either Party to the other hereunder shall, as from the day one month prior to the date of entry into force of the relevant obligations of the General Agreement on Trade in Services (GATS), in respect of sectors or measures covered by the GATS, in no case be more favourable than that accorded by such first Party under the provisions of GATS and this in respect of each service sector, sub-sector and mode of supply.

Article 38.

For the purposes of Chapters II, III and IV, no account shall be taken of treatment accorded by the Community, its Member States or the Republic of Kazakhstan pursuant to commitments entered into in economic integration agreements in accordance with the principles of Article V of the GATS.

Article 39.

1. The most-favoured-nation treatment granted in accordance with the provisions of this Title shall not apply to the tax advantages which the Parties are providing or will provide in the future on the basis of agreements to avoid double taxation, or other tax arrangements.

2. Nothing in this Title shall be construed to prevent the adoption or enforcement by the Parties of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation and other tax arrangements, or domestic fiscal legislation.

3. Nothing in this Title shall be construed to prevent Member States or the Republic of Kazakhstan from distinguishing, in the application of the relevant provisions of their fiscal legislation, between tax payers who are not in identical situations, in particular as regards their place of residence.

Article 40.

Without prejudice to Article 28, no provision of Chapters II, III and IV shall be interpreted as giving the right to:

- Nationals of the Member States or of the Republic of Kazakhstan respectively to enter, or stay in, the territory of the Republic of Kazakhstan or the Community respectively in any capacity whatsoever, and in particular as a shareholder or partner in a company or manager or employee thereof or supplier or recipient of services;

- Community subsidiaries or branches of Kazakh companies to employ or have employed in the territory of the Community nationals of the Republic of Kazakhstan;

- Kazakh subsidiaries or branches of Community companies to employ or have employed in the territory of the Republic of Kazakhstan nationals of the Member States;

Kazakh companies or Community subsidiaries or branches of Kazakh companies to supply Kazakh persons to act for and under the control of other persons by temporary employment contracts;

Community companies or Kazakh subsidiaries or branches of Community companies to supply workers who are nationals of the Member States by temporary employment contracts.

Chapter V. Current Payments and Capital

Article 41.

1. The Parties undertake to authorize in freely convertible currency, any payments on the current account of balance of payments between residents of the Community and of the Republic of Kazakhstan connected with the movement of goods, services or persons made in accordance with the provisions of this Agreement.

2. With regard to transactions on the capital account of balance of payments, from entry into force of this Agreement, the free movement of capital relating to direct investments made in companies formed in accordance with the laws of the host country and investments made in accordance with the provisions of Chapter II, and the liquidation or repatriation of these investments and of any profit stemming therefrom shall be ensured.

3. Without prejudice to paragraph 2 or to paragraph 5, as from entry into force of this Agreement, no new foreign exchange restrictions on the movement of capital and current payments connected therewith between residents of the Community and the Republic of Kazakhstan shall be introduced and the existing arrangements shall not become more restrictive.

4. The Parties shall consult each other with a view to facilitating the movement of forms of capital other than those referred to in paragraph 2 between the Community and the Republic of Kazakhstan in order to promote the objectives of this Agreement.

5. With reference to the provisions of this Article, until a full convertibility of the Kazakh currency within the meaning of Article VIII of the Articles of Agreement of the International Monetary Fund (IMF) is introduced, the Republic of Kazakhstan may in exceptional circumstances apply exchange restrictions connected with the granting or taking up of short and medium-term financial credits to the extent that such restrictions are imposed on the Republic of Kazakhstan for the granting of such credits and are permitted according to the Republic of Kazakhstan's status under the IMF. The Republic of Kazakhstan shall apply these restrictions in a non-discriminatory manner. They shall be applied in such a manner as to cause the least possible disruption to this Agreement. The Republic of Kazakhstan shall inform the Cooperation Council promptly of the introduction of such measures and of any changes therein.

6. Without prejudice to paragraphs 1 and 2, where, in exceptional circumstances, movements of capital between the Community and the Republic of Kazakhstan cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in the Community or the Republic of Kazakhstan, the Community and the Republic of Kazakhstan, respectively, may take safeguard measures with regard to movements of capital between the Community and the Republic of Kazakhstan for a period not exceeding six months if such measures are strictly necessary.

Chapter VI. Intellectual, Industrial and Commercial Property Protection

Article 42.

1. Pursuant to the provisions of this Article and of Annex III, the Republic of Kazakhstan shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement, for a level of protection similar to that existing in the Community, including effective

means of enforcing such rights.

2. By the end of the fifth year after entry into force of the Agreement, the Republic of Kazakhstan shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex III to which Member States are parties or which are de facto applied by Member States, according to the relevant provisions contained in these conventions.

Title V. Legislative Cooperation

Article 43.

1. The Parties recognize that an important condition for strengthening the economic links between the Republic of Kazakhstan and the Community is the approximation of the Republic of Kazakhstan's existing and future legislation to that of the Community. The Republic of Kazakhstan shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition including any related issues and practices affecting trade, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, transport.

3. The Community shall provide the Republic of Kazakhstan with technical assistance for the implementation of these measures, which may include i.e. :

- The exchange of experts;

- The provision of early information especially on relevant legislation;

- Organization of seminars;

- Training activities;

- Aid for translation of Community legislation in the relevant sectors.

4. The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

Title VI. Economic Cooperation

Article 44.

1. The Community and the Republic of Kazakhstan shall establish economic cooperation aimed at contributing to the process of economic reform and recovery and sustainable development of the Republic of Kazakhstan. Such cooperation shall strengthen existing conomic links, to the benefit of both Parties.

2. Policies and other measures will be designed to bring about economic and social reforms and restructuring of the economic system in the Republic of Kazakhstan and will be guided by the requirements of sustainability and harmonious social development; they will also fully incorporate environmental considerations.

3. To this end the cooperation will concentrate, in particular, on economic and social development, human resources development, support for enterprises (including privatization, investment and development of financial services), agriculture and food, energy and civil nuclear safety, transport, tourism, environmental protection and regional cooperation.

4. Special attention shall be devoted to measures capable of fostering cooperation between the Independent States with a view to stimulating a harmonious development of the region.

5. Where appropriate, economic cooperation and other forms of cooperation provided for in this Agreement may be supported by technical assistance from the Community, taking into account the Community's relevant Council regulation applicable to technical assistance in the Independent States, the priorities agreed upon in the indicative programme related to Community technical assistance to the Republic of Kazakhstan and its established coordination and implementation procedures.

Article 45. Industrial Cooperation

1. Cooperation shall aim at promoting the following in particular:

- The development of business links between economic operators of both sides;

- Community participation in Kazakhstan's efforts to restructure its industry;

- The improvement of management;

- The improvement of the quality of industrial products;

- The development of efficient production and processing capacity in the raw materials sector;

- The development of appropriate commercial rules and practices including product marketing;

- Environmental protection;

- Defence conversion.

2. The provisions of this Article shall not affect the enforcement of Community competition rules applicable to undertakings.

Article 46. Investment Promotion and Protection

1. Bearing in mind the respective powers and competences of the Community and the Member States, cooperation shall aim to establish a favourable climate for private investment, both domestic and foreign, especially through better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities.

2. The aims of cooperation shall be in particular:

- The conclusion, where appropriate, between the Member States and the Republic of Kazakhstan of agreements for the promotion and protection of investment;

- The conclusion, where appropriate, between the Member States and the Republic of Kazakhstan of agreements to avoid double taxation;

- The creation of favourable conditions for attracting foreign investments into the Kazakh economy;

- To establish stable and adequate business law and conditions, and to exchange information on laws, regulations and administrative practices in the field of investment;

- To exchange information on investment opportunities in the form of, inter alia, trade fairs, exhibitions, trade weeks and other events.

Article 47. Public Procurement

The Parties shall cooperate to develop conditions for open and competitive award of

Contracts for goods and services in particular through calls for tenders.

Article 48. Cooperation In the Field of Standards and Conformity Assessment

1. Cooperation between the Parties shall promote alignment with internationally agreed criteria, principles and guidelines followed in the field of quality. The required actions will facilitate progress towards mutual recognition in the field of conformity assessment, as well as the improvement of Kazakh product quality.

2. To this end they shall seek to cooperate in technical assistance projects which will:

- Promote appropriate cooperation with organizations and institutions specialized in these fields;

- Promote the use of Community technical regulations and the application of European standards and conformity assessment procedures;

- Permit the sharing of experience and technical information in the field of quality management.

Article 49. Mining and Raw Materials

1. The Parties shall aim at increasing investment and trade in mining and raw materials.

2. The cooperation shall focus in particular on the following areas:

- Exchange of information on the prospects of the mining and non-ferrous metals sectors;

- The establishment of a legal framework for cooperation;

- Trade matters;

- The adoption and implementation of environmental legislation;

- Training;

- Safety in the mining industry.

Article 50. Cooperation In Science and Technology

1. The Parties shall promote cooperation in civil scientific research and technological development (RTD) on the basis of mutual benefit and, taking into account the availability of resources, adequate access to their respective programmes and subject to appropriate levels of effective protection of intellectual, industrial and commercial property rights (IPR).

2. Science and technology cooperation shall cover:

- The exchange of scientific and technical information;

- Joint RTD activities;

- Training activities and mobility programmes for scientists, researchers and technicians engaged in RTD in both sides.

Where such cooperation takes the form of activities involving education and/or training, it should be carried out in accordance with the provisions of Article 51.

The Parties, on the basis of mutual agreement, can engage in other forms of cooperation in science and technology.

In carrying out such cooperation activities, special attention shall be devoted to the redeployment of scientists, engineers, researchers and technicians which are or have been engaged in research on/and production of weapons of mass destruction.

3. The cooperation covered by this Article shall be implemented according to specific arrangements to be negotiated and concluded in accordance with the procedures adopted by each Party, and which shall set out, inter alia, appropriate IPR provisions.

Article 51. Education and Training

1. The Parties shall cooperate with the aim of raising the level of general education and professional qualifications in the Republic of Kazakhstan, both in the public and private sectors.

2. The cooperation shall focus in particular on the following areas:

- Updating higher education and training systems in the Republic of Kazakhstan including the system of certification of higher educational establishments and diplomas of higher education;

- The training of public and private sector executives and civil servants in priority areas to be determined;

- Cooperation between educational establishments and between educational establishments and firms;

- Mobility for teachers, graduates, administrators, young scientists and researchers, and young people;

- Promoting teaching in the field of European Studies within the appropriate institutions;

- Teaching Community languages;

- Post-graduate training of conference interpreters;

- Training of journalists;

- Training of trainers.

3. The possible participation of one Party in the respective programmes in the field of education and training of the other Party could be considered in accordance with their respective procedures and, where appropriate, institutional frameworks and plans of cooperation will then be established building on participation of the Republic of Kazakhstan in the Community's TEMPUS programme.

Article 52. Agriculture and the Agro-industrial Sector

The purpose of cooperation in this area shall be the pursuance of agrarian reform, the modernization, privatization and restructuring of agriculture, the agro-industrial and services sectors in the Republic of Kazakhstan, development of domestic and foreign markets for the Kazakh products, in conditions that ensure the protection of the environment, taking into account the necessity to improve security of food supply as well as the development of agri-business, the processing and distribution of agricultural products. The Parties shall also aim at the gradual approximation of Kazakh standards to Community technical regulations concerning industrial and agricultural food products including sanitary and phytosanitary standards.

Article 53. Energy

1. Cooperation shall take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.

2. The cooperation shall include among others the following areas: the environmental impact of energy production supply and consumption, in order to prevent or minimize the environmental damage resulting from these activities;

- Improvement of the quality and security of energy supply, including diversification of supply, in an economic and environmentally sound manner;

- Formulation of energy policy;

- Improvement in management and regulation of the energy sector in line with a market economy;

- The introduction of the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment;

- Promotion of energy saving and energy effectiveness;

- Modernization of energy infrastructure;

- Improvement of energy technologies in supply and end use across the range of energy types;

- Management and technical training in the energy sector;

- Security in energy supply, transportation and transit of energy and energy materials.

Article 54. Environment

1. Bearing in mind the European Energy Charter, the Parties shall develop and strengthen their cooperation on environment and human health.

2. Cooperation shall aim at combating the deterioration of the environment and in particular:

- Effective monitoring of pollution levels and assessment of environment; system of information on the state of the environment;

- Combating local, regional and transboundary air and water pollution;

- Ecological restoration;

- Sustainable, efficient and environmentally effective production and use of energy;

- Safety of industrial plants;

- Classification and safe handling of chemicals;

- Water quality;

- Waste reduction, recycling and safe disposal, implementation of the Basle Convention;

- The environmental impact of agriculture, soil erosion, and chemical pollution;

- The protection of forests;

- The conservation of biodiversity, protected areas and sustainable use and management of biological resources;

- Land-use planning, including construction and urban planning;

- Use of economic and fiscal instruments;

- Global climate change;

- Environmental education and awareness;

- Implementation of the Espoo Convention on Environmental Impact Assessment in a transboundary context.

3. Cooperation shall take place particularly through:

- Disaster planning and other emergency situations;

- Exchange of information and experts, including information and experts dealing with the transfer of clean technologies and the safe and environmentally sound use of biotechnologies;

- Joint research activities;

- Improvement of laws towards Community standards;

- Cooperation at regional level, including cooperation within the framework of the European Environment Agency, and at international level;

- Development of strategies, particularly with regard to global and climatic issues and also in view of achieving sustainable development;

- Environmental impact studies.

Article 55. Transport

The Parties shall develop and strengthen their cooperation in the field of transport.

This cooperation shall, inter alia, aim at restructuring and modernizing transport systems and networks in the Republic of Kazakhstan, and developing and ensuring, where appropriate, compatibility of transportation systems in the context of achieving a more global transport system.

The cooperation shall include, inter alia:

- The modernizing of management and operations of road transport, railways, ports and airports;

- Modernization and development of railways, waterways, roads, ports, airports and air navigation infrastructure including the modernization of major routes of common interest and the trans-European links for the above modes;

- Promotion and development of multi-modal transport;

- The promotion of joint research and development programmes;

- Preparation of the legislative and institutional framework for policy development and implementation including privatization of the transport sector.

Article 56. Space

Bearing in mind the respective competencies of the Community, its Member States and the European Space Agency the Parties shall promote where appropriate long-term cooperation in the areas of civil space research, development and commercial applications. The Parties will pay particular attention to initiatives making full use of the complementarity of their respective space activities.

Article 57. Postal Services and Telecommunications

Within their respective powers and competencies the Parties shall expand and strengthen cooperation in the following areas:

- The establishment of policies and guidelines for the development of the telecommunications sector and postal services;

- Development of principles of a tariff policy and marketing in telecommunications and postal services;

- Encouraging the development of projects for telecommunications and postal services and attracting investment;

- Enhancing efficiency and quality of the provision of telecommunications and postal services, amongst others through liberalization of activities of sub-sectors;

- Advanced application of telecommunications, notably in the area of electronic funds transfer;

- Management of telecommunications networks and their "optimization";

- An appropriate regulatory basis for the provision of telecommunication and postal services and for the use of the radio frequency spectrum;

- Training in the field of telecommunications and postal services for operations in market conditions.

Article 58. Financial Services

Cooperation shall in particular aim at facilitating the involvement of the Republic of Kazakhstan in universally accepted systems of mutual settlements. Technical assistance shall focus on:

- The development of banking and financial services, the development of a common market of credit resources, the involvement of the Republic of Kazakhstan in a universally accepted system of mutual settlements;

- The development of the fiscal system, fiscal institutions in the Republic of Kazakhstan and the exchange of experience and personnel training in fiscal matters;

- The development of insurance services, which would inter alia create a favourable framework for Community companies participation in the establishment of joint ventures in the insurance sector in the Republic of Kazakhstan, as well as the development of export credit insurance.

This cooperation shall in particular contribute to foster the development of relations between the Republic of Kazakhstan and the Member States in the financial services sector.

Article 59. Money Laundering

1. The Parties agree on the necessity of making efforts and cooperating in order to prevent the use of their financial systems for laundering of proceeds from criminal activities in general and drug offences in particular.

2. Cooperation in this area shall include administrative and technical assistance with the purpose of establishing suitable standards against money laundering equivalent to those adopted by the Community and international fora in this field, including the Financial Action Task Force (FATF).

Article 60. Regional Development

1. The Parties shall strengthen cooperation on regional development and land-use planning.

2. To this end, they shall encourage exchange of information by national, regional and local authorities on regional and land-use planning policy and on methods of formulation of regional policies with special emphasis on the development of disadvantaged areas.

They shall also encourage direct contacts between the respective regions and public organizations responsible for regional development planning with the aim, inter alia, to exchange methods and ways of fostering regional development.

Article 61. Social Cooperation

1. With regard to health and safety, the parties shall develop cooperation between them with the aim of improving the level of protection of the health and safety of workers. The cooperation shall include notably:

- Education and training on health and safety issues with specific attention to high risk sectors of activity;

- Development and promotion of preventive measures to combat work related diseases and other work related ailments;

- Prevention of major accident hazards and the management of toxic chemicals;

- Research to develop the knowledge base in relation to working environment and the health and safety of workers.

2. With regard to employment, the cooperation shall include notably technical assistance to:

- Optimization of the labour market;

- Modernization of the job-finding and consulting services;

- Planning and management of the restructuring programmes;

- Encouragement of local employment development;

- Exchange of information on the programmes of flexible employment, including those stimulating self-employment and promoting entrepreneurship.

3. The Parties shall pay special attention to cooperation in the sphere of social protection which, inter alia, shall include cooperation in planning and implementing social protection reforms in the Republic of Kazakhstan.

These reforms shall aim to develop in the Republic of Kazakhstan methods of protection intrinsic to market economies and shall comprise all directions of social protection.

Article 62. Tourism

The Parties shall increase and develop cooperation between them, which shall include:

- Facilitating the tourist trade;

- Increasing the flow of information;

- Transferring know-how;

- Studying the opportunities for joint operations;

- Cooperation between official tourism bodies;

- Training for tourism development.

Article 63. Small and Medium-sized Enterprises

1. The Parties shall aim to develop and strengthen small and medium-sized enterprises and their associations and cooperation between SMEs in the Community and the Republic of Kazakhstan.

2. Cooperation shall include technical assistance, in particular in the following areas:

- The development of a legislative framework for SMEs;

- The development of an appropriate infrastructure (an agency to support SMEs communications, assistance to the creation of a fund for SMEs);

- The development of technology parks.

Article 64. Information and Communication

The Parties shall support the development of modern methods of information handling, including the media, and stimulate the effective mutual exchange of information. Priority shall be given to programmes aimed at providing the general public with basic information about the Community and the Republic of Kazakhstan, including, where possible, access to databases, in full respect of intellectual property rights.

Article 65. Consumer Protection

The Parties will enter into close cooperation aimed at achieving compatibility between their systems of consumer protection. This cooperation may include the exchange of information on legislative work and institutional reform, the establishment of permanent systems of mutual information on dangerous products, the improvement of information provided to consumers especially on prices, characteristics of products and services offered, the development of exchanges between the consumer interest representatives, and increasing the compatibility of consumer protection policies, and the organization of seminars and training periods.

Article 66. Customs

1. The aim of cooperation shall be to guarantee compliance with all the provisions scheduled for adoption in connection with trade and fair trade and to achieve the approximation of the Republic of Kazakhstan's customs system to that of the Community.

2. Cooperation shall include the following in particular:

- The exchange of information;

- The improvement of working methods;

- The introduction of the Combined Nomenclature and the single administrative document;

- The interconnection between the transit systems of the Community and the Republic of Kazakhstan;

- The simplification of inspections and formalities in respect of the carriage of goods;

- The support in the introduction of modern customs information systems;

- The organization of seminars and training periods.

Technical assistance shall be provided where necessary.

3. Without prejudice to further cooperation foreseen in this agreement and in particular Article 69 the mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the provisions of the Protocol attached to this Agreement.

Article 67. Statistical Cooperation

Cooperation in this area shall have as its aim the development of an efficient statistical system to provide the reliable statistics needed to support and monitor the process of economic reform and contribute to the development of private enterprise in the Republic of Kazakhstan.

The Parties, in particular, shall cooperate in the following fields:

- Adaptation of the Kazakh statistical system to international methods, standards and classification;

- Exchange of statistical information;

- Provision of necessary statistical macro and microeconomic information to implement and manage economic reforms.

The Community shall contribute to this end by rendering technical assistance to the Republic of Kazakhstan.

Article 68. Economics

The Parties shall facilitate the process of economic reform and the coordination of economic policies by cooperating to improve understanding of the fundamentals of their respective economies and the design and implementation of economic policy in market economies. To this end, the Parties shall exchange information on macroeconomic performance and prospects.

The Community shall provide technical assistance so as to:

- Assist the Republic of Kazakhstan in the process of economic reform by providing expert advisory and technical assistance;

- Encourage cooperation among economists in order to expedite the transfer of know-how for the drafting of economic policies, and provide for wide dissemination of policy-relevant research.

Article 69. Drugs

Within the framework of their respective powers and competencies the Parties shall cooperate in increasing the effectiveness and efficiency of policies and measures to counter the illicit production, supply and traffic of narcotic drugs and psychotropic substances, including the prevention of diversion of precursor chemicals, as well as in promoting drug demand prevention and reduction. The cooperation in this area shall be based on mutual consultation and close coordination between the Parties over the objectives and measures on the various drug-related fields.

Article 70. Cooperation on Prevention of Illegal Activities

The Parties shall establish cooperation aimed at preventing illegal activities such as:

- Illegal immigration and illegal presence of physical persons of their nationality on their respective territories, taking into account the principle and practice of readmission;

- Illegal activities in the sphere of economics, including corruption;

- Illegal transactions of various goods, including industrial waste;

- Counterfeiting;

- The illicit traffic of narcotic drugs, psychotropic substances and arms.

The cooperation in the abovementioned areas will be based on mutual consultations and close interactions and will provide technical and administrative assistance including:

- Drafting of national legislation in the sphere of preventing illegal activities;

- Creation of information centres;

- Increasing the efficiency of institutions engaged in preventing illegal activities;

- Training of personnel and development of research infrastructures;

- Elaboration of mutually acceptable measures aimed at impeding illegal activities.

Title VII. Cultural Cooperation

Article 71.

The Parties undertake to promote, encourage and facilitate cultural cooperation. Where appropriate, the Community's cultural cooperation programmes or those of one or more Member States may be the subject of cooperation and further activities of mutual interest may be developed.

Title VIII. Financial Cooperation

Article 72.

In order to achieve the objectives of this Agreement and in accordance with Articles 73, 74 and 75 the Republic of Kazakhstan shall benefit from temporary financial assistance from the Community by way of technical assistance in the form of grants to accelerate the economic transformation of the Republic of Kazakhstan.

Article 73.

This financial assistance shall be covered within the framework of TACIS as foreseen in the Community's relevant Council Regulation.

Article 74.

The objectives and the areas of the Community's financial assistance shall be laid down in an indicative programme reflecting established priorities to be agreed between the two Parties taking into account the Republic of Kazakhstan's needs, sectoral absorption capacities and progress with reform. The Parties shall inform the Cooperation Council thereof.

Article 75.

In order to permit optimum use of the resources available, the Parties shall ensure that Community technical assistance contributions are made in close coordination with those from other sources such as the Member States, other countries, and international organizations such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development.

Title IX. Institutional, General and Final Provisions

Article 76.

A Cooperation Council is hereby established which shall supervise the implementation of this Agreement. It shall meet at ministerial level once a year. It shall examine any major issues arising within the framework of the Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of this Agreement. The Cooperation Council may also make appropriate recommendations, by agreement between the two Parties.

Article 77.

1. The Cooperation Council shall consist of the members of the Council of the European Union and members of the Commission of the European Communities, on the one hand, and of members of the Government of the Republic of Kazakhstan, on the other.

2. The Cooperation Council shall establish its rules of procedure.

3. The office of President of the Cooperation Council shall be held alternately by a representative of the Community and by a member of the Government of the Republic of Kazakhstan.

Article 78.

1. The Cooperation Council shall be assisted in the performance of its duties by a Cooperation Committee composed of representatives of the members of the Council of the European Union and of members of the Commission of the European Communities on the one hand and of representatives of the Government of the Republic of Kazakhstan on the other, normally at senior civil servant level. The office of President of the Cooperation Committee shall be held alternately by the Community and by the Republic of Kazakhstan.

In its rules of procedure the Cooperation Council shall determine the duties of the Cooperation Committee, which shall include the preparation of meetings of the Cooperation Council, and how the Committee shall function.

2. The Cooperation Council may delegate any of its powers to the Cooperation Committee, which will ensure continuity between meetings of the Cooperation Council.

Article 79.

The Cooperation Council may decide to set up any other special committee or body that can assist it in carrying out its duties and shall determine the composition and duties of such committees or bodies and how they shall function.

Article 80.

When examining any issue arising within the framework of this Agreement in relation to a provision referring to an Article of the GATT, the Cooperation Council shall take into account to the greatest extent possible the interpretation that is generally given to the Article of the GATT in question by the Contracting Parties to the GATT.

Article 81.

A Parliamentary Cooperation Committee is hereby established. It shall be a forum for Members of the Kazakh Parliament and the European Parliament to meet and exchange views. It shall meet at intervals which it shall itself determine.

Article 82.

1. The Parliamentary Cooperation Committee shall consist of members of the European Parliament, on the one hand, and of members of the Kazakh Parliament, on the other.

2. The Parliamentary Cooperation Committee shall establish its rules of procedure.

3. The Parliamentary Cooperation Committee shall be presided in turn by the European Parliament and the Kazakh Parliament respectively, in accordance with the provisions to be laid down in its rules of procedure.

Article 83.

The Parliamentary Cooperation Committee may request relevant information regarding the implementation of this Agreement from the Cooperation Council, which shall then supply the Committee with the requested information.

The Parliamentary Cooperation Committee shall be informed of the recommendations of the Cooperation Council.

The Parliamentary Cooperation Committee may make recommendations to the Cooperation Council.

Article 84.

1. 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 in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

2. Within the limits of their respective powers and competences, the Parties:

- Shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and cooperation transactions concluded by economic operators of the Community and those of the Republic of Kazakhstan;

- Agree that where a dispute is submitted to arbitration, each party to the dispute may,

Except where the rules of the arbitration centre chosen by the parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator or the sole arbitrator may be a citizen of a third State;

- Will recommend their economic operators to choose by mutual consent the law applicable to their contracts;

- Shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a State signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Article 85.

Nothing in the Agreement shall prevent a Party from taking any measures:

- Which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

- Which relate to the production of, or trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

- Which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security;

- Which it considers necessary to respect its international obligations and commitments in the control of dual use industrial goods and technology.

Article 86.

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

- The arrangements applied by the Republic of Kazakhstan in respect of the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms;

- The arrangements applied by the Community in respect of the Republic of Kazakhstan shall not give rise to any discrimination between Kazakh nationals, or its companies or firms.

2. The provisions of paragraph 1 are without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to tax payers who are not in identical situations as regards their place of residence.

Article 87.

1. Each of the two Parties may refer to the Cooperation Council any dispute relating to the application or interpretation of this Agreement.

2. The Cooperation Council may settle the dispute by means of a recommendation.

3. In the event of it not being possible to settle the dispute in accordance with paragraph 2 of this Article, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within two months. For the application of this procedure, the Community and the Member States shall be deemed to be one Party to the dispute.

The Cooperation Council shall appoint a third conciliator.

The conciliators' recommendations shall be taken by majority vote. Such recommendations shall not be binding upon the Parties.

Article 88.

The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

The provisions of this Article shall in no way affect and are without prejudice to Articles 13, 87 and 93.

Article 89.

Treatment granted to the Republic of Kazakhstan hereunder shall in no case be more favourable than that granted by the Member States to each other.

Article 90.

For the purposes of this Agreement, the term "Parties" shall mean the Republic of Kazakhstan on the one part, and the Community, or the Member States, or the Community and the Member States, in accordance with their respective powers, on the other part.

Article 91.

Insofar as matters covered by this Agreement are covered by the Energy Charter Treaty and Protocols thereto, such Treaty and Protocols shall upon entry into force apply to such matters but only to the extent that such application is provided for therein.

Article 92.

This Agreement is concluded for an initial period of ten years after which time the Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement six months before it expires.

Article 93.

1. The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall

see to it that the objectives set out in the Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Cooperation Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of these measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the Cooperation Council if the other Party so requests.

Article 94.

Annexes I, II and III together with the Protocol shall form an integral part of this Agreement.

Article 95.

This Agreement shall not, until equivalent rights for individuals and economic operators have been achieved hereunder, affect rights assured to them through existing Agreements binding one or more Member States, on the one hand, and the Republic of Kazakhstan, on the other, except in areas falling within Community competence and without prejudice to the obligations of Member States resulting from this Agreement in areas falling within their competence.

Article 96.

This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community, the European Coal and Steel Community and the European Atomic Energy Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the Republic of Kazakhstan.

Article 97.

The Secretary-General of the Council of the European Union shall be the depositary of this Agreement.

Article 98.

The original of this Agreement, of which the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Kazakh languages are equally authentic, shall be deposited with the Secretary-General of the Council of the European Union.

Article 99.

This Agreement will be approved by the Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify the Secretary-General of the Council of the European Union that the procedures referred to in the first paragraph have been completed.

Upon its entry into force, and as far as relations between the Republic of Kazakhstan and the Community are concerned, this Agreement shall replace the Agreement between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation signed in Brussels on 18 December 1989.

Article 100.

In the event that, pending the completion of the procedures necessary for the entry into force of this agreement, the provisions of certain parts of this agreement are put into effect in 1994 by means of an interim agreement between the community and the republic of kazakhstan, the contracting parties agree that, in such circumstances, the term date of entry into force of the agreement shall mean the date of entry into force of the interim agreement list of Documents attached

Annex I. Indicative list of advantages granted by the Republic of Kazakhstan to the Independent States in accordance with Article 8(3).

Community reservations in accordance with Article 23(1)(b).

Intellectual, industrial and commercial property conventions referred to in Article 42.

Protocol on mutual assistance between administrative authorities in customs matters.

1. Armenia, Belarus, Estonia, Georgia, Lithuania, Moldova, Ukraine, Turkmenistan, Russia:

- No import duties are implemented.

- No export duties are implemented as regards goods delivered under clearing and interstate agreements within the volumes stipulated in these agreements.

- No VAT is applied on export and import. No excise is applied on export.

- All Independent States:

- Export quotas for deliveries of products under annual interstate trade and cooperation agreements are opened in the same way as for deliveries for state needs.

2. Armenia, Belarus, Estonia, Georgia, Lithuania, Moldova, Ukraine, Turkmenistan:

Payments could be made in roubles.

Russia:

Payments could be made in roubles or tenge.

All Independent States:

Special system of non-commercial operations, including payments resulting from these operations.

3. All Independent States:

Special system of current payments.

4. All Independent States:

Special price system in trade with some raw materials and semi-finished products.

5. All Independent States:

Special conditions of transit.

6. All Independent States:

Special conditions of customs procedures.

Annex II. Community reservations in accordance with Article 23(1)(b)

Mining

In some Member States, a concession may be required for mining and mineral rights for non-EC controlled companies.

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 Member States of the Community is restricted to fishing vessels flying the flag of a Community Member State and registered in Community territory unless otherwise provided for.

Real estate purchase

In some Member States, the purchase of real estate by non-EC companies is subject to restrictions.

Audiovisual services including radio

National treatment concerning production and distribution, including broadcasting and other forms of transmission to the

public, may be reserved to audiovisual works meeting certain origin criteria.

Telecommunications services including mobile and satellite services Reserved services

In some Member States market access concerning complementary services and infrastructures is restricted.

Professional services

Services reserved to natural persons nationals of Member States. Under certain conditions those persons may create companies.

Agriculture

In some Member States national treatment is not applicable to non-EC controlled companies which wish to undertake an agricultural enterprise. The acquisition of vineyards by non-EC controlled companies is subject to notification, or, as necessary, authorization.

News agency services

In some Member States limitations of foreign participation in publishing companies and broadcasting companies.

Annex III. Intellectual, industrial and commercial property conventions referred to in Article 42

1. Paragraph 2 of Article 42 concerns the following multilateral conventions:

- Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);

- Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid, 1989);

- Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977 and amended in 1979);

- Budapest Treaty on the International Recognition of the Deposit of Micro Organisms for the purposes of Patent Procedures (1977, modified in 1980);

- International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1991);

2. The Cooperation Council may recommend that paragraph 2 of Article 42 shall apply to other multilateral conventions. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations will be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.

3. The Parties confirm the importance they attach to the obligations arising from the following multilateral conventions:

- Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967 and amended in 1979);

- Madrid Agreement concerning the International Registration of Marks

- (Stockholm Act, 1967 and amended in 1979);

- Patent Cooperation Treaty (Washington, 1970, amended in 1979 and modified in 1984).

4. From the entry into force of this Agreement, the Republic of Kazakhstan shall grant to Community companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by it to any third country under bilateral agreements.

5. The provisions of paragraph 4 shall not apply to advantages granted by the Republic of Kazakhstan to any third country on an effective reciprocal basis and to advantages granted by the Republic of Kazakhstan to another country of the former USSR.

Final act

The plenipotentiaries of:

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the EUROPEAN COMMUNITY, the Treaty

Establishing the EUROPEAN COAL AND STEEL COMMUNITY, and the Treaty establishing the EUROPEAN ATOMIC ENERGY COMMUNITY,

Hereinafter referred to as "the Member States", and of

The EUROPEAN COMMUNITY, the EUROPEAN COAL AND STEEL COMMUNITY, and the EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as "the Community",

Of the one part, and

The plenipotentiary of the REPUBLIC OF KAZAKHSTAN, of the other part,

Meeting at Brussels on 23 January in the year one thousand nine hundred and ninety-five for the signature of the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, hereinafter referred to as the "Agreement", have adopted the following texts:

The Agreement including its Annexes and the following Protocol:

Protocol on mutual assistance between administrative authorities in customs matters

The plenipotentiaries of the Member States and of the Community and the plenipotentiaries of the Republic of Kazakhstan have adopted the texts of the Joint Declarations listed below and annexed to this Final Act:

Joint Declaration concerning Article 13 of the Agreement Joint Declaration concerning Article 23 of the Agreement

Joint Declaration concerning the notion of "control" in Article 25(b) and Article 36 of the Agreement

Joint Declaration concerning Article 42 of the Agreement Joint Declaration concerning Article 93 of the Agreement

The plenipotentiaries of the Member States of the Community and the plenipotentiaries of the Republic of Kazakhstan have further taken note of the Declaration by the French Government annexed to this Final Act:

Declaration by the French Government on its overseas countries and territories.

Joint declaration concerning Article 13

The Community and the Republic of Kazakhstan declare that the text of the safeguard clause does not grant GATT safeguard treatment.

Joint declaration concerning Article 23

Without prejudice to the provisions of Articles 37 and 40, the Parties agree that the words "in conformity with their legislation and regulations" mentioned in paragraphs 1 and 2 of Article 23 mean that each Party may regulate the establishment and operation of companies on its territory, provided that these regulations do not create for the establishment and operation of companies of the other Party any new reservations resulting in a less favourable treatment than that accorded to their own companies or to companies, branches or subsidiaries of companies of any third country.

Joint declaration concerning the notion of control in Article 25 (b) and Article 36

1. The Parties confirm their mutual understanding that the question of control shall depend on the factual circumstances of the particular case.

2. A company shall, for example, be considered as being "controlled" by another company, and thus a subsidiary of such other company if:

- The other company holds directly or indirectly a majority of the voting rights, or

- The other company has the right to appoint or dismiss a majority of the administrative organ, of the management organ or of the supervisory organ and is at the same time a shareholder or member of the subsidiary.

3. Both Parties consider the criteria in paragraph 2 to be non-exhaustive.

Joint declaration concerning Article 42

The Parties agree that for the purpose of the Agreement, intellectual, industrial and commercial property includes in particular copyright, including the copyright in computer programs, and neighbouring rights, the rights relating to patents, industrial designs, geographical indications, including appellations of origin, trademarks and service marks, topographies of integrated circuits as well as protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the protection of Industrial Property and protection of undisclosed information on know-how.

Joint declaration concerning Article 93

The Parties agree, for the purpose of its correct interpretation and its practical application, that the term "cases of special urgency" included in Article 93 of the Agreement means cases of material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in

(a) repudiation of the Agreement not sanctioned by the general rules of international law or

(b) violation of the essential elements of the Agreement set out in Article 2.

Declaration by the French government

The French Republic notes that the Partnership and Cooperation Agreement with the Republic of Kazakhstan does not apply to the overseas countries and territories associated with the European Community pursuant to the Treaty establishing the European Community.