ENHANCED PARTNERSHIP AND COOPERATION AGREEMENT
BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE KYRGYZ REPUBLIC, OF THE OTHER PART

PREAMBLE

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,

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 KYRGYZ REPUBLIC,

of the other part,

hereinafter jointly referred to as "the Parties",

CONSIDERING their strong ties and their common values,

CONSIDERING their desire to strengthen the mutually beneficial cooperation established in the past through the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, signed in Brussels on 9 February 1995,

CONSIDERING their wish to upgrade their relations to reflect new political and economic realities and the advancement of their partnership,

EXPRESSING their common will to consolidate, deepen and diversify their cooperation at all levels on bilateral, regional and international issues of mutual interest,

REAFFIRMING their commitment to strengthen the promotion, protection and implementation of human rights and fundamental freedoms, and the respect for democratic principles, the rule of law and good governance, as well as the development of parliamentary democracy,

CONFIRMING their commitment to the principles laid down in the Charter of the United Nations (hereinafter referred to as the "UN Charter"), the Universal Declaration of Human Rights adopted by the UN General Assembly resolution A/RES/217 (III) A on 10 December 1948 (hereinafter referred to as the "UDHR"), the Organization for Security and Co-operation in Europe (hereinafter referred to as the "OSCE"), in particular the Helsinki Final Act adopted on 1 August 1975 during the Conference on Security and Cooperation in Europe (hereinafter referred to as the "OSCE Helsinki Final Act"), the International Covenant on Civil and Political Rights adopted by the UN General Assembly resolution 2200A (XXI) on 16 December 1966, and the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly resolution 2200A (XXI) on 16 December 1966, as well as principles and norms of international law,

REITERATING their commitment to actively promote international peace and security and engage in effective multilateralism and the peaceful settlement of disputes, in particular by cooperating within the framework of the UN and the OSCE,

CONSIDERING their desire to further develop regular political dialogue on bilateral and international issues of mutual interest,

CONSIDERING their commitment to international obligations to fight against the proliferation of weapons of mass destruction and their means of delivery,

CONSIDERING their commitment to strengthen cooperation in the field of justice, freedom and security, including in the fight against corruption,

CONSIDERING their commitment to contribute, through their wide-ranging cooperation in a broad spectrum of areas of common interest, to the political, socio-economic and institutional development of the Kyrgyz Republic,

CONSIDERING their willingness to strengthen their economic relationship on the basis of the principles of a free-market economy and to create a climate conducive to expanding bilateral trade and investment relations and connectivity,

CONSIDERING their commitment to comply with the rights and obligations arising from membership of the World Trade Organization (hereinafter referred to as the "WTO"), and their commitment to the transparent and non-discriminatory implementation of those rights and obligations,

CONSIDERING their commitment to respect the principle of sustainable development and to work together in pursuit of the objectives of the outcome document entitled "Transforming our world: the 2030 Agenda for Sustainable Development" of the UN summit for the adoption of the post-2015 development agenda adopted by UN General Assembly resolution A/RES/70/1 on 25 September 2015 (hereinafter referred to as the "Agenda 2030"), with due regard to their internal programmes,

CONSIDERING their commitment to ensure environmental sustainability and protection, and the implementation of multilateral environmental agreements to which they are parties, as well as their commitment to strengthen cooperation in environment, disaster risk reduction and in all areas of climate action in line with the purposes of the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (hereinafter referred to as the "Paris Agreement on Climate Change"),

CONSIDERING their commitment to promote cross-border and interregional cooperation,

NOTING that, if the Parties decide, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice concluded by the European Union pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union ("TFEU") after the entry into force of this Agreement, the provisions of such future specific agreements would not bind Ireland unless the European Union, simultaneously with Ireland, as regards its previous bilateral relations, notifies the Kyrgyz Republic that Ireland has become bound by such future specific agreements as part of the European Union in accordance with Protocol No 21 on the position of Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union ("TEU") and to the TFEU; also noting that any subsequent internal measures of the European Union which are adopted pursuant to Title V of Part Three of the TFEU to implement this Agreement would not bind Ireland, unless Ireland has notified its wish to take part in such measures or accept them in accordance with Protocol No 21; and further noting that such future agreements or such subsequent internal measures of the European Union would fall within Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU,

HAVE AGREED AS FOLLOWS:

TITLE I

OBJECTIVES AND GENERAL PRINCIPLES

ARTICLE 1

Objectives

1. This Agreement establishes an enhanced partnership and cooperation between the Parties, based on shared values, common interests and the ambition to strengthen their relationship in all areas of its application, to their mutual benefit.

2. This cooperation is a process between the Parties that contributes to sustainable development, peace, stability and security, through increased convergence with regard to foreign and security policy, effective political and economic cooperation and multilateralism.

ARTICLE 2

General principles

1. Respect for democratic principles and human rights and fundamental freedoms, as laid down in particular in the UN Charter, the UDHR, the OSCE Helsinki Final Act and other relevant international human rights instruments to which they are party, and for the principle of the rule of law, underpins the internal and international policies of the Parties and constitutes an essential element of this Agreement.

2. The Parties reaffirm their respect for the principles of good governance, including the fight against corruption at all levels.

3. The Parties reiterate their commitment to the principles of a free-market economy, promoting sustainable development and the fight against climate change.

4. The Parties commit themselves to the fight against the different forms of transnational organised crime and terrorism, the fight against the proliferation of weapons of mass destruction (hereinafter referred to as "WMD") and their means of delivery and to effective multilateralism.

5. The Parties shall implement this Agreement on the basis of shared values, the principles of dialogue, mutual trust and respect, regional cooperation, effective multilateralism and respect for their international obligations arising from, in particular, their membership of the UN and the OSCE.

TITLE II

POLITICAL DIALOGUE AND REFORM;
COOPERATION IN THE FIELD OF FOREIGN AND SECURITY POLICY

ARTICLE 3

Aims of political dialogue

The Parties shall develop effective political dialogue in all areas of mutual interest, including foreign and security policy and internal reform. The aims of the political dialogue shall be:

(a) to increase the effectiveness of political cooperation and convergence with regard to foreign and security policy and to promote, preserve and strengthen peace and regional and international stability and security on the basis of effective multilateralism;

(b) to strengthen democracy and political, sustainable socio-economic and institutional development in the Kyrgyz Republic;

(c) to strengthen the respect for democratic principles, the rule of law and good governance, human rights, fundamental freedoms and the principle of non-discrimination, and to increase cooperation in these areas;

(d) to develop dialogue and deepen cooperation in the field of security and defence;

(e) to promote the peaceful resolution of conflicts and the principles of territorial integrity, inviolability of borders, sovereignty and independence;

(f) to improve the conditions for regional cooperation.

ARTICLE 4

Democracy and the rule of law

The Parties shall enhance dialogue and cooperation with the aim of:

(a) ensuring the application of democratic principles and the rule of law;

(b) developing, consolidating and increasing the stability, effectiveness and accountability of democratic institutions;

(c) pursuing judicial and legal reform and effective functioning of institutions in the areas of law enforcement and the administration of justice, so as to ensure equal access to justice and the right to a fair trial (including procedural rights of suspects, accused and victims), to secure the independence, accountability, quality and efficiency of the judiciary, the prosecution and law enforcement;

(d) promoting e-governance and pursuing public administration reform to build an accountable, efficient and transparent governance at national, regional and local levels;

(e) strengthening electoral processes and capacities of electoral management bodies;

(f) ensuring effectiveness in the fight against corruption at all levels.

ARTICLE 5

Human rights and fundamental freedoms

The Parties shall cooperate in the promotion and protection of human rights and fundamental freedoms, and enhance dialogue and cooperation with the aim of:

(a) ensuring the respect for human rights, the principle of non-discrimination and the rights of persons belonging to minorities and vulnerable groups;

(b) ensuring the protection of fundamental freedoms, including freedom of expression, freedom of assembly and of association; freedom of the media and freedom of religion;

(c) promoting economic, social and cultural rights;

(d) promoting gender equality, promoting, protecting and fulfilling girls' and women's rights, including by ensuring their active participation in private and public spheres;

(e) strengthening national human-rights-related institutions, including through their participation in the decision making processes;

(f) strengthening cooperation within the United Nations human rights bodies and Special Procedures of the Human Rights Council, including a proper follow-up of their recommendations in accordance with national legislation of the Parties.

ARTICLE 6

Civil society

The Parties shall cooperate to strengthen civil society and its role in economic, social and political development of an open democratic society, in particular by:

(a) strengthening the capacity, independence and transparency of civil society organisations;

(b) fostering civil society engagement in law- and policy-making processes by establishing an open, transparent and regular dialogue between public institutions, on the one hand, and representatives of civil society, on the other;

(c) fostering strengthened contacts, exchange of information and experiences including through seminars and consultations between all sectors of civil society of the European Union and of the Kyrgyz Republic, including by implementing this Agreement.

ARTICLE 7

Foreign and security policy

1. The Parties reaffirm their commitment to the principles and norms of international law, including those enshrined in the UN Charter and the OSCE Helsinki Final Act, and their commitment to the promotion of those principles and norms in their bilateral and multilateral relations.

2. The Parties shall intensify their dialogue and cooperation in the area of foreign and security policy, including various aspects of security and defence policy, and shall address, in particular, issues of conflict prevention and crisis management, risk reduction, cybersecurity, efficient functioning of the security sector, regional stability, disarmament, non-proliferation, arms control and export control.

ARTICLE 8

Serious crimes of concern to the international community

1. The Parties reaffirm that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the domestic and international level.

2. The Parties consider that the establishment and effective functioning of the International Criminal Court constitutes an important development for international peace and justice. The Parties shall enhance cooperation in the promotion of peace and international justice. The parties shall promote universality of the Rome Statute of the International Criminal Court and will discuss the question of ratification and implementation, taking into account their legal and constitutional frameworks.

3. The Parties agree to closely cooperate to prevent genocide, crimes against humanity and war crimes by making use of appropriate bilateral and multilateral frameworks.

ARTICLE 9

Conflict prevention and crisis management

The Parties shall cooperate in conflict prevention and crisis management and work against conflicts in the region in order to create an environment of peace and stability.

ARTICLE 10

Regional cooperation and peaceful resolution of conflicts

1. The Parties shall intensify their joint efforts to improve conditions for further regional cooperation in key areas such as water, energy, environment and climate change, integrated management of water and hydro energy resources, border management that facilitates cross-border flow of persons and goods, and democratic and sustainable development, thereby contributing to good neighbourly relations, stability and security in Central Asia. The Parties shall work towards the peaceful resolution of conflicts.

2. The efforts referred to in paragraph 1 shall follow the objective of maintaining international peace and security, as enshrined in the UN Charter, the OSCE Helsinki Final Act and other relevant multilateral instruments to which the Parties adhere.

ARTICLE 11

Countering proliferation of WMD

1. The Parties consider that the proliferation of 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 therefore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The Parties agree that this provision constitutes an essential element of this Agreement.

2. The Parties furthermore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery by:

(a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement relevant international instruments;

(b) the establishment of an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual-use technologies and containing effective sanctions for breaches of export controls.

3. The Parties agree to establish a regular political dialogue that will accompany and consolidate these elements.

ARTICLE 12

Small arms and light weapons and conventional arms export control

1. The Parties recognise that the illicit manufacture, transfer and circulation of small arms and light weapons (hereinafter referred to as "SALW"), including their ammunition, and their excessive accumulation, poor management, inadequately secured stockpiles and uncontrolled spread continue to pose a serious threat to peace and international security.

2. The Parties agree to observe and fully implement their respective obligations to deal with the illicit trade in SALW, including their ammunition, under existing international agreements and UN Security Council resolutions, as well as their commitments within the framework of other international instruments applicable in this area, such as the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted on 20 July 2001.

3. The Parties recognise the importance of domestic control systems for the transfer of conventional arms in line with existing international standards. The Parties recognise the importance of applying such controls in a responsible manner, as a contribution to international and regional peace, security and stability, and to the reduction of human suffering, as well as to the prevention of diversion of conventional weapons.

4. The Parties therefore undertake to cooperate and ensure coordination, complementarity and synergy in their efforts to regulate, or to improve the regulation of, international trade in conventional arms and to prevent, combat and eradicate the illicit trade in arms. They agree to establish a regular political dialogue that will accompany and consolidate this undertaking.

TITLE III

JUSTICE, FREEDOM AND SECURITY

ARTICLE 13

Protection of personal data

1. The Parties recognise the importance of promoting and ensuring the fundamental rights to privacy and the protection of personal data, as a central factor of citizens' trust in the digital economy and a key element for further developing commercial exchanges and law enforcement cooperation.

2. The Parties shall cooperate to ensure the effective protection and enforcement of these rights, including in the context of the prevention and combat of terrorism and of other transnational crimes. Cooperation may include capacity-building, technical assistance and the exchange of information and expertise, and other forms.

3. 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. As a way to facilitate cooperation, the Kyrgyz Republic will strive for accession to, and implementation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data done on 28 January 1981 and its Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows done on 8 November 2001.

ARTICLE 14

Cooperation on migration, asylum and border management

1. The Parties reaffirm the importance of establishing a comprehensive dialogue on all migration-related issues, including legal migration where appropriate, international protection and the fight against illegal migration, and the fight against people smuggling and trafficking in human beings.

2. Cooperation shall be based on a specific needs-assessment conducted through mutual consultation between the Parties and shall be implemented in accordance with their relevant legislation in force. It shall, in particular, focus on:

(a) addressing the root causes of migration;

(b) the development and implementation of national legislation and practices as regards international protection, with a view to satisfying the provisions of the Convention Relating to the Status of Refugees adopted on 28 July 1951, and the Protocol Relating to the Status of Refugees done on 31 January 1967;

(c) recalling the New York Declaration for Refugees and Migrants adopted by the UN General Assembly resolution A/RES/71/1 on 19 September 2016;

(d) the admission rules and rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals, education and training and measures against racism and xenophobia;

(e) the establishment of an effective and preventive policy against illegal migration, the smuggling of migrants and trafficking in human beings, including the issue of how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking in the framework of relevant international instruments;

(f) issues such as organisation, training, best practices and other operational measures in the areas of migration management, in particular illegal migration, document security, visa policy, and border-management and migration-information systems.

ARTICLE 15

Readmission and the fight against illegal migration

1. In the framework of their cooperation to prevent and tackle illegal migration, the Parties agree that:

(a) the Kyrgyz Republic shall readmit any of its nationals who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on the territory of a Member State of the European Union, upon request by the latter and without further formalities;

(b) each Member State of the European Union shall readmit any of its nationals who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on the territory of the Kyrgyz Republic, upon request by the latter and without further formalities;

(c) the Member States of the European Union and the Kyrgyz Republic shall provide their nationals with appropriate travel documents for such purposes or accept the use of the European travel document established in accordance with Regulation (EU) 2016/1953 of the European Parliament and of the Council[1] for return purposes. When the person to be readmitted does not possess any documents or other proofs of his or her nationality, the competent diplomatic and consular representations of the Member State concerned or the Kyrgyz Republic shall, upon request by the Kyrgyz Republic or the Member State concerned, provide full cooperation in order to establish his or her nationality.

2. The Parties agree to conclude, upon request, an agreement between the European Union and the Kyrgyz Republic regulating the specific obligations for Member States of the European Union and the Kyrgyz Republic on readmission, including detailed provisions for the readmission of nationals of other countries and stateless persons. The Parties may consider as well, if conditions allow, a possible negotiation of an agreement between the European Union and the Kyrgyz Republic on visa facilitation for citizens of the European Union and of the Kyrgyz Republic.

[1] Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994 (OJ EU L 311, 17.11.2016, p. 13).

ARTICLE 16

Anti-money laundering and combating the financing of terrorism

1. The Parties shall cooperate with a view to preventing and effectively combating the use of their financial institutions and designated non-financial businesses and professions from laundering the proceeds of criminal activities and financing terrorism.

2. To that end, they shall exchange information within the framework of their respective legislation and cooperate to ensure the effective and full implementation of the Financial Action Task Force (FATF) recommendations and other standards adopted by relevant international bodies active in this area. Such cooperation may include, inter alia, identification, tracing, seizure, confiscation and recovery of assets or funds derived from the proceeds of crime.

ARTICLE 17

Illicit drugs

1. The Parties shall cooperate to ensure a balanced, evidence-based and integrated approach towards illicit drugs as well as new psychoactive substances.

2. Drug-related policies and actions shall be aimed at reinforcing structures to prevent and address illicit drugs, reduce the supply of, trafficking in, and demand for illicit drugs, and cope with the health and social consequences of the use of illicit drugs with a view to reducing harm. The Parties shall cooperate to prevent the diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic and new psychoactive substances.

3. The Parties shall agree on the necessary methods of cooperation to attain the objectives referred to in paragraph 1. Actions shall be based on commonly agreed principles set out in the relevant UN drug control conventions, and on the recommendations set out in the outcome document entitled "Our joint commitment to effectively addressing and countering the world drug problem" adopted by the UN General Assembly resolution A/RES/S-30/1 on 19 April 2016, as the most recent international consensus on the international drug policy, in order to take stock of the implementation of the commitments made to jointly address and counter the world drug problem.

ARTICLE 18

Fight against organised crime and corruption

1. The Parties shall cooperate in combating and preventing criminal and illegal activities, including transnational activities, organised or otherwise, such as:

(a) smuggling of migrants and trafficking in human beings;

(b) smuggling and trafficking in firearms including SALW;

(c) smuggling and trafficking illicit drugs;

(d) smuggling and trafficking in goods;

(e) illegal economic and financial activities such as counterfeiting, fiscal fraud and public-procurement fraud;

(f) embezzlement in projects funded by international donors;

(g) active and passive corruption, in both the private and public sector;

(h) forging documents and submitting false statements;

(i) cybercrime.

2. The Parties shall enhance bilateral, regional and international cooperation among law-enforcement bodies, including training and experience sharing. The Parties shall implement effectively the relevant international standards, in particular those enshrined in the United Nations Convention against Transnational Organised Crime adopted by the UN General Assembly resolution A/RES/55/25 on 8 January 2001 and the Protocols thereto.

3. The Parties shall cooperate in preventing and fighting corruption in line with relevant international standards, in particular those enshrined in the United Nations Convention against Corruption adopted by the UN General Assembly resolution A/RES/58/4 on 31 October 2003 and the recommendations arising from assessments against this convention.

ARTICLE 19

Counter-terrorism

1. The Parties reaffirm the importance of the fight against and the prevention of terrorism, and agree to work together at bilateral, regional and international level to prevent and combat terrorism in all its forms and manifestations.

2. The Parties agree that it is essential that the fight against terrorism be conducted with full respect for the rule of law and in full conformity with international law, including international human rights law, international refugee law and international humanitarian law, the principles of the UN Charter, and all relevant international counter-terrorism-related instruments.

3. The Parties stress the importance of the universal ratification and implementation of all UN counter-terrorism-related conventions and protocols. The Parties agree to promote dialogue on the draft comprehensive convention on international terrorism and to cooperate in the implementation of the United Nations Global Counter-Terrorism Strategy adopted by the UN General Assembly resolution A/RES/60/288 on 8 September 2006, as well as all relevant UN Security Council resolutions.

4. The Parties reaffirm the importance of a law-enforcement and judicial approach to the fight against terrorism, and agree to cooperate in the prevention and suppression of terrorism, in particular by:

(a) exchanging information on terrorist groups and individuals and their support networks, in accordance with international and national law, in particular as regards data protection and the protection of privacy;

(b) exchanging experience with regard to the prevention and suppression of terrorism, means and methods and their technical aspects, as well as training, in accordance with applicable law;

(c) exchanging views on radicalisation and recruitment, and ways to counter radicalisation, and promote deradicalisation and rehabilitation;

(d) exchanging views and experience concerning cross-border movement and travel of terrorist suspects as well as terrorist threats;

(e) sharing best practices as regards the protection of human rights in the fight against terrorism, in particular in relation to criminal proceedings;

(f) ensuring the criminalisation of terrorist offences and taking measures to counter the financing of terrorism;

(g) taking measures against the threat of chemical, biological, radiological and nuclear terrorism, and undertaking necessary measures to prevent the acquisition, transfer and use for terrorist purposes of chemical, biological, radiological and nuclear materials as well as to prevent illegal acts against high-risk chemical, biological, radiological and nuclear facilities.

5. Cooperation shall be based on relevant available assessments and conducted through mutual consultation between the Parties.

ARTICLE 20

Judicial and legal cooperation

1. The Parties shall enhance existing cooperation on mutual legal assistance and extradition on the basis of relevant international agreements. The Parties shall strengthen existing mechanisms and, where appropriate, consider the development of new mechanisms to facilitate international cooperation in this area. Such cooperation shall include, as appropriate, accession to, and implementation of, the relevant international instruments, and closer cooperation with Eurojust.

2. The Parties shall develop judicial and legal cooperation in civil and commercial matters, in particular, as regards the negotiation, ratification and implementation of multilateral conventions on civil judicial cooperation, including the Conventions of The Hague Conference on Private International Law.

ARTICLE 21

Consular protection

The diplomatic and consular authorities of any represented Member State of the European Union shall provide protection to any national of a Member State of the European Union which does not have a permanent representation in the Kyrgyz Republic in a position to effectively provide consular protection in a given case, on the same conditions as to nationals of that Member State.

With a view to establishing a coordinated procedure allowing nationals of the Kyrgyz Republic to receive consular protection in Member States of the European Union in which the Kyrgyz Republic does not have a permanent representation in a position to effectively provide consular protection in a given case, the requirement for consular posts of the Kyrgyz Republic established in a Member State of the European Union to give notification under Article 7 of the Vienna Convention on Consular Relations adopted on 24 April 1963 is waived.

TITLE IV

TRADE AND TRADE-RELATED MATTERS

CHAPTER 1

HORIZONTAL PROVISIONS

ARTICLE 22

Objectives

The objectives of this Title are the following:

(a) the expansion, diversification and facilitation of trade between the Parties in particular through provisions regarding customs and trade facilitation, technical barriers to trade as well as sanitary and phytosanitary measures, while preserving the right of each Party to legislate in order to achieve public policy objectives;

(b) the facilitation of trade in services and investment between the Parties including through the free transfer of current payments and capital movements;

(c) the effective and reciprocal opening of government procurement markets of the Parties;

(d) the promotion of innovation and creativity by ensuring an adequate and effective protection of all intellectual property rights;

(e) the promotion of conditions fostering undistorted competition in the economic activities of the Parties in particular with regard to trade and investment between them;

(f) the development of international trade in a manner that contributes to sustainable development in its economic, social and environmental dimensions;

(g) the establishment of an effective, fair and predictable dispute settlement mechanism to solve disputes on the interpretation and application of this Title.

ARTICLE 23

Definitions

For the purposes of this Title:

(a) "Agreement on Agriculture" means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

(b) "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

(c) "Anti-Dumping Agreement" means the Agreement on Implementation of Article VI of GATT 1994, contained in Annex 1A to the WTO Agreement;

(d) "days" means calendar days, including weekends and holidays;

(e) "Energy Charter Treaty" means the Energy Charter Treaty, done at Lisbon on 17 December 1994;

(f) "existing" means in effect on the date of entry into force of this Agreement;

(g) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(h) "GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

(i) "measure" includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or in any other forms[1];

[1] For greater certainty, the term measure includes failures to act.

(j) "measures of a Party" means any measures adopted or maintained by:[1]

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

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

(k) "person" means a natural person or a legal person;

(l) "Revised Kyoto Convention" means the International Convention on the Simplification and Harmonisation of Customs Procedures, done at Kyoto on 18 May 1973, as amended;

(m) "Safeguards Agreement" means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

(n) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

(o) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

(p) "TBT Agreement" means the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement;

[1] For greater certainty, "measures of a Party" covers measures by entities listed in point (j), (i) and (ii) which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

(q) "third country" means a country or territory outside the geographic scope of application of this Agreement;

(r) "Trade Facilitation Agreement" means the Agreement on Trade Facilitation, contained in Annex 1A of the WTO Agreement;

(s) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement;

(t) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969;

(u) "World Customs Organization's Arusha Declaration" means the Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs, as last revised in June 2003;

(v) "WTO" means the World Trade Organization;

(w) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

ARTICLE 24

Relation to other international agreements

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and any other agreements to which they are both party.

2. Nothing in this Agreement shall be construed as requiring either Party to act in a manner inconsistent with its obligations under the WTO Agreement.

ARTICLE 25

References to laws and regulations and other agreements

1. Any reference in this Title to laws and regulations, either generally or by reference to a specific statute, regulation or directive, shall be construed as a reference to the law and regulations as amended, unless otherwise indicated.

2. Any reference, or incorporation by means of a reference, in this Title to other agreements or legal instruments in whole or in part, shall be construed, unless otherwise indicated, as including:

(a) related annexes, protocols, footnotes, interpretative notes and explanatory notes; and

(b) successor agreements to which the Parties are party or amendments that are binding on the Parties, except where the reference affirms existing rights.

ARTICLE 26

Right of action under domestic law

A Party shall not provide for a right of action under its law against the other Party on the grounds that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 27

Specific tasks of the Cooperation Council acting in its trade configuration

1. When the Cooperation Council performs any of the tasks conferred upon it relating to this Title, it shall be composed of representatives of the Parties with responsibility of trade-related matters, in accordance with the Parties' respective legal frameworks, or by their designees.

2. The Cooperation Council acting in its trade configuration:

(a) shall have the power to adopt decisions in order to update or amend the following on the basis of mutual consent with due respect to the completion of the Parties' respective internal procedures as provided for in their legislation:

(i) Annex 2;

(ii) Annexes 8-A, 8-B and 8-C;

(iii) Annex 9;

(iv) Annexes 14-A and 14-B;

(v) the Protocol;

such updates and amendments shall be confirmed by, and enter into force upon, the exchange of diplomatic notes between the Parties, unless otherwise agreed by the Parties.

(b) may adopt decisions to issue interpretations of the provisions of this Title;

(c) may adopt decisions to establish additional subcommittees from those established in this Title, composed of representatives of the Parties, and assign them responsibilities within its competence; it may also decide to modify the functions that are assigned to the subcommittees it establishes, as well as to dissolve them.

3. The Cooperation Council acting in its trade configuration shall adopt decisions and make appropriate recommendations following the completion of the Parties' respective internal procedures, as provided for in their legislation.

4. When meetings of the Cooperation Council are not available, the decisions referred to in paragraph 2 may be adopted by written procedure.

ARTICLE 28

Specific tasks of the Cooperation Committee acting in its trade configuration

1. When the Cooperation Committee performs any of the tasks conferred upon it in this Title, it shall be composed of representatives of the Parties with responsibility for trade-related matters, or their designees.

2. The Cooperation Committee acting in its trade configuration shall have, in particular, the following tasks:

(a) assist the Cooperation Council in the performance of its tasks regarding trade-related matters;

(b) be responsible for the proper implementation and application of this Title; in this respect, and without prejudice to the rights established in Chapter 14, either Party may refer for discussion within the Cooperation Committee any issue relating to the application or interpretation of this Title;

(c) oversee the further elaboration of this Title as necessary and evaluate the results obtained from its application;

(d) seek appropriate ways of preventing and solving problems which might otherwise arise in areas covered by this Title; and

(e) supervise the work of all subcommittees established under this Title.

3. In the performance of its tasks under paragraph 2 of this Article, the Cooperation Committee may submit proposals on the necessity to adopt the decisions to make updates or amendments as referred to in point (a) of Article 27(2) or to issue interpretations as referred to in point (b) of Article 27(2) when meetings of the Cooperation Council are not available.

4. The Cooperation Committee, acting in its trade configuration shall take decisions and make appropriate recommendations following the completion of the Parties' respective internal procedures, as provided in their legislation.

ARTICLE 29

Coordinators

1. The European Union and the Kyrgyz Republic shall each appoint a coordinator for this Title, within 60 days after the entry into force of this Agreement, and notify each other of the contact details of the coordinators.

2. The coordinators shall jointly establish the agenda and conduct all other necessary preparations for the meetings of the Cooperation Council and the Cooperation Committee in accordance with this Chapter, and shall follow up on the decisions of such bodies, where appropriate.

ARTICLE 30

Subcommittees

1. The subcommittees shall be composed of representatives of the European Union, on the one part, and of representatives of the Kyrgyz Republic, on the other part.

2. The subcommittees shall meet within a year of the date of entry into force of this Agreement and, thereafter, once per year or at the request of either Party or of the Cooperation Committee, at an appropriate level. When in person, meetings shall be held alternately in Brussels or Bishkek. Meetings may also be held by any technological means available to the Parties.

3. The subcommittees shall be co-chaired by representatives of the Parties.

CHAPTER 2

TRADE IN GOODS

ARTICLE 31

Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

ARTICLE 32

Definitions

For the purposes of this Chapter:

(a) "consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of a good;

(b) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good; it does not include any:

(i) charge equivalent to an internal tax imposed in accordance with Article 34;

(ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in accordance with GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the SCM Agreement and the Safeguards Agreement, as appropriate;

(iii) fee or other charge imposed on or in connection with the importation of a good that is limited in amount to the approximate cost of the services rendered;

(c) "export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

(d) "good of a Party" means a domestic good as this is understood in GATT 1994;

(e) "Harmonised System" or "HS" means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization;

(f) "import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;

(g) "remanufactured good" means a good classified in the Harmonised System's Chapters 84, 85, 87, 90 or Heading 9402 that:

(i) is entirely or partially comprised of parts obtained from goods that have been used beforehand;

(ii) has similar performance and working conditions compared to the equivalent good in new condition; and

(iii) is given the same warranty as the equivalent good in new condition.

ARTICLE 33

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 GATT 1994, including its Notes and Supplementary Provisions, 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 a third country in accordance with the WTO Agreement.

ARTICLE 34

National treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To this end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 35

Import and export restrictions

Neither Party shall adopt 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, except in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 36

Export duties, taxes or other charges

1. Neither Party shall introduce or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party or any other measures having an equivalent effect other than for goods in accordance with the Schedule set out in Annex 2 to this Agreement. This provision does not apply to goods in transit across the territory of a Party within the meaning of Article V of GATT 1994, or to goods which, in accordance with an international agreement between the Kyrgyz Republic and a third party, have been imported into the Kyrgyz Republic without the imposition of export duties which could otherwise have been imposed by that third party on export to the European Union in accordance, where relevant, with that third party's Schedule of concessions annexed to GATT 1994 or any bilateral commitments with the European Union.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good to the other Party a fee or charge that is permitted under Article 38.

ARTICLE 37

Dual-use export controls

The Parties shall exchange information and good practices on dual-use export controls with a view to promoting the convergence of the European Union and of the Kyrgyz Republic export controls.

ARTICLE 38

Fees and formalities

1. Article VIII of GATT 1994 and its interpretative notes as well as any exception and exemption to the obligations, and waivers thereof, set out in Article VIII of GATT 1994 applicable under the WTO Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Each Party shall promptly publish all fees and charges it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties, to become acquainted with them.

3. Each Party shall periodically review the fees and charges it imposes with a view to reducing their number and diversity, where practicable.

4. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

ARTICLE 39

Remanufactured goods

1. A Party shall endeavour to accord to remanufactured goods of the other Party a treatment that is not less favourable than that it accords to equivalent goods in new condition.

2. If a Party adopts or maintains import and export prohibitions or restrictions to used goods, it shall endeavour not to apply those measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that they meet all applicable technical requirements that apply to equivalent goods in new condition.

ARTICLE 40

Temporary admission of goods

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

ARTICLE 41

Transit

Article V of GATT 1994 is incorporated into and made part of this Agreement. The Parties shall take all necessary measures to facilitate the transit of energy goods, in accordance with the principle of freedom of transit, and with Article 7(1) and (3) of the Energy Charter Treaty.

ARTICLE 42

Import and export monopolies

Neither Party shall designate or maintain a designated import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import a good from, or export a good to, the other Party[1].

[1] For greater certainty, this Article is without prejudice to Chapter 6, and does not include a right that results from the grant of an intellectual property right.

ARTICLE 43

Origin marking

1. Where the Kyrgyz Republic requires a mark of origin on the importation of goods of the European Union, it shall accept the "Made in EU" origin marking or the equivalent in a language in accordance with the Kyrgyz Republic origin marking requirements under conditions that are no less favourable than those applied to marks of origin of Member States of the European Union.

2. For the purposes of the origin mark "Made in EU", the Kyrgyz Republic shall treat the European Union as a single territory.

ARTICLE 44

Import licensing procedures

Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures. To that end, Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 45

Export licensing procedures[1]

1. Each Party, in accordance with its competencies[2], shall ensure transparency with regard to export licensing procedures and publish any new export licensing procedure, or any modification to an existing export licensing procedure in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, no later than 30 days before any new export licencing procedure or any modification of any existing export licencing procedure takes effect, and in any event no later than the date when such procedure or modification takes effect.

2. The publication of export licensing procedures shall include the following information:

(a) the texts of the export licensing procedures or any modifications made thereto;

(b) the goods subject to each export licensing procedure;

[1] For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its obligations or commitments under UN Security Council Resolutions, as well as under multilateral non-proliferation regimes and export control arrangements.

[2] With respect to the Kyrgyz Republic, this Article is applied only with respect to measures applied by the Kyrgyz Republic unilaterally in accordance with laws and regulations applied in its territory.

(c) for each procedure, a description of the process for applying for an export licence and any criteria an applicant has to fulfil to be eligible to apply for an export licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application or other relevant documentation is to be submitted;

(f) a description of any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until it is withdrawn or revised in a new publication;

(h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions from or exceptions to the requirement to obtain an export licence, how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within 45 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that adopts a new export licensing procedure, or modifies any existing export licensing procedure, shall notify to the other Party the procedure or modification within 60 days of publication. The notification shall include the reference to the source(s) where the information required pursuant to paragraph 2 is published and include, where appropriate, the address of the relevant official website.

ARTICLE 46

Trade remedies

The Parties affirm their rights and obligations under:

(a) Article XIX of GATT 1994;

(b) the Safeguards Agreement;

(c) Article 5 of the Agreement on Agriculture;

(d) Article VI of GATT 1994;

(e) the Anti-Dumping Agreement; and

(f) the SCM Agreement.

ARTICLE 47

Transparency of trade defence instruments

1. Parties agree that trade defence instruments (anti-dumping, anti-subsidy and global safeguards) should be used in full compliance with the relevant WTO requirements and on the basis of a fair and transparent system.

2. Before a final determination on anti-dumping or countervailing measures 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 Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall allow interested parties sufficient time to make their comments.

3. Each interested party shall be given an opportunity to express its views during anti-dumping and anti-subsidy investigations, provided that this does not unnecessarily delay the conduct of the investigations.

4. This Article shall not be subject to Chapter 14 of this Title.

CHAPTER 3

CUSTOMS

ARTICLE 48

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 consumer safety, prevent the flows of goods infringing intellectual property rights and fight smuggling and fraud.

2. In order to implement the objectives referred to in paragraph 1 and within the limits of available resources, the Parties shall cooperate with a view to, inter alia:

(a) improving customs legislation and harmonising and simplifying customs procedures, in accordance with international conventions and standards applicable in the field of customs and trade facilitation, including those developed by the WTO (including the Trade Facilitation Agreement) and the World Customs Organization (in particular the Revised Kyoto Convention), and taking into account the instruments and best practices developed by the European Union, including customs blueprints;

(b) establishing 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; post-clearance audit; transparent customs valuation and provisions for customs-to-business partnerships;

(c) ensuring the facilitation and effective control of transhipment operations and transit movements through their respective territories; ensuring cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit; and pursuing, where relevant and appropriate, opportunities to make compatible the respective customs transit systems;

(d) encouraging the highest standards of professional ethics, in particular at the border, through the application of measures reflecting the principles of the World Customs Organization's Arusha Declaration;

(e) exchanging best practices and providing technical support for planning and for ensuring the highest standards of professional ethics;

(f) exchanging, where appropriate, relevant information and data while respecting each other's rules on the confidentiality of sensitive data and on the protection of personal data;

(g) engaging, where relevant and appropriate, in coordinated customs actions between their customs authorities.

ARTICLE 49

Mutual administrative assistance

Without prejudice to other forms of cooperation envisaged in this Agreement, in particular in Article 48, the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the Protocol.

ARTICLE 50

Customs valuation

1. Articles 1-17 of the Agreement on Implementation of Article VII of GATT 1994, contained in Annex 1A to the WTO Agreement, shall govern the customs valuation of goods in the trade between the Parties. These provisions are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

CHAPTER 4

TECHNICAL BARRIERS TO TRADE

ARTICLE 51

Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade.

ARTICLE 52

Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures defined in the TBT Agreement which may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or

(b) sanitary and phytosanitary measures, as defined in Annex A to the SPS Agreement, which are covered by Chapter 5 of this Agreement.

ARTICLE 53

Relationship with the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 54

Technical regulations

1. Each Party shall carry out, in accordance with the rules and procedures applicable to that Party, a regulatory impact assessment of planned technical regulations taking into account the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives in accordance with Article 2.2 of the TBT Agreement.

2. Each Party shall use relevant international standards as a basis for its technical regulations unless it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

3. If a Party has not used international standards as a basis for its technical regulations, it shall, on the request of the other Party, take measures to ensure that any substantial deviation from the relevant international standard is identified and explain the reasons why such standards were considered to be inappropriate or ineffective for the aim pursued.

4. Each Party shall review its technical regulations to increase their convergence with relevant international standards, taking into account, inter alia, any new development in the relevant international standards or any change in the circumstances that have given rise to divergences from any relevant international standard.

5. When developing major technical regulations which may have a significant effect on trade, each Party shall take measures to ensure, in accordance with its respective rules and procedures, that procedures exist that allow persons to provide input through a public discussion, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, and that the results of such discussions are made public.

ARTICLE 55

Standards

1. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage the standardising bodies established within its territory and the regional standardising bodies of which it or the standardising bodies established in its territory are members to:

(a) participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

(b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardising bodies;

(d) review, at regular intervals, national and regional standards not based on relevant international standards, with a view to increasing their convergence with such international standards;

(e) cooperate with the relevant standardising bodies of the other Party in international standardisation activities; that cooperation may be undertaken in the international standardising bodies or at regional level; and

(f) foster bilateral cooperation between them and the standardising bodies of the other Party.

2. The Parties should exchange information on their respective standardisation processes, and the extent of use of international, regional or sub-regional standards as a basis for their national standards.

3. If requirements of standards are rendered mandatory in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 58 of this Agreement and in Article 2 or 5 of the TBT Agreement shall be fulfilled.

4. International standards adopted by the International Organization for Standardization, the International Electrotechnical Commission, the International Telecommunication Union, the Codex Alimentarius Commission established by the Food and Agriculture Organization shall be considered to be the relevant international standards within the meaning of Articles 2 and 5 of the TBT Agreement and of Annex 3 thereto, not precluding the use of other international standards.

5. A standard developed by other international organisations could also be considered to be relevant international standard within the meaning of Articles 2 and 5 of the TBT Agreement and of Annex 3 thereto, provided that it has been developed:

(a) by a standardisation body which seeks to establish consensus either among:

(i) national delegations of the participating WTO Members representing all the national standardisation bodies in their territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardisation activity relates; or

(ii) governmental bodies of participating WTO Member; and

(b) in accordance with the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5 of the TBT Agreement and of Annex 3 thereto.

ARTICLE 56

Conformity assessment

1. The provisions set out in Article 52 with respect to the preparation, adoption and application of technical regulations shall apply to conformity assessment procedures *mutatis mutandis*.

2. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall select conformity assessment procedures[1] proportionate to the risks involved as determined on the basis of risk assessment, including, where appropriate, the use of the supplier's declaration of conformity.

3. If a Party requires third-party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a government authority as specified in paragraph 4, it shall:

(a) preferentially use accreditation to qualify conformity assessment bodies;

(b) make best use of international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example through the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF);

(c) consider joining or encourage its conformity assessment bodies to join, as applicable, any functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(d) ensure that economic operators have a choice amongst the conformity assessment bodies accepted by the authorities of a Party for a particular product;

[1] For the Kyrgyz Republic, conformity assessment procedures are established by technical regulations.

(e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;

(f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment; and

(g) publish on a single website a list of the bodies that it has designated to perform such conformity assessment and relevant information on the scope of designation of each of those bodies.

4. Nothing in point (f) of paragraph 3 shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself.

5. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products be performed by specified government authorities. In such cases, the Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, on the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited to the approximate cost of services rendered; and

(b) make publicly available the conformity assessment fees.

6. Three years after the entry into force of this Agreement, the Parties shall start discussions on the acceptance of a supplier's declaration of conformity as proof of compliance with existing technical regulations, in particular in the following fields:

(a) safety aspects of electrical and electronic equipment;

(b) safety aspects of machinery;

(c) electromagnetic compatibility of equipment;

(d) energy efficiency, including eco-design requirements; and

(e) restriction of the use of certain hazardous substances in electrical and electronic equipment.

ARTICLE 57

Cooperation in the field of technical barriers to trade

1. The Parties shall strengthen their cooperation with regard to standards, technical regulations, metrology, market surveillance, accreditation and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To that end, the Parties shall seek to identify and develop cooperation mechanisms and initiatives appropriate for the particular issues or sectors, including:

(a) exchanging information and experiences on the preparation and application of their respective technical regulations and conformity assessment procedures;

(b) encouraging cooperation between their respective bodies responsible for metrology, standardisation, conformity assessment and accreditation; and

(c) exchanging information on developments in relevant regional and multilateral fora related to standards, technical regulations, conformity assessment procedures and accreditation.

2. In order to promote trade between them, the Parties shall:

(a) seek to reduce the differences which exist between them with regard to technical regulations, metrology, standardisation, market surveillance, accreditation and conformity assessment procedures, including by encouraging the use of relevant internationally agreed instruments;

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

(c) promote the participation and, where possible, the membership of the Kyrgyz Republic and its relevant national bodies in the European and international organisations whose activity relates to standards, conformity assessment, accreditation, metrology and related functions.

ARTICLE 58

Transparency

1. Upon transmitting a proposed technical regulation or conformity assessment procedure to the WTO Central Registry of Notifications a Party shall allow for a period of at least 60 days for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall give consideration to a reasonable request to extend the period for comments.

2. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:

(a) if requested by the other Party, discuss the written comments with the participation of its own competent regulatory authority, at a time when they can be taken into account; and

(b) reply to comments in writing no later than the date of publication of the technical regulation or conformity assessment procedure.

3. Each Party shall publish on a website its responses to comments it receives following the notification referred to in paragraph 1 no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.

4. Each Party shall, if requested by the other Party, provide information regarding the objectives of, and legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

5. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are published on a website free of charge.

6. Each Party shall provide information on the adoption and the entry into force of the technical regulation and conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO.

7. There shall be a reasonable interval between the publication of technical regulations and their entry into force in order to allow economic operators of the other Party to adapt. The phrase "reasonable interval" shall be understood to mean a period of not less than six months, except in cases where this would be an ineffective means for the fulfilment of the legitimate objectives pursued.

8. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation to the WTO as referred to in paragraph 1, to extend the period of time between the adoption of the technical regulation and its entry into force, except in cases where the delay would be an ineffective means for the fulfilment of the legitimate objectives pursued.

ARTICLE 59

Marking and labelling

1. The Parties agree that a technical regulation may include or exclusively address marking or labelling requirements. In such cases, the Parties shall apply the principles of Article 2.2 of the TBT Agreement.

2. If a Party requires mandatory marking or labelling of products:

(a) it shall only require information which is relevant for consumers or users of the product or to indicate the product's conformity with the mandatory technical requirements;

(b) it shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its established requirements unless it is necessary in view of the risk of the products to human, animal or plant health or life, the environment or national security;

(c) if it requires the use of a unique identification number by economic operators, it shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) provided that the elements listed below are not misleading, contradictory or confusing in relation to the information required in the Party importing the goods, that Party shall permit:

(i) information in other languages in addition to the language required in the Party importing the goods;

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the Party importing the goods;

(e) it shall accept that labelling, including supplementary labelling or corrections to labelling, takes place in customs warehouses or other designated areas as an alternative to labelling in the country of origin; and

(f) where appropriate, it will consider accepting non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 60

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the TBT Chapter coordinator of the other Party. The Parties shall make every attempt to resolve the matter in a mutually satisfactory manner and may convene the Cooperation Committee for that purpose.

2. For greater certainty, this Article is without prejudice to the rights and obligations of the Parties under Chapter 14.

ARTICLE 61

TBT Chapter coordinator

1. Each Party shall nominate a TBT Chapter coordinator and inform the other Party if it changes. The TBT Chapter coordinators shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties in all matters related to the TBT Agreement.

2. The functions of each TBT Chapter coordinator shall include:

(a) following the implementation and administration of this Chapter, including any issue related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures;

(b) communicating with the other Party's TBT Chapter coordinator on initiatives taken by the Parties for enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures and exchanging information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.

3. The TBT Chapter coordinators shall communicate with one another by any agreed method that is appropriate to carry out their functions.

CHAPTER 5

SANITARY AND PHYTOSANITARY MATTERS

ARTICLE 62

Objective

The objective of this Chapter is to set out the principles applicable to sanitary and phytosanitary (hereinafter referred to as "SPS") measures in trade between the Parties, as well as to cooperate on animal welfare, the protection of plants and antimicrobial resistance. The principles set out in this Chapter shall be applied by the Parties in a manner that facilitates trade and avoids the creation of unjustified barriers to trade between them, while preserving each Party's level of protection of human, animal or plant life or health.

ARTICLE 63

Multilateral obligations

The Parties affirm their rights and obligations made under the SPS Agreement.

ARTICLE 64

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 and taking into account the international standards (the International Plant Protection Convention, signed in Rome on 6 December 1951 (hereinafter referred to as the "IPPC"), the World Organisation for Animal Health (hereinafter referred to as the "OIE"), and the Codex Alimentarius Commission (hereinafter referred to as the "Codex Alimentarius")).

2. Each 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 between the Parties.

3. Each Party shall ensure that SPS measures, procedures or controls are implemented and that requests for information received from a competent authority of the other Party are addressed without undue delay and in a manner no less favourable to imported products than to like domestic products.

ARTICLE 65

Import requirements

1. The import requirements of the importing Party shall be applicable to the entire territory of the exporting Party, subject to Article 64.

2. The import requirements set out in certificates that may be required for trading food and agricultural goods between the Parties are based on IPPC, OIE and Codex Alimentarius principles and their relevant standards, unless the import requirements are supported by a science-based risk assessment conducted in accordance with the applicable international rules provided for in the SPS Agreement.

3. The requirements set out in import permits as issued by the Kyrgyz Republic shall not contain sanitary and veterinary conditions that are more stringent than those laid down in the certificates referred to in paragraph 2. Each Party should apply harmonised import certificates that are managed at central level and that are applicable to the whole territory of the exporting Party.

ARTICLE 66

Measures linked to animal and plant health

In accordance with the SPS Agreement and the relevant IPPC, OIE and Codex Alimentarius standards, guidelines or recommendations:

(a) the Parties shall recognise the concept of pest or disease-free areas and areas of low pest or disease prevalence;

(b) the importing Party shall base its sanitary measures applicable to the exporting Party whose territory is affected by a pest or disease on the zoning decision taken by the exporting Party, provided that the importing Party's appropriate level of protection will be achieved;

(c) when determining pest- 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 67

Inspections and audits

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

ARTICLE 68

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 IPPC, the OIE and the Codex Alimentarius.

2. The Parties agree to cooperate on matters relating to food safety, animal health, animal welfare, plant health, the protection of plants and antimicrobial resistance through the exchange of information, expertise and experience with the objective of building up capacity in those fields. Such cooperation may include technical assistance.

3. Upon request by either Party, the Parties shall establish a timely dialogue on SPS issues 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 contact points for communication on matters covered by this Chapter.

ARTICLE 69

Transparency

Each Party shall:

(a) pursue transparency as regards SPS measures applicable to trade and, in particular, to the SPS requirements applied to imports of the other Party;

(b) upon the request of the other Party and within two months after the date of such a request, communicate the requirements that apply for the import of specific products, and indicate whether a risk assessment is needed; and

(c) notify the contact point of the other Party by mail, fax or e-mail, without undue delay, of any serious or significant animal or plant health risk, including any food emergencies related to goods traded between the Parties.

CHAPTER 6

TRADE IN SERVICES AND INVESTMENT

ARTICLE 70

Objective, scope and coverage

1. The Parties, affirming their respective commitments under the WTO Agreement, hereby lay down the necessary arrangements with a view to improving reciprocal conditions for trade in services and investment.

2. Nothing in this Chapter shall be construed as imposing any obligation with respect to government procurement subject to Chapter 9.

3. This Chapter shall not apply to subsidies granted by either Party.

4. The Parties reaffirm the right to regulate within their respective territory to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.

5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the Parties or to measures regarding citizenship, residence or employment on a permanent basis.

6. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits accrued under this Chapter.

7. For the purposes of this Chapter, no account shall be taken of treatment accorded by a Party:

(a) pursuant to an agreement which substantially liberalises trade in services (including establishment in the area of services) meeting the criteria of Articles V and V bis of the GATS or to an agreement which substantially liberalises establishment in other economic activities, meeting the same criteria, in respect of such activities;

(b) resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licencing or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.

8. This Chapter does not apply to the audio-visual sector.

ARTICLE 71

Definitions

For the purposes of this Chapter:

(a) "activity performed in the exercise of governmental authority" means activity performed, including any service supplied, neither on a commercial basis nor in competition with one or more economic operators;

(b) "branch" means a place of business established in a Party that does not have legal personality, has the appearance of permanency, such as the extension of a parent body established in the other Party, 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 in the other Party, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;

(c) "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to a service consumer of the other Party;

(d) "economic activity" means any service or activity of an industrial, commercial or professional character or activity of a craftsman, except for services or activities performed in the exercise of governmental authority;

(e) "enterprise" means a legal person, branch or representative office set up through establishment;

(f) "establishment" means the setting-up or acquisition of a legal person, including through capital participation, or the creation of a branch or representative office, in the European Union or in the Kyrgyz Republic, with a view to establishing or maintaining lasting economic links;

(g) "intra-corporate transferee" means a natural person who has been employed by a legal person of a Party or has been a partner in it, for a period of not less than one year immediately preceding the date of his or her application for entry and temporary stay in the other Party, and who is temporarily transferred to an enterprise, in the territory of the other Party, which forms part of the same group of the former legal person, including its representative office, subsidiary, branch or head company, provided that:

(i) the natural person concerned belongs to one of the following categories:

(A) managers or executives: persons working in a senior position who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from shareholders of the business or their equivalent, and as a minimum:

(1) direct the enterprise or a department thereof;

(2) supervise and control the work of other supervisory, professional or managerial employees; and

(3) have the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

(B) specialists: persons possessing specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures or management; or

(C) trainee employees: persons possessing a university degree who are temporarily transferred for career development purposes or to obtain training in business techniques or methods[1];

(ii) for the European Union, in assessing the knowledge referred to in point (i)(B), account is taken not only of knowledge specific to the enterprise, but also of whether the natural person has a high level of qualification in relation to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

(h) "investor" of a Party means a natural or legal person of that Party that seeks to perform or performs an economic activity through setting up an establishment in the other Party;

(i) "legal 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;

[1] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

(j) "legal person of a Party" means a legal person set up in accordance with the law of the European Union or its Member States or with the law of the Kyrgyz Republic, and having its registered office, its central administration or its principal place of business in the territory of the European Union or in the territory of the Kyrgyz Republic, respectively; in cases where a legal person set up in accordance with the law of the European Union or its Member States or with the law of the Kyrgyz Republic has only its registered office or central administration in the territory of the European Union or in the territory of the Kyrgyz Republic, respectively, it shall not be considered to be a legal person of a Party unless it engages in substantive business operations in the territory of the European Union or in the territory of the Kyrgyz Republic, respectively; shipping companies established outside the European Union or the Kyrgyz Republic and controlled by nationals of a Member State of the European Union or the Kyrgyz Republic, respectively, shall also be beneficiaries of this Chapter if their vessels are registered in accordance with their respective legislation, in a Member State of the European Union or in the Kyrgyz Republic and fly the flag of a Member State of the European Union or the Kyrgyz Republic;

(k) "natural person of the European Union" and "natural person of the Kyrgyz Republic" mean, respectively, a national of one of the Member States of the European Union and a national of the Kyrgyz Republic in accordance with the domestic laws and regulations of that Member State of the European Union[1] or the Kyrgyz Republic, respectively;

[1] The definition of "natural person of the European Union" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other State but who is entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen passport.

(l) "operations" means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of an enterprise;

(m) "services" means any service[1] in any sector except services supplied in the exercise of governmental authority;

(n) "service supplier" means any natural or legal person that seeks to supply or supplies a service;

(o) "subsidiary of a legal person of a Party" means a legal person which is controlled by another legal person of that Party;

(p) "supply of a service" means the production, distribution, marketing, sale or delivery of a service.

ARTICLE 72

Most-favoured-nation treatment and national treatment

1. With respect to the establishment and operations of an enterprise to perform economic activities in its territory, the European Union shall accord to investors of the Kyrgyz Republic and their enterprises treatment no less favourable than that accorded to investors of any third country and their enterprises.

[1] For greater clarity, for the purposes of this Chapter, a service shall be deemed to be a service as those listed in the most up-to-date version of the WTO document MTN.GNS/W/120 in its up to date version.

2. With respect to the establishment and operations of an enterprise to perform economic activities in its territory, the Kyrgyz Republic shall accord to investors of the European Union and their enterprises treatment no less favourable than that accorded to its own investors and their enterprises or to the investors of any third country and their enterprises, whichever is the better.

3. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investor-to-state dispute-settlement procedures provided for in other international agreements. Substantive provisions in other international agreements concluded by a Party with a third party do not in themselves constitute treatment under this Article. Measures of a Party pursuant to such provisions[1] may constitute treatment as referred to in paragraphs 1 and 2, and thus may give rise to a breach of this Article.

4. Paragraphs 1, 2 and 3 of this Article shall not apply to air transport, inland waterways or maritime transport.

ARTICLE 73

Horizontal limitation on services

1. Notwithstanding any other provision of this Chapter, a Party should not be required to accord, in respect of sectors or measures covered by the GATS, treatment which is more favourable than that which that Party is required to accord under the GATS and this in respect of each services sector and sub-sector and mode of supply.

[1] For greater certainty, the mere transposition of such provisions by a Party into its law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

2. For greater certainty, in respect of services, the GATS schedules of specific commitments of the Parties, including the reservations and, for the European Union, its Annex on Article II exemptions (list of MFN exceptions), shall be incorporated into and made part of this Agreement and shall apply.

ARTICLE 74

Prudential carve-out

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons, such as the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier, or ensuring the integrity and stability of the financial system. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

2. Nothing in this 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 75

Denial of benefits

A Party may deny the benefits of this Chapter to a legal person of the other Party or to an enterprise established by that legal person in its territory if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that legal person or its enterprise; or

(b) would be violated or circumvented if the benefits under this Chapter were accorded to that legal person or its enterprise, including where the measures prohibit transactions with a natural person who owns or controls that legal person or its enterprise.

ARTICLE 76

Intra-corporate transferees

1. Each Party shall allow investors of the other Party to employ in their enterprises natural persons of that other Party provided that such employees are intra-corporate transferees.

2. The entry and temporary stay of the natural persons referred to in paragraph 1 shall be for the following periods:

(a) for managers or executives, a period of up to three years;

(b) for specialists, a period of up to three years; and

(c) for trainee employees, a period of up to one year.

3. All requirements pursuant to the laws and regulations of the Parties regarding entry, stay, work and social security measures continue to apply, including regulations concerning period of stay, minimum wages and collective wage agreements.

4. This Article does not apply in cases where the intent or effect of the temporary presence of an intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour or management dispute or negotiation.

ARTICLE 77

Progressive liberalisation of investment

The Parties recognise the importance of granting each other's investors national treatment with regard to the establishment and operations of enterprises in their respective territories and will consider the possibility of advancing towards this end on a mutually satisfactory basis, and in the light of any recommendations by the Cooperation Committee.

ARTICLE 78

Standstill clause

1. Each Party shall use its best endeavours to avoid taking any measures or actions which render the conditions for the establishment and operations of enterprises in its territory of each other's investors more restrictive than the situation existing on the day preceding the date of signature of this Agreement.

2. Acting in the spirit of partnership and cooperation and in the light of Chapter 13, the Kyrgyz Republic shall inform the European Union of its intention to adopt new laws or regulations which may render the conditions for the establishment or operations of enterprises in the Kyrgyz Republic of investors of the European Union more restrictive than the situation existing on the day preceding the date of signature of this Agreement.

3. The European Union may request the Kyrgyz Republic to communicate the drafts of new laws or regulations as referred to in paragraph 2 and to enter into consultations about such drafts.

4. Where new laws or regulations introduced in the Kyrgyz Republic would result in rendering the conditions for the operations of enterprises of investors of the European Union more restrictive than the situation existing on the date of signature of this Agreement, such laws or regulations shall not apply for three years following their entry into force to those enterprises already established in the Kyrgyz Republic at the time of their entry into force.

5. For greater certainty, tax measures applied by the Kyrgyz Republic in a non-discriminatory manner shall not be considered to be more restrictive within the meaning of paragraph 4.

ARTICLE 79

Cross-border supply of services

1. The Parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the cross-border supply of services between the Parties, taking into account the development of their respective service sectors.

2. The Cooperation Council shall make recommendations for the implementation of this Article.

ARTICLE 80

Cooperation for a market-oriented service sector in the Kyrgyz Republic

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

ARTICLE 81

Maritime transport services

1. The Parties shall apply the principle of unrestricted access to the international maritime markets and trade on a commercial and non-discriminatory basis.

2. In applying the principle referred to in paragraph 1, the Parties shall:

(a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, any such cargo-sharing arrangements that exist in previous agreements; and

(b) 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.

ARTICLE 82

Other transport services

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

CHAPTER 7

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 83

Current account

Without prejudice to other provisions of this Agreement, the Parties shall allow any payments with regard to transactions on the current account of the balance of payments between the Parties, in freely convertible currency, and in accordance with the Articles of the Agreement of the International Monetary Fund adopted at the United Nations Monetary and Financial Conference on 22 July 1944, as applicable.

ARTICLE 84

Capital movements

1. With regard to transactions on the capital and financial account of the balance of payments, from the date of entry into force of this Agreement, each Party shall ensure the free movement of capital related to direct investments made in accordance with the law applicable in its territory and Chapter 6, as well as the liquidation or repatriation of such invested capital and any profit stemming therefrom.

2. Without prejudice to other provisions of this Agreement, neither Party shall introduce any new restrictions on the movement of capital and current payments between residents of the Member States of the European Union and the Kyrgyz Republic and shall not make the existing arrangements more restrictive.

3. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

ARTICLE 85

Application of laws and regulations relating to capital movements, payments or transfers

1. Articles 83 and 84 shall not preclude a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in financial instruments;

(c) financial reporting or record-keeping of capital movements, payments or transfers where necessary to assist law-enforcement or financial regulatory authorities;

(d) criminal or penal offences, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner or in a manner which otherwise constitutes a disguised restriction on capital movements, payments or transfers.

ARTICLE 86

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties, or threat thereof, for the operation of monetary and exchange rate policy, in the case of the Kyrgyz Republic or a Member State of the European Union whose currency is not the euro, or for the operation of the economic and monetary union, in the case of the European Union, safeguard measures may be adopted or maintained by the concerned Party with regard to capital movements, payments or transfers for a period not exceeding six months.

2. The measures referred to in paragraph 1 shall be limited to the extent they are strictly necessary.

ARTICLE 87

Restrictions in the event of balance-of-payments and external financing difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or the threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers[1].

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of the Agreement of the International Monetary Fund, as applicable;

(b) not exceed those necessary to deal with serious balance-of-payments or external financial difficulties, or the threat thereof;

(c) be temporary and be phased out progressively as the circumstances referred to in paragraph 1 improve;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

[1] In the case of the European Union, such measures may be taken by one of the Member States of the European Union in situations other than those referred to in Article 86 which affect the economy of that Member State of the European Union.

(e) not treat the other Party less favourably than a non-Party in like situations.

3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Such measures shall be in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994.

4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Such measures shall be in accordance with Article XII of GATS.

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

6. Where restrictions are adopted or maintained under this Article, consultations shall be held promptly in the Cooperation Committee unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the balance-of-payments or external financial difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

7. The consultations referred to in paragraph 6 shall address the compliance of any restrictive measure with paragraphs 1 and 2. All relevant findings of a statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.

CHAPTER 8

INTELLECTUAL PROPERTY RIGHTS

SECTION A

GENERAL PROVISIONS

ARTICLE 88

Objectives

The objectives of this Chapter are to:

(a) facilitate the production and commercialisation of innovative and creative products and services between the Parties contributing to a more sustainable and inclusive economy for the Parties;

(b) facilitate and govern trade between the Parties as well as reduce distortions and impediments to such trade; and

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

ARTICLE 89

Nature and scope of obligations

1. The Parties shall implement the international treaties dealing with intellectual property rights to which they are parties, including the TRIPS Agreement. This Chapter shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are Parties.

2. For the purposes of this Chapter, the term "intellectual property rights" refers to all categories of intellectual property that are referred to in Articles 92 to 136 of this Agreement and Sections 1 to 7 of Part II of the TRIPS Agreement.

3. The protection of intellectual property rights includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as amended on 28 September 1979 (hereinafter referred to as the "Paris Convention").

4. This Chapter does not preclude any Party from applying its law introducing higher standards for the protection and enforcement of intellectual property rights, provided that they are compatible with this Chapter.

ARTICLE 90

Exhaustion

1. Each Party shall provide for a regime of national or regional exhaustion of intellectual property rights, in accordance with its law in respect of copyright and related rights and trademarks.

2. In the area of copyright and related rights, exhaustion of rights applies only to the distribution to the public by sale or otherwise of the original of works or of other protected subject matter or copies thereof.

ARTICLE 91

National treatment

1. In respect of the intellectual property rights covered in this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than that which it accords to its own nationals with regard to the protection[1] of intellectual property rights, subject to the exceptions already provided for in:

(a) the Paris Convention;

[1] For the purposes of this paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter. Furthermore, for the purposes of this paragraph, "protection" also includes measures to prevent the circumvention of effective technological measures and measures concerning rights management information.

(b) the Berne Convention for the Protection of Literary and Artistic Works adopted on 9 September 1886 (hereinafter referred to as the "Berne Convention");

(c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (hereinafter referred to as the "Rome Convention"); or

(d) the Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington on 26 May 1989.

In respect of performers, producers of phonograms and broadcasting organisations, the obligation referred to in the first subparagraph only applies in respect of the rights provided for in this Agreement.

2. A Party may avail itself of the exceptions already provided for in the international instruments referred to in paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such exceptions are:

(a) necessary to ensure compliance with the Party's laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided for in multilateral agreements concluded under the auspices of the World Intellectual Property Organisation (hereinafter referred to as the "WIPO") relating to the acquisition or maintenance of intellectual property rights.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 92

International agreements

1. Each Party reaffirms its commitment to and shall comply with:

(a) the Berne Convention;

(b) the Rome Convention;

(c) the WIPO Copyright Treaty (WCT) adopted in Geneva on 20 December 1996;

(d) the WIPO Performances and Phonograms Treaty (WPPT) adopted in Geneva on 20 December 1996; and

(e) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled adopted in Marrakesh on 28 June 2013.

2. Each Party shall comply with and shall make all reasonable efforts to ratify or accede to the Beijing Treaty on Audiovisual Performances adopted in Beijing on 24 June 2012.

ARTICLE 93

Authors

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

(a) 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; and

(d) the commercial rental to the public of originals or copies of their works.

ARTICLE 94

Performers

Each Party shall provide for performers 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 the fixations of their performances;

(d) the making available to the public of fixations of their performances, 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;

[1] "fixation" means the embodiment of sounds, or of the representations thereof, or audiovisual embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device.

(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; and

(f) the commercial rental to the public of the fixation of their performances.

ARTICLE 95

Producers of phonograms

Each Party shall provide for phonogram producers 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 to the public, by sale or otherwise, of their phonograms, including copies thereof;

(c) the making available to the public of their phonograms, 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; and

(d) the commercial rental of their phonograms to the public.

ARTICLE 96

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(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 broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite; and

(e) 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 97

Broadcasting and communication to the public of phonograms published for commercial purposes[1]

1. Each Party shall provide that the performers and producers of phonograms have a right to equitable remuneration if a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used for broadcasting or communication to the public.

2. Each Party shall ensure that the remuneration referred to in paragraph 1 is shared between the relevant performers and phonogram producers. In the absence of an agreement between performers and producers of phonograms, each Party may set the terms according to which the remuneration is to be shared between them.

[1] Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

ARTICLE 98

Term of protection

1. The rights of an author of a work shall run for the life of the author and for 70 years after his or her death, irrespective of the date when the work is lawfully made available to the public.

2. The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.

3. 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.

4. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his or her identity or if the author discloses his or her identity during the period referred to in the first sentence of this paragraph, the term of protection applicable shall be that which is referred to in paragraph 1.

5. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors:

(a) the principal director;

(b) the author of the screenplay;

(c) the author of the dialogue; and

(d) the composer of music specifically created for use in the cinematographic or audiovisual work.

The Kyrgyz Republic may exclude from or add one or several persons to this list in its law.

6. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

7. The rights of performers shall expire 50 years after the date of the fixation of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within that period, the term of protection shall be calculated from the date of the first such publication or communication to the public, whichever is the earlier.

With respect to the fixation of the performance in a phonogram, the term of protection shall be 70 years after the date of the first such publication or communication to the public.

8. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, those rights shall expire 70 years from the date of the first such 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 70 years from the date of the first lawful communication to the public. Each Party may adopt measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

9. The terms laid down in this Article shall be calculated from 1 January of the year following the event.

10. Each Party may provide for longer terms of protection than those provided for in this Article.

11. No later than two years after the date on which this Agreement enters into force, the Kyrgyz Republic shall provide for the terms of protection referred to in this Article.

ARTICLE 99

Resale right

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, 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 any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The procedure for collection of the remuneration and its amount shall be a matter for determination by domestic legislation.

ARTICLE 100

Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in the territories of the Parties and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. Each Party shall promote transparency of collective management organisations, in particular regarding rights revenue they collect, deductions they apply to rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party undertakes to ensure that, where a collective management organisation established in the territory of one Party represents another collective management organisation established in the territory of the other Party by way of a representation agreement, the representing collective management organisation does not discriminate against right-holders of the represented collective management organisation.

4. Each Party shall endeavour to provide that, where a collective management organisation established in the territory of one Party represents another collective management organisation established in the territory of the other Party by way of a representation agreement, the representing collective management organisation is to accurately, regularly and diligently pay amounts owed to the represented collective management organisation as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

ARTICLE 101

Exceptions and limitations

Each Party shall restrict limitations or exceptions to the rights set out in Articles 93 to 96 to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right-holders.

ARTICLE 102

Protection of technological measures

1. Each Party shall provide 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 or she is circumventing an effective technological measure.

2. Each Party shall provide 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:

(a) are promoted, advertised or marketed for the purpose of circumventing an effective technological measure;

(b) have only a limited commercially significant purpose or use other than to circumvent an effective technological measure; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of an effective technological measure.

3. For the purposes of this Sub-Section, "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 national legislation. Technological measures shall be deemed "effective" where the use of a protected 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.

4. Notwithstanding the legal protection provided for in paragraph 1 of this Article, in the absence of voluntary measures taken by the right-holders, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 101 from enjoying such exceptions or limitations.

ARTICLE 103

Obligations concerning rights management information

1. Each Party shall provide legal protection against any person knowingly performing without authority any of the following acts if such person knows, or has reasonable grounds to know, that by doing so he or she is inducing, enabling, facilitating or concealing an infringement of a copyright or any related rights provided for in national legislation:

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

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

2. For the purposes of this Article, "rights-management information" means any information provided by right-holders which identifies the work or other subject-matter referred to in this Article, 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. Paragraph 2 shall apply when rights-management information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

SUB-SECTION 2

TRADEMARKS

ARTICLE 104

International agreements

Each Party shall:

(a) accede to the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as amended on 3 October 2006 and on 12 November 2007;

(b) comply with the Trademark Law Treaty, done at Geneva on 27 October 1994 and with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957; and

(c) make all reasonable efforts to accede to the Singapore Treaty on the Law of Trademarks done at Singapore on 27 March 2006.

ARTICLE 105

Signs of which a trademark may consist

1. A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the respective register of each Party trademarks, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

2. No later than five years after the date on which this Agreement enters into force, the Kyrgyz Republic shall endeavour to make it possible to register sound as a trademark.

ARTICLE 106

Rights conferred by a trademark, including on goods in transit

1. The registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties, not having the consent of the proprietor, from using in the course of trade any sign:

(a) which is identical to the registered trademark in relation to goods or services which are identical to those for which the trademark is registered;

(b) where, because it is identical or similar to the registered trademark and because the goods or services covered by this trademark are identical or similar to those covered by the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the registered trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trademark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark[1].

[1] The Parties may take additional appropriate measures with a view to ensuring the smooth transit of generic medicines.

3. The entitlement of the proprietor of the trademark referred to in paragraph 2 shall lapse if, during the proceedings to determine whether the registered trademark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 107

Registration procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision, including partial refusal, taken by the relevant trademark administration is communicated in writing to the relevant party, duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose trademark applications or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations. The Kyrgyz Republic shall, no later than two years after the date on which this Agreement enters into force, provide for electronic database of trademark applications referred to in the first sentence of this paragraph, on the condition that the European Union has provided adequate technical assistance in conformity with European Union's law.

ARTICLE 108

Well-known trademarks

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO from 20 to 29 September 1999.

ARTICLE 109

Exceptions to the rights conferred by a trademark

1. Each Party:

(a) shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms including geographical indications; and

(b) may provide for other limited exceptions to the rights conferred by a trademark.

When providing for the limited exceptions referred to in points (a) and (b) of the first paragraph, each Party shall take account of the legitimate interests of the proprietor of the trademark and third parties.

2. A trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, the following provided that he or she uses them in accordance with honest practices in industrial or commercial matters:

(a) the name or address of the third party, where the third party is a natural person;

(b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; and

(c) the trademark where it is necessary to indicate the intended purpose of a good or service, in particular as accessories or spare parts.

3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and within the limits of the territory in which it is recognised.

ARTICLE 110

Grounds for revocation

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of at least three years, it has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use.

2. No person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of minimum three-year period and filing of the application for revocation, genuine use of the trademark has been started or resumed.

3. The commencement or resumption of use within a period of three months preceding the filing of an application for revocation which began at the earliest on expiry of the continuous period of five years of non-use shall be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

4. A trademark shall also be liable to revocation if, after the date on which it was registered:

(a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;

(b) in consequence of the use made of it by the proprietor of the trademark or with the consent of the proprietor in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE 111

Bad-faith applications

A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark is not to be registered.

SUB-SECTION 3

DESIGNS

ARTICLE 112

International agreements

The European Union reaffirms its commitment under and the Kyrgyz Republic shall comply with the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted on 2 July 1999.

ARTICLE 113

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original. Such protection shall be provided by means of registration and shall confer an exclusive right upon the holder of a registered design in accordance with this Sub-Section.

2. The holder of a registered design shall have the right to prevent third parties not having the consent of the holder of a registered design at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

3. 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 original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

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

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

5. For the purposes of this Article, a Party may consider that a design having individual character is original.

ARTICLE 114

Duration of protection

Each Party shall ensure that a design is protected for a period of five years as from the date of the filing of the application and that the right-holder has the right to renew the term of protection for one or more five-year periods, up to a total term of at least 15 years from the date of filing.

ARTICLE 115

Protection of unregistered designs

1. Each Party shall provide the legal means to prevent the use of the unregistered design only if the contested use results from copying the unregistered design in its territory. Such use shall at least cover offering for sale, putting on the market, importing or exporting the product.

2. The Kyrgyz Republic shall provide the protection available for the unregistered design referred to in paragraph 1 of this Article no later than 10 years after the date on which this Title starts to apply on the condition that the European Union has provided technical assistance, upon request and according to the needs of the Kyrgyz Republic, in conformity with European Union law.

3. The duration of protection available for the unregistered design as referred to in paragraph 1, shall amount to at least three years from the date on which the design was made available to the public in one of the Parties.

ARTICLE 116

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs including unregistered 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 holder of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall not be extended to a design solely on the basis of its technical or functional considerations. A design shall not subsist in features of appearance of a product which necessarily have to be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

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

4. By way of derogation from paragraph 2 of this Article, a design shall, under the conditions set out in Article 113(1), subsist in a design which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 117

Relationship to copyright

Each Party shall ensure that a design, including unregistered design, is eligible for protection under its copyright law as from the date on which the design was created or fixed in any form. Each Party shall determine the extent to which, and the conditions under which, such protection is conferred, including the level of originality required.

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 118

Scope

1. For the purposes of this Sub-Section, "geographical indication" means a geographical indication as defined in Article 22(1) of the TRIPS Agreement[1].

2. This Sub-Section applies to the recognition and protection of geographical indications originating in the territories of the Parties.

3. Geographical indications of a Party which are to be protected by the other Party shall only be subject to this Sub-Section if covered by the scope of the legislation referred to in Article 119.

[1] For greater certainty, the Kyrgyz Republic reaffirms its commitments in the framework of the TRIPS Agreement and in particular that its legislation providing for appellations of origin of goods with a definition is in line with article 22(1) of the TRIPS Agreement.

ARTICLE 119

Procedures

1. Having examined the legislation of the Kyrgyz Republic listed in Section A of Annex 8-A, the European Union concludes that that legislation contains the elements for the registration and control of geographical indications set out in Section B of Annex 8-A.

2. Having examined the legislation of the European Union listed in Section A of Annex 8-A, the Kyrgyz Republic concludes that that legislation contains the elements for the registration and control of geographical indications set out in Section B of Annex 8-A.

3. Following the completion of an opposition procedure in accordance with the criteria set out in Annex 8-B and an examination of the geographical indications for products of the European Union to be protected in the Kyrgyz Republic listed in Section A of the Annex 8-C which have been registered by the European Union under the legislation referred to in paragraph 2 of this Article, the Kyrgyz Republic shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

4. Following the completion of an opposition procedure in accordance with the criteria set out in Annex 8-B and an examination of the geographical indications for products of the Kyrgyz Republic to be protected in the European Union listed in Section B of the Annex 8-C which have been registered by the Kyrgyz Republic under the legislation referred to in paragraph 1 of this Article, the European Union shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

ARTICLE 120

Amendment of the list of geographical indications

The Parties may amend the list of geographical indications to be protected in Annex 8-C in accordance with Article 27. New geographical indications shall be added following the completion of the opposition procedure and their examination as referred to in Article 119(3) or (4).

ARTICLE 121

Protection of geographical indications

1. The geographical indications listed in Annex 8-C, including the geographical indications added in accordance with Article 120, shall be protected against:

(a) any direct or indirect commercial use of a protected name:

(i) for comparable products not compliant with the product specification of the protected name; or

(ii) in so far as such use exploits the reputation of a geographical indication, including when that product is used as an ingredient;

(b) any misuse, imitation or evocation, 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", "imitation", "flavour", "like" or similar, including when those products are used as an ingredient;

(c) any other false or misleading indication as to the 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, including when those products are used as an ingredient; and

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

2. Geographical indications listed in Annex 8-C, including ones added in accordance with Article 120, shall not become generic in the territories of the Parties.

3. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be, protected in the territory of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of that Party of origin. Such notification shall take place in accordance with Article 154.

4. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, the name of that person and/or the name of the predecessor of that person in business, except where that name is used in such a manner to mislead the public.

ARTICLE 122

Right of use of geographical indications

1. A name protected under this Agreement may be used by any natural or legal person marketing a product which conforms to the corresponding specification.

2. Once a geographical indication is protected under this Sub-Section, the use of such protected name shall not be subject to any registration of users or related charges.

ARTICLE 123

Relationship to trademarks

1. The Parties shall, where a geographical indication is protected under this Agreement, refuse to register a trademark the use of which would be contrary to Article 121(1), provided an application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

2. For geographical indications referred to in Article 119, the date of submission of the application for protection referred to in paragraph 1 of this Article shall be the date of entry into force of this Agreement.

3. Trademarks registered in breach of paragraph 1 shall be invalidated.

4. For geographical indications referred to in Article 120, the date of submission of the application for protection referred to in paragraph 1 of this Article shall be the date of the transmission of a request to the other Party to protect a geographical indication.

5. Without prejudice to paragraph 7 of this Article, each Party shall protect geographical indications also where a prior trademark exists. A "prior trademark" means a trademark the use of which is contrary to Article 121(1) and which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

6. A prior trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the invalidity or revocation of the trademark exist in the legislation on trademarks of each Party. In such cases, the use of the protected geographical indication as well as the use of the relevant trademarks shall be permitted.

7. A Party shall not be required to protect a name as a geographical indication under this Agreement if, in light of a trademark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

ARTICLE 124

Enforcement of protection

Each Party shall enforce the protection provided for in Articles 119 to 123 by appropriate administrative and judicial measures or at the request of an interested party to prevent or stop the unlawful use of a protected geographical indication.

ARTICLE 125

General rules

1. This Agreement shall apply without prejudice to the rights and obligations of the Parties under the WTO Agreement.

2. A Party shall not be required to protect a name as a geographical indication under this Agreement if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

3. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be protected even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide on the practical conditions of use under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. When a Party, in the context of bilateral negotiations with a third party, proposes to protect a geographical indication of that third party which is wholly or partially homonymous with a geographical indication of the other Party protected under this Agreement, it may inform the other Party thereof and give it an opportunity to comment before the geographical indication of the third party becomes protected.

5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the Intellectual Property Rights subcommittee referred to in Article 154.

6. The protection of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.

7. A product specification referred to in this Agreement shall be that which is approved, including any amendments also approved, by the authorities of the Party in which the product originates.

ARTICLE 126

Transitional provisions

1. Nothing in this Chapter shall oblige a Party to implement the protection given to geographical indications listed in Annex 8-C as provided in Articles 118 to 125 during a transitional period of a maximum of seven years after the entry into force of this Agreement.

2. A Party shall refuse to register a trademark that corresponds to any of the situations referred to in Article 121 in relation to a protected geographical indication for like products, provided that an application for that trademark is submitted for protection in the territory concerned after the entry into force of this Title.

3. A trademark registered in breach of paragraph 2 shall be invalidated.

4. Subsequent to the transition period set in paragraph 1, for a transitional period of three years, the protection pursuant to this Agreement of the following geographical indications for products of the European Union shall not preclude those geographical indications from being used in order to designate and present certain comparable products originating in Kyrgyz Republic:

(a) Φέτα (Feta);

(b) Calvados;

(c) Asti;

(d) České pivo.

5. Subsequent to the transition period set in paragraph 1, for a transitional period of eight years, the protection pursuant to this Agreement of the following geographical indications for products of the European Union shall not preclude those geographical indications from being used in order to designate and present certain comparable products originating in the Kyrgyz Republic:

(a) Champagne;

(b) Cognac.

6. Products which were produced and labelled in conformity with law of a Party before this Agreement entered into force but which do not comply with the requirements of this Agreement, may continue to be sold until stocks run out.

7. Products which were produced and labelled, in conformity with a Party's law, with the geographical indications listed in paragraphs 4 and 5 after this Agreement entered into force and before the termination of the transitional periods referred to in paragraphs 4 and 5, but which do not comply with the requirements of this Sub-Section, may continue to be sold until stocks run out.

ARTICLE 127

Technical assistance

For the purpose of facilitating the implementation of this Sub-Section in the Kyrgyz Republic, as well as assisting the industry of the Kyrgyz Republic, the European Union shall provide to the Kyrgyz Republic, subject to its request and according to its needs, adequate technical assistance in conformity with European Union law.

SUB-SECTION 5

PATENTS

ARTICLE 128

International agreements

Each Party shall ensure that the procedures provided under the Patent Cooperation Treaty, done at Washington on 19 June 1970 are available in its territory and shall make all reasonable efforts to comply with the Patent Law Treaty, adopted in Geneva on 1 June 2000.

ARTICLE 129

Patents and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 by the Ministerial Conference of the WTO (hereinafter referred as the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Sub-Section, each Party shall ensure consistency with the Doha Declaration.

2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and Appendix to the Annex to the TRIPS Agreement, which entered into force on 23 January 2017.

ARTICLE 130

Further protection for medicinal products[1]

1. The Parties recognise that medicinal products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their respective market (hereinafter referred to as the "marketing authorisation procedure"). The Parties 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 their respective law, may shorten the period of effective protection under the patent.

2. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays[2] in the granting of the first marketing authorisation in its respective territory in accordance with its law.

[1] For the purposes of this Chapter, "medicinal product" means at least any substance or combination of substances which: (a) are presented as having properties for treating or preventing disease in human beings or animals; or (b) may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

[2] For the purposes of this Article, an "unreasonable delay" includes at least a delay of more than two years in the first response to the applicant following the date of filing of the application for marketing authorisation. Any delays that occur in the granting of a marketing authorisation due to periods attributable to the applicant or any period that is out of control of the marketing authorisation authority need not be included in the determination of such delay.

3. As an alternative to paragraph 2, a Party may provide for further protection for a medicinal product which is protected by a patent and which has been subject to a marketing authorisation procedure, for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first marketing authorisation to place the product on the market in the Party, reduced by a period of five years. The duration of such further protection shall not exceed five years. That period may be extended for a further six months in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

ARTICLE 131

Extension of the period of protection conferred by a patent on plant protection products

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

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

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

4. Notwithstanding paragraph 3, the duration of the further period of protection shall not exceed five years.

SUB-SECTION 6

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 132

Scope of protection of trade secrets

1. In fulfilling its obligation to comply with the TRIPS Agreement, and in particular Article 39(1) and (2) of the TRIPS Agreement, each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

(b) "trade secret holder" means any natural or legal person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following forms of conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in point (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret;

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Sub-Section shall be understood as requiring any Party to consider any of the following forms of conduct to be contrary to honest commercial practices:

(a) independent discovery or creation;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use or disclosure of information required or allowed by the law of a Party;

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

5. Nothing in this Sub-Section shall be understood as restricting freedom of expression and information, including media freedom as protected in the jurisdiction of each of the Parties.

ARTICLE 133

Civil procedures and remedies for trade secret holders

1. Each Party shall ensure that any person participating in the civil judicial procedures referred to in Article 132, or who has access to documents which form part of those procedures, is not permitted to use or disclose any trade secret or alleged trade secret which the judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the civil judicial procedures referred to in Article 132, each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(c) order the person that knew or ought to have known that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder adequate damages to compensate for the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

(d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil judicial procedures relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices; such specific measures may include, in accordance with the law of a relevant Party, the possibility of:

(i) restricting access to certain documents in whole or in part;

(ii) restricting access to hearings and their corresponding records or transcript; and

(iii) making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted; and

(e) impose sanctions on any persons participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

3. Each Party shall not be required to provide for the civil judicial procedures and remedies referred to in Article 132 when the conduct contrary to honest commercial practices is carried out, in accordance with the relevant law of a Party, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by its law.

ARTICLE 134

Data protection for medicinal products[1]

1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention, each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal product on the market (hereinafter referred to as the "marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use and except where the disclosure is necessary for an overriding public interest.

2. If a Party requires, as a condition for approving the marketing of medicinal product, the submission of undisclosed test data or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public interest.

3. Each Party shall ensure that, for a period of at least five years, the authority responsible for the granting of the marketing authorisation does not accept any subsequent application for a marketing authorisation that refers to the data referred to in paragraph 2 submitted in the application for the first marketing authorisation without explicit consent of the holder of the first marketing authorisation, except where necessary to protect the public interest.

[1] For the purposes of this Article, "public interest" includes public health in accordance with the Doha Declaration and domestic legislation.

ARTICLE 135

Data protection for plant protection products

1. Each Party shall recognise a temporary right, hereinafter referred to as "data protection", of the owner of a test or study report submitted for the first time to obtain a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to obtain a marketing authorisation for a plant protection product, except when the explicit consent of the first owner is proved.

2. The test or study report should be:

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

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

3. The period of data protection shall be at least 10 years from the first authorisation granted by the concerned authority in the Party concerned. For low-risk plant protection products, the period can be extended to 13 years.

4. The period of data protection shall be extended by three months for each extension of authorisation for minor uses if the applications for such authorisations are made by the authorisation holder at the latest five years after the date of the first authorisation. The total period of data protection may in no case exceed 13 years. For low risk plant protection products the total period of data protection may in no case exceed 15 years.

5. A test or study report shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period of data protection shall be 30 months.

6. Notwithstanding paragraphs 3, 4 and 5, the public body responsible for the granting of a marketing authorisation shall not take into account the information referred to in paragraphs 1 and 2 for any successive marketing authorisation, regardless of whether or not it has been made available to the public.

7. Each Party shall lay down measures obliging the applicant and holders of previous authorisations established in the Parties' respective territories, to share proprietary information, so as to avoid duplicative testing on vertebrate animals.

SUB-SECTION 7

PLANT VARIETIES

ARTICLE 136

General provisions

Each Party shall protect plant variety rights, in accordance with the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the "UPOV Convention"), including the optional exceptions to the breeder's right as referred to in Article 15(2) of the UPOV Convention, and co-operate to promote and enforce those rights.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 137

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular Part III thereof, and shall provide for the measures, procedures and remedies necessary to ensure that intellectual property rights are enforced. Such 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. For the purposes of Section C of this Chapter, the term "intellectual property rights" shall not include rights covered by Sub-Section 6 of Section B of this Chapter.

2. The measures, procedures and remedies referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to trade and the Parties shall provide for safeguards against their abuse.

ARTICLE 138

Persons entitled to request the application of measures, procedures and remedies

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

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

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

(d) professional defence 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 applicable law.

ARTICLE 139

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the judicial authorities are able, on application by a person who has presented reasonably available evidence to support his or her claims that his or her intellectual property right has been infringed or is about to be infringed, to order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. In ordering provisional measures, the judicial authorities shall take into account the legitimate interests of the alleged infringer.

2. The provisional measures referred to in paragraph 1 may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of such goods and the documents relating thereto.

3. Each Party shall take the measures necessary, in cases of infringement of an intellectual property right committed on a commercial scale, to enable the judicial authorities to order, where appropriate, on application by a person, the communication of banking, financial or commercial documents under the control of the opposing person, subject to the protection of confidential information.

ARTICLE 140

Right of information

1. Each Party shall ensure that, during civil judicial procedures concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the judicial authorities are able to order the infringer or any other person which is party to a litigation or a witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1, "any other person" means a person who was:

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

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

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

(d) identified by a person carrying out an activity 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.

3. Information referred to in paragraph 1 shall, as appropriate, 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; and

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

4. Paragraphs 1 and 2 shall apply without prejudice to each Party's law which:

(a) grants the right-holder rights to receive additional information;

(b) governs the use of the information communicated pursuant to this Article in civil judicial procedures;

(c) governs responsibility for misuse of the right to information;

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

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

ARTICLE 141

Provisional and precautionary measures

1. Each Party shall ensure that the judicial authorities are able, at the request of the applicant, to 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, where appropriate, to 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 that the right-holder is compensated. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services, including internet 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 alleged 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 are able, in accordance with domestic law, to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of bank accounts and other assets of the alleged infringer. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

ARTICLE 142

Remedies

1. Each Party shall ensure that the judicial authorities are able to 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 destruction, or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right. Each Party shall also ensure that, where appropriate, the judicial authorities are able to order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that the remedies referred to in paragraph 1 shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

ARTICLE 143

Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities are able to issue against the infringer as well as against an intermediary whose services are used by a third party to infringe an intellectual property right an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 144

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the remedies provided for in Article 142 or 143, are able to order pecuniary compensation to be paid to the injured party instead of applying the remedies provided for in those Articles if that person acted unintentionally and without negligence, if execution of the remedies in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 145

Damages

1. Each Party shall ensure that the judicial authorities have the authority to order on application by the injured party, an infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity to pay the right-holder adequate damages to compensate for the actual prejudice suffered by the right-holder as a result of the infringement. When the judicial authorities set the damages:

(a) they shall take into account all appropriate factors, 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, such as the moral prejudice caused to the right holder by the infringement; or

(b) as an alternative to point (a), they may, in appropriate cases, set the damages as a lump sum on the basis of factors including, as a minimum, 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 infringing activity, the Parties may provide that the judicial authorities are able to order in favour of the injured party the recovery of profits or the payment of damages, which may be pre-established.

ARTICLE 146

Legal costs

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

ARTICLE 147

Publication of judicial decisions

Each Party shall ensure that, in legal proceedings instituted with regard to infringement of an intellectual property right, the judicial authorities are able to 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 148

Presumption of authorship or ownership

The Parties shall recognise that, for the purpose of applying the measures, procedures and remedies provided for in this Section it shall be sufficient for the name of the author to appear on the literary or artistic work in the usual manner for the author of that work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings. This Article shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 149

Administrative procedures

To the extent that any civil remedy can 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 set forth in the relevant provisions of this Section.

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE 150

Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures through which a right-holder is able to submit an application requesting the customs authorities to detain or suspend the release of goods suspected of infringing intellectual property rights, in particular trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights (hereinafter referred to as "suspected goods").

2. Each Party shall have in place electronic systems for the management by the customs authorities of the applications granted or recorded. The Kyrgyz Republic shall, no later than five years after the date on which this Agreement enters into force, provide for such electronic systems.

3. When a Party charges a fee to cover the administrative costs resulting from the application or recordation, that fee shall be proportionate to the service rendered and the cost incurred.

4. Each Party shall ensure that its customs authorities decide on the granting or recording of an application within a reasonable period of time in accordance with its law.

5. Each Party shall provide for the application referred to in paragraph 1 to apply to multiple shipments.

6. Each Party shall ensure that, with respect to goods under customs control, its customs authorities are able to act upon their own initiative to detain or suspend the release of suspected goods.

7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.

8. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, in particular where the persons concerned agree or are not opposed to the destruction. In cases where goods determined to be infringing are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in such a manner as to avoid any harm to the right-holder.

9. Where the detained or suspended goods are subsequently found not to infringe an intellectual property right, the right-holder shall be liable to any holder or declarant of the goods who has suffered damage in that regard, in accordance with the applicable legislation of each Party.

10. Each Party may have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent in postal or express couriers' consignments.

11. Each Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the rightholders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

12. Each Party shall ensure that its customs authorities maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

13. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties agree to share information on trade in suspected goods affecting the other Party, without prejudice to the respective applicable law on personal data protection in each Party.

14. Without prejudice to other forms of cooperation, the Protocol on mutual administrative assistance in customs matters shall be applicable with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities are competent in accordance with this Article.

15. The Intellectual Property Rights subcommittee referred to in Article 154 shall be responsible for ensuring the proper functioning and implementation of this Article, in particular in terms of cooperation between the Parties.

ARTICLE 151

Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs authorities, whether or not covered by this Sub-Section, the Parties shall ensure consistency with their obligations under GATT 1994 and TRIPS Agreement and, in particular, with Article V of GATT 1994, Article 41 and Section 4 of the Part III of TRIPS Agreement.

SECTION D

FINAL PROVISIONS

ARTICLE 152

Cooperation

1. The Parties agree to cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Chapter.

2. The cooperation between the Parties shall include the following activities:

(a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

(b) exchange of experience between the Parties on legislative progress;

(c) exchange of experience between the Parties on the enforcement, at central and sub-central level, of intellectual property rights;

(d) coordination to prevent exports of counterfeit goods, including with other countries;

(e) technical assistance, capacity building; exchange and training of personnel;

(f) protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, business circles and civil society;

(g) public awareness of consumers and right-holders; enhancement of institutional cooperation, particularly between the intellectual property offices;

(h) awareness promotion and education of the general public on policies concerning the protection and enforcement of intellectual property rights;

(i) promotion of protection and enforcement of intellectual property rights with public-private collaboration involving small and medium-sized enterprises;

(j) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of violations of intellectual property rights, including the risk to health and safety and the connection to organised crime.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to Sub-Section 4.

4. The Parties shall, either directly or through the Intellectual Property Rights subcommittee referred to in Article 154, maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE 153

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce the infringement of intellectual property rights, including over the internet and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned, including in the following ways:

(a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;

(b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the stakeholders in the Parties, and to encourage those stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

ARTICLE 154

Institutional provisions

1. The Parties hereby establish an Intellectual Property Rights subcommittee (hereinafter referred to as the "IPR subcommittee") consisting of representatives of the European Union and the Kyrgyz Republic with the purpose of monitoring the implementation of this Chapter and of intensifying their cooperation and dialogue on intellectual property rights.

2. The IPR subcommittee shall meet at the request of either Party, alternately in the European Union and in the Kyrgyz Republic, at a time and a place and in a manner agreed by the Parties, which may include by videoconference, but no later than 90 days after the request has been submitted.

CHAPTER 9

GOVERNMENT PROCUREMENT

ARTICLE 155

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 services" means services that have as their objective the realisation by whatever means of civil or building works, based on Division 51 of the UN CPC;

(c) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(d) "in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated, and includes electronically transmitted and stored information;

(e) "limited tendering" means a procurement method whereby the procuring entity contacts one or more suppliers of its choice;

(f) "measure" means any law, regulation, procedure, administrative guidance document or practice, or any action of a procuring entity relating to a covered procurement;

(g) "multi-use list" means a list of qualified suppliers that the procuring entity intends to use more than once;

(h) "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;

(i) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, countertrade and similar actions or requirements;

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

(k) "procuring entity" means an entity covered under a Party's Sub-Section of Section 1, 2 or 3 of Annex 9;

(l) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

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

(n) "services" includes construction services, unless otherwise specified;

(o) "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;

(p) "supplier" means a person or group of persons that provides or could provide goods or services;

(q) "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;

(r) "UN CPC" means the United Nations Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

ARTICLE 156

Scope

1. This Chapter applies to any measure relating to a 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 a good, a service, or any combination thereof:

(i) as specified in Annex 9; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service 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, as estimated in accordance with paragraphs 6, 7 and 8 of this Article, equals or exceeds the relevant threshold specified in Sections 1, 2 and 3 of Annex 9, at the time of publication of a notice in accordance with Article 160;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage by paragraph 3 of this Article or by the relevant Party's Sub-Section of Sections 1, 2, 3 or 5 of Annex 9.

3. Except as otherwise provided for in Annex 9, this Chapter does not apply to:

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

(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 if the applicable procedure or condition would be inconsistent with this Chapter.

4. The commitments of each Party on covered procurement and the related access to information are set out in Annex 9 as follows:

(a) in Section 1, the central government entities whose procurement is covered by this Chapter, including the applicable thresholds for covered goods and services;

(b) in Section 2, the sub-central government entities whose procurement is covered by this Chapter, including the applicable thresholds for covered goods and services;

(c) in Section 3, all other entities whose procurement is covered by this Chapter, including the applicable thresholds for covered goods and services;

(d) in Section 4, the services, other than construction services, covered by this Chapter;

(e) in Section 5, general notes and derogations; and

(f) in Section 6, the media in which the Party publishes its procurement notices, award notices, and other information related to its government procurement system as set out in this Chapter.

5. If a procuring entity, in the context of covered procurement, requires a person not covered under the relevant Party's Sub-Section of Section 1, 2 or 3 of Annex 9 to procure in accordance with particular requirements, paragraph 4 of this Article shall apply *mutatis mutandis* to such requirements.

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) if the procurement provides for the possibility of options, the total value of such options.

7. If 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, if 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 a good or a service, 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) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

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

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

(c) if it is not certain whether the contract is to be a fixed-term contract, point (b) shall apply.

ARTICLE 157

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or from not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement:

(a) of arms, ammunition or war material;

(b) indispensable for national security; or

(c) for national defence purposes.

2. 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 where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent 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, of philanthropic institutions or of prison labour.

ARTICLE 158

General principles

Non-discrimination

1. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall accord immediately and unconditionally 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 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.

National treatment of locally established suppliers

3. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a legal person are accorded, with regard to any government procurement of the Party in its territory, treatment no less favourable than the treatment accorded to its domestic suppliers in accordance with national laws and regulations.

The general exceptions set forth in Article 157 shall apply.

Use of electronic means

4. 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;

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including with regard to the determination of the time of receipt and the prevention of inappropriate access; and

(c) use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and, to the widest extent practicable, for the submission of tenders.

Conduct of covered procurement

5. 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 and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of origin

6. For the purposes of covered procurement, a Party shall not apply rules of origin to imports or supplies of goods or services 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.

Offsets

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Measures not specific to procurement

8. Paragraphs 1 and 2 shall not apply to:

(a) customs duties and charges of any kind imposed on, or in connection with, importation;

(b) the method of levying such duties and charges; or

(c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Anti-corruption measures

9. Each Party shall ensure that it has appropriate measures in place to address corruption in its government procurement. Those measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the judicial authorities or competent State authorities of that Party have determined by final decision to have engaged in fraudulent or other illegal actions in relation to government procurement in the territory of that Party. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest of persons engaged in or having influence over procurement.

ARTICLE 159

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 thereto, 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. Each Party shall list in Section 6 of Annex 9:

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

(b) the electronic or paper media in which the Party publishes the notices referred to in Articles 160, 162(7) and 169(2); and

(c) the website address or addresses where the Party publishes its notices concerning awarded contracts pursuant to Article 169(2).

3. A Party shall promptly notify the Cooperation Committee of any modification to the information listed, pursuant to paragraph 2 of this Article, in Section 6 of Annex 9.

ARTICLE 160

Notices

1. All notices referred to in this Article (notice of intended procurement, summary notice and notice of planned procurement) shall be directly accessible by electronic means free of charge through a single online point of access. In addition, the notices may also be published in an appropriate paper medium which is widely disseminated and shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

Notice of intended procurement

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 166.

3. 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, if 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) if applicable, the address and any final date for the submission of requests for participation;

(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, including any requirements for specific documents or certifications to be provided by suppliers in connection with such participation, 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;

(k) if, pursuant to Article 162, 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, if applicable, any limitation on the number of qualified suppliers that will be permitted to tender; and

(l) an indication that the procurement is a covered procurement.

Summary notice

4. 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 one of the languages of the WTO. 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, if applicable, any final date for the submission of requests for participation 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

5. Procuring entities are encouraged to publish in the appropriate electronic and, if available, paper medium listed in Section 6 of Annex 9 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 shall also be published in the single point of access website listed in Section 6 of Annex 9, subject to paragraph 3 of this Article. 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.

6. A procuring entity covered under Sections B or C 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 4 of this Article as is available to the procuring entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 161

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; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement[1].

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 it has specified in advance in notices or tender documentation.

4. If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier from participation in a procurement on grounds such as:

(a) bankruptcy;

[1] For greater certainty: if a procuring entity requires to demonstrate prior experience, it is sufficient for the supplier to demonstrate that this prior experience has been acquired in any territory.

(b) false declarations;

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

(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 162

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. In this case, the Party shall ensure that interested suppliers have access to information on the registration system to the extent possible, through electronic means, and that they may request registration at any time. The procuring entity shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision shall be duly motivated.

2. Each Party shall ensure that:

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

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

3. A Party, including its procuring entities, shall not adopt or apply a 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. If a procuring entity intends to use selective tendering, it shall:

(a) include in the notice of intended procurement at least the information specified in points (a), (b), (f), (g), (j), (k) and (l) of Article 160(3) 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 specified in points (c), (d), (e), (h) and (i) of Article 160(3) to the qualified suppliers that it notifies as specified in point (b) of Article 164(3).

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 qualified suppliers permitted to tender and the criteria for selecting the limited number of suppliers. An invitation to submit a tender shall be addressed to a number of qualified suppliers necessary to ensure effective competition.

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

Multi-use lists

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

(a) published annually in the appropriate medium listed in Section 6 of Annex 9; and

(b) if published by electronic means, made available continuously in the appropriate medium listed in Section 6 of Annex 9.

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 procuring 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 if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

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

9. Notwithstanding paragraph 7, if 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 of the list and states 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 in the appropriate medium listed in Section 6 of Annex 9.

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. If 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 164(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 procuring entity does not have sufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Procuring entities covered by Sections 2 and 3 of Annex 9

12. A procuring entity covered under Sections 2 and 3 of Annex 9 may use a notice inviting interested 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 160(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 procuring entity promptly provides to suppliers that have expressed an interest in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required under Article 160(2), to the extent such information is available.

13. A procuring entity covered under Section 2 or 3 of Annex 9 may allow a supplier that has applied for inclusion on a multi-use list to tender in a given procurement, if there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

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. If 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 a qualified supplier, or removes a supplier from a multi-use list, the procuring 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 163

Technical specifications and tender documentation

Technical specifications

1. A Party including its procuring entities shall not prepare, adopt or apply any technical specification or set out any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In setting out the technical specifications for the goods or services being procured, a procuring entity shall, if 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, if such standards exist, otherwise, on national technical regulations, recognised national standards or building codes.

3. If design or descriptive characteristics are set out in the technical specifications, a procuring entity should indicate, if 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 set out 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 the procuring 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. A Party, including its procuring entities, may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment, provided that it does so in accordance with this Article.

A Party may:

(a) allow procuring entities to take into account environmental and social considerations throughout the procurement procedure, provided they are non-discriminatory and they are linked to the subject matter of the concerned contract; and

(b) take appropriate measures to ensure compliance with its obligations in the fields of environmental, social and labour law, including the obligations under Chapter 10.

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, if 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, including a list of information and documents that suppliers are required to submit in connection with such participation;

(c) all evaluation criteria the procuring entity will apply in the awarding of the contract and, unless price is the sole criterion, the relative importance of those criteria;

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

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

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if 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 on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services set in accordance with paragraph 8.

8. In setting 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, destocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the 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. If, 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 made available to participating suppliers, or amends or reissues the notice or tender documentation, it shall transmit in writing all such modifications or the 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, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

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

ARTICLE 164

Time periods

1. A procuring entity shall, in accordance with its own reasonable needs, provide sufficient time periods 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 if electronic means are not used.

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

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation is, in principle, to be at least 25 days after the date of publication of the notice of intended procurement. If 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 is to be at least 40 days after 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 procuring 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 if:

(a) the procuring entity has published a notice of planned procurement as referred to in Article 160(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 160(2), as is available;

(b) the procuring entity, for contracts 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. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

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

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

(c) the procuring entity accepts tenders by electronic means.

6. The use 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 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, a procuring entity purchasing commercial goods or services, or any combination thereof, 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, if the procuring 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 10 days.

8. A procuring entity covered under Section 2 or 3 of Annex 9 that has selected all or a limited number of qualified suppliers may determine the time period for tendering by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the time period shall not be less than 10 days.

ARTICLE 165

Negotiation

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

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement as referred to in point (f) of Article 160(3); or

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

ARTICLE 166

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 160, 161 and 162, Article 163(7) to (11), and Articles 164 to 167 under any of the following circumstances:

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

(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) if 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 requirements are for a work of art;

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

(iii) 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 if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability 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) if, and only insofar as is strictly necessary, 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) if 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) if 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 referred to in paragraph 1 that justified the use of limited tendering.

ARTICLE 167

Electronic auctions

A procuring entity that intends to conduct a covered procurement using an electronic auction, shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender if the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the electronic auction.

ARTICLE 168

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 period specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. A procuring entity that provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, 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 qualified supplier.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the qualified supplier that the procuring 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) if price is the sole criterion, the lowest price.

6. If 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. The procuring entity may also verify whether the supplier has obtained subsidies. In that case, the tender may be rejected on that ground alone unless the supplier is able to prove, within a sufficient time period fixed by the procuring entity, that the subsidy was granted in compliance with the disciplines relating to subsidies laid down in Section B of Chapter 11.

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.

8. Each Party shall provide, as a general rule, for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

ARTICLE 169

Transparency of procurement information

Information provided to suppliers

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Article 170(2) and (3), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of award information

2. A procuring entity shall publish a notice in the appropriate electronic or paper medium listed in Section 6 of Annex 9 no later than 72 days after the award of each contract covered by this Chapter. If the procuring 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 166, a description of the circumstances and conditions referred to in paragraph 1 of that Article that justified 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 166; and

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

ARTICLE 170

Disclosure of information

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a covered procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. If releasing the information might prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after obtaining the consent of the Party that provided the 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 if such 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 171

Domestic review procedures

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

(a) a breach of this Chapter; or

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

The procedural rules for all challenges shall be in writing and made publicly available.

2. In the case of a complaint by a supplier, arising in the context of a 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 covered procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring 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 covered procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge. That period of time 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.

4. 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.

5. If a body other than an authority referred to in paragraph 4 initially reviews a challenge, the relevant 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 covered procurement is the subject of the challenge.

6. Each Party shall ensure that a review body referred to in paragraph 5 that is not a court has its decision subject to judicial review or has procedures that provide that:

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

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

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

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

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

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

7. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the covered procurement. Such interim measures may result in suspension of the procurement process. The procedures 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.

Each Party shall also adopt or maintain procedures that provide for corrective action or compensation for the loss or damages suffered, in cases where a review body has determined that there has been a breach or a failure as referred to in paragraph 1. The compensation for the loss or damages suffered may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 172

Modifications and rectifications to coverage

1. A Party may propose to modify its covered procurement set out in Annex 9 or to rectify its relevant Sub-Section in Sections 1, 2 or 3 of Annex 9.

Modifications

2. A Party that intends to propose a modification to Annex 9 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 does not need to provide compensatory adjustments if the modification covers a procuring entity over which the Party has eliminated its control or influence, or if the procuring entity henceforward will be operating as a commercial enterprise subject to competition in a market to which access is not restricted.

A Party is considered to exert control or influence over a procuring entity if that entity:

(a) is financed, for the most part, by the State, or a body controlled by the State;

(b) is subject to management supervision by the State, or a body controlled by the State; or

(c) has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State or a body controlled by the State.

4. The other Party must object in writing to a proposed modification to Annex 9 notified pursuant to paragraph 2 of this Article, if it disputes that:

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

(b) the modification covers a procuring entity over which the Party has eliminated its control or influence pursuant to paragraph 3; or

(c) the procuring entity concerned is operating as a commercial enterprise subject to competition in a market to which access is not restricted.

If no objection is submitted in writing within 45 days after the date of receipt of the notification referred to in point (a) of paragraph 2, the other Party shall be deemed to have agreed to the adjustment or modification.

Rectifications

5. The following changes to a Party's Sub-Section in Sections 1, 2 or 3 of Annex 9 shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in this Chapter:

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

(b) a merger of two or more procuring entities; and

(c) the separation of a procuring entity into two or more entities that are all added to the procuring entities covered by the same Section of Annex 9.

The Party making such rectification of a purely formal nature shall not be obliged to provide for compensatory adjustments.

6. In the case of proposed rectifications to a Party's Sub-Section in Sections 1, 2 or 3 of Annex 9, the Party shall notify the other Party every two years following the entry into force of this Chapter.

7. A Party may notify the other Party of an objection to a proposed rectification in writing within 45 days from having received the notification. A Party submitting an objection shall explain why it considers the proposed rectification to be outside the scope of paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Chapter. If no objection is submitted in writing within 45 days after the date of receipt of the notification, the other Party shall be deemed to have agreed to the proposed rectification.

Consultations and dispute settlement

8. If the other Party objects to the proposed modification or rectification, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days after the date of receipt of the objection, the Party seeking to modify or rectify its Sub-Section in Sections 1, 2 or 3 of Annex 9 may refer the matter to the dispute settlement procedure under Chapter 14 to determine whether the objection is justified.

Amendments of Annex 9

9. Once the Parties agree on any proposed modification or rectification, including where a Party has not objected within 45 days in accordance with paragraph 4 or 7 or where the issue has been resolved through the dispute settlement procedure referred to in paragraph 8, the Cooperation Council acting in its trade configuration shall modify Annex 9 accordingly.

ARTICLE 173

Institutional provisions

On a Party's request, the Cooperation Committee shall meet to address matters related to the implementation and operation of this Chapter as well as of Annex 9, such as:

(a) the necessity of a modification to Annex 9;

(b) issues regarding government procurement that are referred to it by a Party;

(c) any other matter related to the operation of this Chapter.

ARTICLE 174

Transitional period

This Chapter shall become applicable three years after the entry into force of this Agreement.

CHAPTER 10

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 175

Context and objectives

1. The Parties recall Agenda 21 of the UN Conference on Environment and Development of 1992, the International Labour Organization's (hereinafter referred to as "ILO") Declaration on Fundamental Principles and Rights at Work of 1998, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008 and the UN 2030 Agenda for Sustainable Development of 2015 with its Sustainable Development Goals (hereinafter referred to as "SDGs").

2. The Parties reaffirm their commitments to promote the development of international trade and investment in such a way as to contribute to the objective of sustainable development and the fight against climate change. In this context, the Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.

ARTICLE 176

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 policies accordingly, in accordance with internationally recognised standards and agreements and with a view to achieving 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 level of protection afforded in their environmental law or in their labour law and standards.

3. A Party shall not seek to encourage trade or investment by derogating from or, through a sustained or recurring course of action or inaction, failing to enforce its environmental and labour law effectively.

ARTICLE 177

Multilateral environmental agreements and labour conventions

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental challenges as well as of full and productive employment, including skills development and decent work for all, as a key element of sustainable development for all countries and as a priority objective of international cooperation.

2. In this context, and taking into account Articles 259 to 265 of this Agreement, the Parties reaffirm their commitment to effectively implement the multilateral environmental agreements, including the Paris Agreement on Climate Change, that they have ratified respectively.

3. Taking into account Articles 285 to 288 of this Agreement, the Parties reaffirm their commitment to effectively implement the fundamental ILO conventions, as well as other ILO conventions that they have ratified respectively, and to maintain an effective labour inspection system consistent with their commitments as members of the ILO.

ARTICLE 178

Trade and investment favouring sustainable developments

1. The Parties reaffirm their commitment to enhance the contribution of trade to the objective of sustainable development. Accordingly, they agree to promote the use of sustainability assurance schemes, such as fair and ethical trade or eco-labelling, corporate social responsibility and responsible business conduct practices and trade and investment in environmental goods and services as well as in climate-friendly products and technologies.

2. The Parties shall exchange information and share experience on their actions to promote coherence and mutual supportiveness between trade, social and environmental policies, and shall strengthen dialogue and cooperation on sustainable development issues that may arise in the context of their trade relations.

3. Such dialogue and cooperation between the Parties should involve relevant stakeholders, in particular social partners, as well as other civil society organisations, including through the civil society cooperation established pursuant to Article 314, as appropriate.

ARTICLE 179

Dispute settlement

Articles 223, 224 and 225 do not apply to disputes under this Chapter. For any such dispute, after the arbitration panel has delivered its final report pursuant to Articles 219 and 220, the Parties, taking that 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 178(3).

CHAPTER 11

ANTICOMPETITIVE CONDUCT, MERGER CONTROL AND SUBSIDIES

ARTICLE 180

Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade and investment liberalisation.

ARTICLE 181

Competitive neutrality

The Parties shall apply this Chapter to all enterprises, public and private.

ARTICLE 182

Economic activities

This Chapter applies to economic activities.

For the purposes of this Chapter, "economic activities" means those activities pertaining to the offering of goods and services in a market.

SECTION A

ANTICOMPETITIVE CONDUCT AND MERGER CONTROL

ARTICLE 183

Legislative framework

Each Party shall adopt or maintain competition law which applies to all enterprises in all sectors of the economy[1] and addresses, in an effective manner, the following practices:

(a) horizontal and vertical agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(b) the abuse by one or more enterprises of a dominant position; and

(c) concentrations between enterprises which would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

[1] For greater certainty, pursuant to Article 42 of the Treaty on the Functioning of the European Union, competition law in the European Union applies to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ EU L 347, 20.12.2013, p. 671).

ARTICLE 184

Services of general economic interest

The Parties shall ensure that enterprises entrusted with the operation of services of general economic interest are subject to the rules set out in this Section, in so far as the application of those rules does not obstruct the performance, in law or in fact, of the tasks assigned to such enterprises. The tasks assigned shall be transparent and any limitation to or deviation from the application of the rules set out in this Section shall not go beyond what is strictly necessary to achieve those tasks.

ARTICLE 185

Implementation

1. Each Party shall establish or maintain an operationally independent competition authority which is responsible for, and appropriately equipped with the powers and resources necessary to ensure, the full application and the effective enforcement of its competition law referred to in Article 183.

2. Each Party shall apply its competition law referred to in Article 183 in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.

ARTICLE 186

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement.

2. To facilitate such cooperation, the competition authorities of the Parties may exchange information, subject to the confidentiality rules laid down in the Parties' respective law.

3. The competition authorities of the Parties shall endeavour to coordinate, where possible and appropriate, their enforcement activities relating to the same or related conduct or cases.

ARTICLE 187

Non-application of dispute settlement

Chapter 14 does not apply to this Section.

SECTION B

SUBSIDIES

ARTICLE 188

Definition and scope

1. For the purposes of this Section, "a subsidy" means a measure that fulfils the conditions set out in paragraph 1.1 of Article 1 of the SCM Agreement, irrespective of whether it is granted to an enterprise supplying goods or services[1].

2. This Section applies to subsidies that are specific within the meaning of Article 2 of the SCM Agreement or that fall within the scope of Article 192 of this Agreement.

3. The Parties shall ensure that subsidies to enterprises entrusted with the operation of services of general economic interest are subject to the rules set out in this Section, in so far as the application of those rules does not obstruct the performance, in law or in fact, of the tasks assigned to these enterprises. The tasks assigned shall be transparent and any limitation to or deviation from the application of the rules set out in this Section shall not go beyond what is strictly necessary to achieve those tasks.

[1] This definition is without prejudice to the outcome of any future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions at the WTO level, the Parties may update this Agreement in this respect.

4. Article 191 of this Agreement does not apply to subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture.

5. Articles 191 and 192 do not apply to the audio-visual sector.

6. Article 192 does not apply to subsidies formally agreed or granted before or within five years of the entry into force of this Agreement.

ARTICLE 189

Relationship with the WTO

Nothing in this Section shall affect the rights or obligations of either Party under the SCM Agreement, the Agreement on Agriculture, Article XVI of GATT 1994 or Article XV of GATS.

ARTICLE 190

Transparency

1. Each Party shall, with respect to a subsidy granted or maintained within its territory, make the following information public:

(a) the legal basis and purpose of the subsidy;

(b) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient of the subsidy.

2. A Party shall comply with paragraph 1 by:

(a) submitting a notification pursuant to Article 25 of the SCM Agreement, which is provided at least every two years;

(b) submitting a notification pursuant to Article 18 of the Agreement on Agriculture; or

(c) ensuring that the information referred to in paragraph 1 is published by itself or on its behalf on a publicly accessible website by 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained.

ARTICLE 191

Consultations

1. If a Party considers that a subsidy is adversely affecting or is likely to adversely affect its trade or investment liberalisation interests, it may express its concern in writing to the other Party and request further information on the matter.

2. The request referred to in paragraph 1 shall include an explanation of how the subsidy is adversely affecting or is likely to adversely affect the requesting Party's interests. The requesting Party may seek the following information about the subsidy:

(a) the legal basis for and policy objective or purpose of the subsidy;

(b) the form of the subsidy;

(c) the dates and duration of the subsidy and any other time limits attached to it;

(d) the eligibility requirements for the subsidy;

(e) the total amount or the annual amount budgeted for the subsidy;

(f) if possible, the name of the recipient of the subsidy; and

(g) any other information permitting an assessment of the adverse effects of the subsidy.

3. The requested Party shall provide the information requested in writing within a reasonable period of time, in principle not exceeding 60 days after the date of delivery of the request. In the event that the requested Party does not provide any of the information requested, that Party shall explain the absence of such information in its written response within the same period of time.

4. After having received the information requested, the requesting Party may request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held within a reasonable period of time, in principle not exceeding 60 days after the date of delivery of the request for consultations.

5. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

ARTICLE 192

Subsidies subject to conditions

1. The following subsidies shall be allowed subject to the conditions below for the purposes of this Section:

(a) subsidies whereby a government guarantees debts or liabilities of certain enterprises, provided that the amount of those debts and liabilities or the duration of such guarantee are limited; and

(b) subsidies to insolvent or ailing enterprises in various forms, provided that:

(i) there is a credible restructuring plan based on realistic assumptions with a view to ensuring the return to long-term viability of the insolvent or ailing enterprise within a reasonable time period; and

(ii) the enterprise contributes to the costs of restructuring; small and medium-sized enterprises are not obliged to contribute to the costs of restructuring.

2. Point (b) of paragraph 1 does not apply to subsidies provided to enterprises as temporary liquidity support in the form of loan guarantees or loans during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business.

3. Subsidies to ensure the orderly market exit of a company shall be allowed.

4. This Article does not apply to subsidies the cumulative amounts or budgets of which are less than EUR 200 000 per enterprise over a period of three consecutive years.

5. Paragraph 1 does not apply to subsidies that are granted to remedy a serious disturbance in the economy of a Party. A disturbance in the economy of a Party shall be considered serious if it is exceptional, temporary and significant.

6. To the extent that they do not fall within the scope of Article 188(3), subsidies provided for implementation of programmes, in particular in the areas of social housing and railway transport for commodities, are exempted from respecting the conditions referred to in paragraph 1 of this Article provided that they are socially oriented.

ARTICLE 193

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the policy objective for which the subsidies were granted[1].

[1] For greater certainty, when a Party has set up the relevant legislative framework and administrative procedures to this effect, the obligation is considered to be fulfilled.

CHAPTER 12

STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES, AND DESIGNATED MONOPOLIES

ARTICLE 194

Definitions

For the purposes of this Chapter:

(a) "Arrangement" means the Arrangement on Officially Supported Export Credits of the Organisation for Economic Co-operation and Development (hereinafter referred to as "OECD") or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

(b) "commercial activities" means activities the end result of which is the production of a good or supply of a service which will be sold in quantities and at prices determined by an enterprise, and are undertaken with an orientation towards profit-making[1];

[1] For greater certainty, this excludes activities undertaken by an enterprise: (a) which operates on a non-profit basis; or (b) which operates on cost recovery basis.

(c) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;

(d) "designated monopoly" means an entity, including a consortium or a government agency, that in a relevant market in the territory of a Party is designated 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 granting;

(e) "designate" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(f) "enterprise granted special rights or privileges" means an enterprise, public or private, to which a Party has granted, in law or in fact, special rights or privileges by designating or limiting to two or more the number of enterprises authorised to supply a good or a service, other than according to objective, proportional and non-discriminatory criteria, in a way that substantially affects the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

(g) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS, including, where applicable, in the Annex on Financial Services to GATS.

(h) "state-owned enterprise" means an enterprise in which a Party:

(i) directly owns more than 50 % of share capital;

(ii) controls, directly or indirectly, the exercise of more than 50 % of the voting rights;

(iii) holds the power to appoint a majority of the members of the board of directors or an equivalent management body; or

(iv) has the power to exercise control over the enterprise.

ARTICLE 195

Scope

1. The Parties confirm their rights and obligations under paragraphs 1, 2 and 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

2. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies engaged in a commercial activity. Where such enterprises or monopolies engage in both commercial and non-commercial activities, only the commercial activities are covered by this Chapter.

3. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at all levels of government.

4. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges or designated monopolies where they act as procuring entities covered under each Party's annexes to Appendix I to the Agreement on Government Procurement, done at Marrakesh on 15 April 1994, contained in Annex 4 to the WTO Agreement, or under Annex 9 to this Agreement for governmental purposes and where they do not act with a view to reselling the goods or services procured on a commercial basis or with a view to using the goods or services procured in the production of goods or in the supply of services for commercial sale.

5. This Chapter does not apply to any service supplied in the exercise of governmental authority.

6. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges or designated monopolies engaged exclusively in the production of military and defence-related products[1].

7. This Chapter does not apply to a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly if in any one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of that enterprise or monopoly was less than 50 million special drawing rights.

[1] For greater certainty, insofar as such enterprises or monopolies are engaged in commercial activities unrelated to military or defence activities, such activities are covered by this Chapter.

8. Article 197 does not apply to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

(a) supports exports or imports, provided that the services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that the services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement[1].

9. Article 197 does not apply to the service sectors outside the scope of this Agreement as set out in Chapter 6.

[1] For greater clarity, the Parties acknowledge that the Kyrgyz Republic is not a Participant to the Arrangement, but, nevertheless, the Parties understand that this provision confers rights equally to the Parties of this Agreement.

ARTICLE 196

General provisions

1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter prevents a Party from establishing or maintaining state-owned enterprises, granting enterprises special rights or privileges or designating or maintaining monopolies.

2. Neither Party shall require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

ARTICLE 197

Non-discriminatory treatment and commercial considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or a service, except to fulfil any terms of its public service mandate[1], for example concerning socially-oriented programmes and projects, that are not inconsistent with point (b) or (c);

[1] For greater clarity, state-owned banks may be assigned a public service mandate to grant preferential loans for agricultural sector. Such loans are to be considered domestic support for agriculture.

(b) in its purchase of a good or a service:

(i) accords to a good or a service supplied by an enterprise of the other Party treatment no less favourable than that which it accords to a like good or a like service supplied by its enterprises; and

(ii) accords to a good or a service supplied by an enterprise of the other Party that is a covered investment in its territory treatment no less favourable than that which it accords to a like good or a like service supplied by enterprises in the relevant market in its territory that are investments of investors of the Party; and

(c) in its sale of a good or a service:

(i) accords to an enterprise of the other Party treatment no less favourable than that which it accords to its enterprises; and

(ii) accords to an enterprise of the other Party that is a covered investment in its territory treatment no less favourable than that which it accords to enterprises in the relevant market in its territory that are investments of its investors.

2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price, provided that the purchase or supply is undertaken in accordance with commercial considerations; or

(b) refusing to purchase or supply goods or services, provided that this is done on the basis of commercial considerations.

ARTICLE 198

Regulatory framework

1. The Parties shall endeavour to respect and make best use of relevant international standards, including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any regulatory body that it establishes or maintains or any body that it entrusts with a regulatory function:

(a) is independent of, and not accountable to, any of the enterprises that that body regulates in order to ensure the effectiveness of the regulatory function; and

(b) acts impartially[1] with respect to all enterprises that that body regulates, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies[2].

[1] For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body.

[2] For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body in other Chapters, the relevant provision in those other Chapters shall prevail.

3. Each Party shall apply its laws and regulations to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

ARTICLE 199

Transparency

1. A Party which has reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly of the other Party may request in written form that other Party to supply information about the operations of that enterprise or monopoly related to the implementation of this Chapter.

2. Requests for information as referred to in paragraph 1 shall indicate:

(a) the enterprise or monopoly concerned;

(b) the goods or services and markets concerned;

(c) the interests under this Chapter that the requesting Party believes to be adversely affected;

(d) practices in which the enterprise or monopoly is engaging that hinder trade or investment between the Parties in a manner inconsistent with this Chapter; and

(e) which of the following information is to be provided:

(i) the ownership and the voting structure of the enterprise or monopoly, indicating the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the enterprise or monopoly;

(ii) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, where such rights are different from those attached to the general common shares of the enterprise or monopoly;

(iii) a description of the organisational structure of the enterprise or monopoly and its composition of the board of directors or of any other equivalent body;

(iv) a description of the government departments or public bodies that regulate or monitor the enterprise or monopoly, a description of the reporting requirements imposed on the enterprise or monopoly by those departments or bodies, and the rights and practices of the government departments or public bodies in the appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent management body of the enterprise or monopoly;

(v) annual revenue and total assets of the enterprise or monopoly over the most recent three-year period for which information is available;

(vi) any exemptions, immunities and related measures from which the enterprise or monopoly benefits under the laws and regulations of the requested Party; and

(vii) any additional information regarding the enterprise or monopoly that is publicly available, including annual financial reports and third-party audits.

3. If the requested information is not available to the requested Party, that Party shall provide the reasons for this in writing to the requesting Party.

CHAPTER 13

TRANSPARENCY

ARTICLE 200

Definitions

For the purposes of this Chapter:

(a) "administrative decision" means a decision with legal effect that affects the rights and obligations of a specific person in an individual case, and covers an administrative action or failure to take an administrative action or decision as provided for in the Party's law;

(b) "interested person" means any person that is or may be affected by a measure of general application;

(c) "measure of general application" means laws, regulations, procedures and administrative rulings of general application that may have an impact on any matter covered by this Title.

ARTICLE 201

Objective

Recognising the impact which their respective regulatory environment may have on trade and investment between them, the Parties aim to promote a predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises, in accordance with the provisions of this Chapter.

ARTICLE 202

Publication

1. Each Party shall ensure that a measure of general application with respect to any matter covered by this Title:

(a) is promptly published via an officially designated medium and, where feasible, electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with it;

(b) provides an explanation of the objective of, and rationale for, the measure; and

(c) allows for sufficient time between publication and entry into force of such a measure, except where this is not possible on grounds of urgency.

2. When adopting or amending laws or regulations of general application with respect to any matter covered by this Title, each Party shall, in accordance with its respective rules and procedures:

(a) publish at an early appropriate stage the draft law or regulation or consultation documents providing details of the objective of, and rationale for, the proposed law or regulation;

(b) provide reasonable opportunities and an appropriate period of time for interested persons to comment; and

(c) endeavour to take into consideration the comments received.

ARTICLE 203

Enquiries

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any person regarding any measure of general application which is proposed or is in force, with respect to any matter covered by this Title.

2. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any measure of general application or any proposal to adopt, amend or repeal any measure of general application with respect to any matter covered by this Title and that the requesting Party considers might affect the operation of this Agreement.

ARTICLE 204

Administration of measures of general application

1. Each Party shall administer in an objective, impartial and reasonable manner all measures of general application with respect to any matter covered by this Title.

2. Each Party, in applying the measures referred to in paragraph 1 to specific persons, goods or services of the other Party in individual cases shall:

(a) endeavour to provide interested persons who are directly affected by administrative proceedings with reasonable notice, in accordance with its laws and regulations, when proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and, where appropriate, a general description of any issues in dispute; and

(b) provide those interested persons with a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings and the public interest permit.

ARTICLE 205

Review

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative decisions with respect to any matter covered by this Title. Each Party shall ensure that its procedures for review are carried out in a non-discriminatory and impartial manner. Each Party shall ensure that its tribunals carrying out such review are impartial and independent of the office or authority entrusted with administrative enforcement and do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties to the proceedings referred to in paragraph 1 are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. The decision referred to in point (b) of paragraph 2 shall, subject to appeal or further review as provided for in each Party's law, be implemented by the office or authority entrusted with administrative enforcement.

ARTICLE 206

Regulatory quality, performance and good regulatory practices

1. The Parties recognise the principles of good regulatory practices and shall promote regulatory quality and performance, including by:

(a) encouraging the use of regulatory impact assessments when developing major initiatives; and

(b) establishing or maintaining procedures to promote periodic retrospective evaluation of their measures of general application.

2. The Parties shall endeavour to cooperate in regional and multilateral fora and to promote good regulatory practices and transparency in respect of international trade and investment in areas covered by this Title.

ARTICLE 207

Specific provisions

This Chapter shall apply without prejudice to any specific transparency rules established in the other Chapters of this Title.

CHAPTER 14

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 208

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Title with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 209

Scope

This Chapter applies to any dispute between the Parties concerning the interpretation or application of this Title (hereinafter referred to as "covered provisions"), unless otherwise provided for in this Title.

ARTICLE 210

Definitions

1. For the purposes of Chapter 14 and Annexes 14-A-and 14-B:

(a) "administrative staff" means individuals, other than assistants, under the direction and control of a panellist;

(b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;

(c) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;

(d) "candidate" means an individual whose name is on the list of panellists referred to in Article 214 and who is under consideration for selection as a panellist in accordance with Article 213;

(e) "complaining Party" means a Party that requests the establishment of a panel under Article 212;

(f) "mediator" means an individual who has been selected as a mediator in accordance with Article 236;

(g) "panel" means a panel established pursuant to Article 213;

(h) "panellist" means a member of a panel;

(i) "Party complained against" means a Party that is alleged to be in violation of the covered provisions;

(j) "representative" means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Title.

SECTION B

CONSULTATIONS

ARTICLE 211

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 209 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 identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to the request promptly, and in any case no later than 10 days after the date of its delivery. Consultations shall be held no later than 30 days after the date of delivery of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. Consultations shall be deemed to have been concluded within 30 days after the date of delivery of the request, unless the Parties agree to continue them further.

4. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 15 days after the date of delivery of the request. Consultations shall be deemed to have been concluded within those 15 days unless the Parties agree to continue them further.

5. During consultations, each Party shall provide the other Party with sufficient factual information to allow a complete examination of the manner in which the measure at issue could affect the application of the covered provisions. Each Party shall endeavour to ensure the participation of personnel of their competent governmental authorities who have expertise in the matter subject to the consultations.

6. Consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

SECTION C

PANEL PROCEDURES

ARTICLE 212

Initiation of panel procedures

1. A Party that sought consultations in accordance with Article 211 may request the establishment of a panel if:

(a) the Party to which the request for consultation is made in accordance with Article 211 does not respond to that request within 10 days after the date of its delivery;

(b) consultations are not held within the time periods set out in Article 211(3) or (4);

(c) the Parties agree not to have consultations; or

(d) consultations have been concluded and no mutually agreed solution has been reached.

2. A Party that requests the establishment of a panel (hereinafter referred to as the "complaining Party") shall do so by means of a written request delivered to the Party that is alleged to be in violation of the covered provisions (hereinafter referred to as the "Party complained against"). The complaining Party shall identify the measure at issue in its request, and explain how that measure is inconsistent with the covered provisions in a manner that clearly presents the legal basis for the complaint.

ARTICLE 213

Establishment of a panel

1. A panel shall be composed of three panellists.

2. Within 14 days after the date of delivery of the written request for the establishment of a panel, the Parties shall consult one another with a view to agreeing on the composition of the panel.

3. If the Parties are unable to agree on the composition of the panel within the time period set out in paragraph 2 of this Article, each Party shall appoint a panellist from its sub-list established under Article 214 within five days after the expiry of the time period set out in paragraph 2 of this Article. If a Party does not appoint a panellist from its sub-list within that time period, the co-chair of the Cooperation Committee from the complaining Party shall select the panellist by lot, within five days after the expiry of that time period, from the sub-list of the Party that did not appoint a panellist. The co-chair of the Cooperation Committee from the complaining Party may delegate such selection by lot of the panellist.

4. If the Parties are unable to agree on the chairperson of the panel within the time period set out in paragraph 2 of this Article, the co-chair of the Cooperation Committee from the complaining Party shall select the chairperson of the panel by lot, within five days after the expiry of that time period, from the sub-list of chairpersons established under Article 214. The co-chair of the Cooperation Committee from the complaining Party may delegate such selection by lot of the chairperson of the panel.

5. If any of the lists provided for in Article 214 have not been established or do not contain sufficient names at the time a request is made pursuant to Article 212, the panellists shall be selected in accordance with the Rules of Procedure set out in Annex 14-A.

6. The date of establishment of the panel shall be the date on which all three selected panellists have notified their acceptance of appointment in accordance with the Rules of Procedure set out in Annex 14-A.

ARTICLE 214

Lists of panellists

1. The Cooperation Committee shall, no later than six months after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by the Kyrgyz Republic; and

(c) one sub-list of individuals who are not nationals of either Party and who are willing and able to serve as chairperson of the panel.

2. Each sub-list shall include at least five individuals. The Cooperation Committee shall ensure that each sub-list is always maintained at that minimum number of individuals.

3. The Cooperation Committee may establish additional lists of individuals with expertise in specific sectors covered by this Title. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 213.

ARTICLE 215

Requirements for panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade and other matters covered by this Title;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in an individual capacity and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with the Code of Conduct for Panellists and Mediators set out in Annex 14-B.

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject matter of a particular dispute, the Parties may agree to derogate from the requirements listed in point (a) of paragraph 1.

ARTICLE 216

Functions of the panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and

(c) should regularly consult with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 217

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of this Title cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with those provisions and to deliver a report in accordance with Articles 219 and 220."

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 218

Decision on urgency

1. If a Party so requests, the panel shall decide, within 10 days after its establishment, whether the case concerns a matter of urgency.

2. In cases of urgency, the applicable time periods set out in this Section shall be half the time prescribed therein, except for the time periods referred to in Articles 213 and 217.

ARTICLE 219

Interim report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall, under no circumstances, deliver its interim report later than 120 days after the date of establishment of the panel.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days after the date of its delivery. A Party may comment on the other Party's request within six days after the delivery of the request.

ARTICLE 220

Final report

1. The panel shall deliver its final report to the Parties within 120 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall, under no circumstances, deliver its final report later than 150 days after the date of establishment of the panel.

2. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.

ARTICLE 221

Compliance measures

1. The Party complained against shall take any measures necessary to comply promptly with the findings and conclusions in the final report in order to bring itself into compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after delivery of the final report, notify the complaining Party in writing of the measures which it has taken, or which it envisages to take, to comply with the final report.

ARTICLE 222

Reasonable period of time

1. If immediate compliance in accordance with Article 221(1) is not possible, the Party complained against shall, no later than 30 days after delivery of the final report, notify the complaining Party in writing of the length of the reasonable period of time it will require. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the final report.

2. If the Parties are unable to agree on the length of the reasonable period of time referred to in paragraph 1, the complaining Party may, at the earliest 20 days after the date of delivery of the notification referred to in paragraph 1, request in writing that the original panel determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days after the date of delivery of the request.

3. The Party complained against shall notify the complaining Party in writing of its progress in complying with the final report at least one month before the expiry of the reasonable period of time established in accordance with paragraph 2.

4. The Parties may agree to extend the reasonable period of time established in accordance with paragraph 2.

ARTICLE 223

Compliance review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time referred to in Article 222, notify the complaining Party in writing of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence of measures taken to comply with the final report or the consistency of such measures with the covered provisions, the complaining Party may deliver a written request to the original panel to decide on the matter. The request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner that clearly presents the legal basis for the complaint. The panel shall deliver its decision to the Parties within 46 days after the date of delivery of the request.

ARTICLE 224

Temporary remedies

1. The Party complained against shall, upon request by and after consultations with the complaining Party, present an offer for temporary compensation if:

(a) the Party complained against notifies the complaining Party in writing that it is not possible to comply with the final report;

(b) the Party complained against fails to deliver a written notification of any measure taken to comply with the final report within the deadline referred to in Article 221(2) or before the date of expiry of the reasonable period of time; or

(c) the panel finds that no measure has been taken to comply or that the measure taken to comply is inconsistent with the covered provisions.

2. Under any of the situations referred to in points (a), (b) and (c) of paragraph 1, the complaining Party may notify the Party complained against in writing that it intends to suspend the application of its obligations under the covered provisions if:

(a) the complaining Party decides not to make a request under paragraph 1; or

(b) where the complaining Party has made a request under paragraph 1 of this Article, the Parties do not agree on temporary compensation within 20 days after the expiry of the reasonable period of time referred to in Article 222 or the delivery of the panel decision under Article 223(2).

The notification shall specify the level of intended suspension of obligations.

3. The complaining Party may suspend obligations under the covered provisions 10 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against has delivered a request under paragraph 5.

4. The level of suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation of the covered provisions.

5. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel before the expiry of the 10-day period set out in paragraph 3 to decide on the matter. The panel shall deliver its decision to the Parties within 30 days after the date of the request. Obligations shall not be suspended until the panel has delivered its decision. The suspension of obligations shall be consistent with that decision.

6. The compensation or the suspension of obligations referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 240;

(b) the Parties have agreed that the measure taken to comply with the final report brings the Party complained against into compliance with the covered provisions; or

(c) any measure taken to comply with the final report which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into compliance with those provisions.

ARTICLE 225

Review of any measure taken to comply after the adoption of temporary remedies

1. The Party complained against shall notify the complaining Party in writing of any measure it has taken to comply with the final report following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases in which paragraph 2 applies, the complaining Party shall terminate the suspension of obligations within 30 days after the date of delivery of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after the date of delivery of the notification that it has complied.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 brings the Party complained against into compliance with the covered provisions within 30 days after the date of delivery of the notification, the complaining Party may deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 46 days after the date of delivery of the request. If the panel finds that the measure taken to comply with the final report is in compliance with the covered provisions, the suspension of obligations or the compensation, as the case may be, shall be terminated. Where relevant, the complaining Party shall adjust the level of suspension of obligations or the level of compensation in light of the panel decision.

3. If the Party complained against considers that the level of suspension implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision within 46 days after the date of delivery of the request.

ARTICLE 226

Replacement of panellists

If, during dispute settlement procedures, a panellist is unable to participate, withdraws or needs to be replaced because he or she does not comply with the Code of Conduct for Panellists and Mediators set out in Annex 14-B, the procedure provided for in Article 213 applies. The time periods for the delivery of the reports or decisions of the panel set out in this Section shall be extended as necessary for the appointment of the new panellist.

ARTICLE 227

Rules of procedure

1. Panel procedures shall be governed by this Chapter and the Rules of Procedure set out in Annex 14-A.

2. Any hearing of the panel shall be open to the public unless otherwise provided in the Rules of Procedure set out in Annex 14-A.

ARTICLE 228

Suspension and termination

At the request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or at the end of the suspension period at the written request of either Party. Where the latter applies, the requesting Party shall notify the other Party in writing of the request. If neither Party requests the resumption of the panel's work at the end of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated. In the event of the suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended.

ARTICLE 229

Receipt of information

1. At the request of a Party, or its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. At the request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel may also seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. Natural persons of a Party or legal persons established in a Party may file *amicus curiae* submissions in accordance with the Rules of Procedure set out in Annex 14-A.

4. Any information obtained by the panel under this Article shall be disclosed to the Parties. The Parties may provide comments on that information.

ARTICLE 230

Rules of interpretation

The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of WTO panels and reports of the Appellate Body adopted by the WTO Dispute Settlement Body under the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "WTO Dispute Settlement Understanding"). Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 231

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If this is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The reports and decisions of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

3. Each Party shall make the reports and decisions of the panel and its submissions publicly available, subject to the protection of confidential information.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with the Rules of Procedure set out in Annex 14-A.

ARTICLE 232

Choice of forum

1. Where a dispute arises regarding a particular measure in alleged breach of an obligation under this Title and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the complaining Party shall select the forum in which to settle the dispute.

2. Once the complaining Party has selected the forum and initiated dispute settlement procedures under this Section or under another international agreement, that Party shall not initiate dispute settlement procedures under the other international agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel under Article 212;

(b) dispute settlement procedures 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 Dispute Settlement Understanding;

(c) dispute settlement procedures under any other international agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the WTO Dispute Settlement Body or authorised under the dispute settlement procedures of another international agreement to which both disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Section.

SECTION D

MEDIATION MECHANISM

ARTICLE 233

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 234

Request for information

1. At any time before the initiation of the mediation procedure, a Party may deliver to the other Party a written request for information regarding a measure that adversely affects trade or investment between the Parties. The Party to which such request is delivered shall, within 20 days after the date of delivery of the request, deliver a written response containing its comments on the requested information.

2. If the responding Party considers that it will not be able to deliver a response within 20 days after the date of delivery 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. A Party is normally expected to make a request for information in accordance with paragraph 1 before the initiation of the mediation procedure.

ARTICLE 235

Initiation of the mediation procedure

1. A Party may at any time request to enter into a mediation procedure with respect to a measure that adversely affects trade or investment between the Parties.

2. The request referred to in paragraph 1 shall be made by means of a written request delivered to the other Party. The request shall present the concerns of the requesting Party clearly and in sufficient detail and shall:

(a) identify the specific measure at issue;

(b) provide a statement on the adverse effects that the requesting Party considers 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.

3. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator. The Party to which the request to enter into a mediation procedure is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days after the date of its delivery. If the Party to which the request is made fails to deliver its written acceptance or rejection within that period the request shall be regarded as rejected.

ARTICLE 236

Selection of the mediator

1. The Parties shall endeavour to agree on a mediator within 10 days after the initiation of the mediation procedure.

2. In the event that the Parties are unable to agree on the mediator within the time period set out in paragraph 1 of this Article, either Party may request the co-chair of the Cooperation Committee from the Party requesting to enter into a mediation procedure to select the mediator by lot, within five days after the request, from the sub-list of chairpersons established in accordance with Article 214. The co-chair of the Cooperation Committee from the Party requesting to enter into a mediation procedure may delegate such selection by lot of the mediator.

3. If the sub-list of chairpersons provided for in point (c) of Article 214(1) has not been established at the time a request is made pursuant to Article 235, the mediator shall be drawn by lot from the individuals who have been formally proposed by one Party or both Parties for that sub-list.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with the Code of Conduct for Panellists and Mediators set out in Annex 14-B.

ARTICLE 237

Rules of the mediation procedure

1. Within 10 days after the date on which the mediator was agreed upon pursuant to Article 236(1) or selected pursuant to Article 236(2) or (3), the Party which initiated the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular as regards the operation of the measure at issue and its possible adverse effects on trade or investment between the Parties. The other Party may provide written comments on that description within 20 days after the date of delivery thereof. Either Party may include any information that it deems relevant in its description or comments.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on trade or investment between the Parties. 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 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. The mediator shall not advise or comment on the consistency of the measure at issue with this Title.

4. The mediation procedure shall take place in the territory of the Party to which the request was made, 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 after the date on which the mediator was agreed upon pursuant to Article 236(1) or selected pursuant to Article 236(2) or (3). Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods or seasonal goods or services.

6. A mutually agreed solution may be adopted by a decision of the Cooperation Committee. Either Party may make the mutually agreed solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information that a Party has designated as confidential.

7. Upon the request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

(a) a brief summary of the specific measure at issue;

(b) the procedures followed; and

(c) if applicable, any mutually agreed solution reached, including possible interim solutions.

The mediator shall allow the Parties 15 days to comment on the draft factual report. After considering the comments of the Parties, the mediator shall, within another 15 days, deliver a final factual report to the Parties. The final factual report shall not include any interpretation of this Title.

8. The procedure shall be terminated by:

(a) the adoption of a mutually agreed solution by the Parties, on the date of its adoption;

(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 having explored proposed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

ARTICLE 238

Confidentiality

Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, shall be confidential. Each Party may disclose to the public the fact that mediation is taking place.

ARTICLE 239

Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C of this Chapter or under dispute settlement procedures under any other international agreement.

2. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Title or any other international agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered in accordance with Article 237(2);

(b) the fact that the other Party has indicated its willingness to accept a solution in relation to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, a mediator shall not serve as a member of a panel in dispute settlement procedures under this Title or under any other international agreement involving the same matter for which he or she has been a mediator.

SECTION E

COMMON PROVISIONS

ARTICLE 240

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute covered by Article 209.

2. If a mutually agreed solution is reached during the panel or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, as appropriate. Upon such notification, the panel or the mediation procedure shall be terminated.

3. Each Party shall take any measures necessary to implement the mutually agreed solution within the agreed time period.

4. Each Party shall, before the expiry of the agreed time period, inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 241

Time periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following the act to which they refer.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. Under Section C, the panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 242

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.

2. The Parties shall share jointly and equally the expenses for organisational matters, including the remuneration and expenses of the panellists and of the mediator. The remuneration of the panellists and of the mediator shall be in accordance with WTO practice and shall be determined in accordance with the Rules of Procedure set out in Annex 14-A.

ARTICLE 243

Annexes

The Cooperation Council may modify Annexes 14-A and 14-B.

CHAPTER 15

EXCEPTIONS

ARTICLE 244

General exceptions

1. For the purposes of Chapters 2, 3, 6 and 12, Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. 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 Parties where like conditions prevail, or a disguised restriction on investment liberalisation or trade in services, nothing in Chapter 6 or Chapter 12 shall be construed to prevent the adoption or enforcement by either Party of measures necessary to:

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

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

[1] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

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

(i) the prevention of deceptive and fraudulent practices;

(ii) the effects of a default on contracts;

(iii) 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; and

(iv) safety.

3. For greater certainty, the Parties understand that, to the extent that measures covered by paragraphs 1 and 2 of this Article are otherwise inconsistent with Chapters 6 and 12:

(a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures which are necessary to protect human, animal or plant life or health;

(b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement multilateral environmental agreements can fall under point (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of the provision of such information, the Party may take the relevant measures. Where exceptional and critical circumstances requiring immediate action make the provision of prior information impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation. That Party shall inform the other Party thereof immediately.

ARTICLE 245

Taxation

1. Nothing in this Title shall affect the rights and obligations of the Kyrgyz Republic or the European Union or its Member States under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, that tax convention shall prevail to the extent of the inconsistency.

2. Articles 33 and 72 of this Agreement shall not apply to an advantage accorded by a Party pursuant to a tax convention.

3. 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 Parties where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Title shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

(a) distinguishes between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or

(b) aims to prevent the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic fiscal legislation.

4. For the purposes of this Article:

(a) "residence" means residence for tax purposes;

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the Kyrgyz Republic or the European Union or its Member States are party.

ARTICLE 246

Disclosure of information

1. Nothing in this Title shall be construed as requiring a Party to make available confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 14. In such cases, the treatment of confidential information shall be governed by the relevant provisions of Chapter 14.

2. When a Party submits to the other Party, including through the bodies established under this Agreement, information which is considered confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 247

WTO waivers

If an obligation in this Title is substantially equivalent to an obligation contained in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the substantively equivalent provision of this Agreement.

TITLE V

COOPERATION IN THE AREA OF ECONOMIC AND SUSTAINABLE DEVELOPMENT

ARTICLE 248

General cooperation objectives

1. The Parties shall cooperate on economic reform by improving the shared understanding of the fundamentals of their respective economies and the formulation and implementation of economic policies.

2. The Kyrgyz Republic shall take further steps to develop a well-functioning and sustainable market economy, including the improvement of the investment climate and an increased inclusion of the private sector. The Parties shall work together in ensuring sound macroeconomic policies and public finance management that are compatible with the fundamental principles of effectiveness, transparency and accountability.

ARTICLE 249

General cooperation principles

The Parties shall:

(a) exchange experience and best practices related to strategies for sustainable development, including the promotion of economic, social and cultural rights;

(b) exchange information on macroeconomic trends and policies, as well as on structural reforms;

(c) exchange expertise and best practices in areas such as public-finance, monetary and exchange-rate policy frameworks, financial-sector policy and economic statistics;

(d) exchange information and experiences on regional economic integration, including the functioning of the European economic and monetary union;

(e) review the status of bilateral cooperation in the economic, financial and statistical fields.

ARTICLE 250

Management of public finances, financial control and external audit

The Parties shall cooperate on the further development of robust public financial management systems for the Kyrgyz Republic, essential for the country's financial framework within which the government of the Kyrgyz Republic delivers its economic and social policy objectives for the benefit of its citizens, and which rest on the following best principles and practices:

(a) the government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years, and all budget institutions operate within that budgetary framework;

(b) the budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed;

(c) the central budget authority, or authorised treasury authority, centrally controls disbursement of funds from the treasury single account and ensures cash liquidity;

(d) there is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt-servicing costs are kept under control;

(e) budget transparency and scrutiny are ensured;

(f) the operational framework for internal control defines responsibilities and powers, and is implemented by budget institutions in line with the overall internal control policy;

(g) the operational framework for internal audit reflects international standards and is applied consistently by government institutions;

(h) public procurement regulations are aligned with internationally recognised principles of economy, efficiency, transparency, openness and accountability, and there is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently;

(i) the remedies system is aligned with applicable agreements and international regulations, with internationally recognised good practice of independence, probity and transparency, and provides for rapid and competent handling of complaints and sanctions;

(j) public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, and ensure the most efficient use of public funds, and contracting authorities have appropriate capacities and use modern procurement techniques;

(k) the independence, mandate and organisation of the supreme audit institution are established and protected by the constitutional and legal frameworks and are respected in practice;

(l) the supreme audit institution applies standards in a neutral and objective manner to ensure high-quality audits which positively impact on the governance and functioning of the public sector.

ARTICLE 251

Cooperation in the area of taxation

The Parties recognise and shall implement the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the minimum standards against base erosion and profit shifting ("BEPS"). The Parties shall promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of legitimate tax revenues.

ARTICLE 252

Cooperation in the area of statistics

1. The Parties shall promote the harmonisation of statistical methods and practice, including the gathering and dissemination of statistics by a sustainable, efficient and professionally independent national statistical system.

2. Cooperation in the area of statistics shall focus on exchange of knowledge, fostering good practices and respect for the Fundamental Principles of Official Statistics adopted by the UN General Assembly Resolution 68/261 of 29 January 2014 and, when relevant, the revised European Statistics Code of Practice adopted by the European Statistical System Committee on 16 November 2017, including any subsequent amendments.

3. The Parties shall exchange best practices in the field of training and capacity building in all fields of statistics.

ARTICLE 253

General energy cooperation objectives

1. The Parties shall cooperate on energy matters with the objective of promoting the use of renewable energy sources, energy efficiency and energy security.

2. This cooperation shall be based on a comprehensive partnership and shall be guided by mutual interest, reciprocity, transparency and predictability according to the principles of market economy and the Energy Charter Treaty, done at Lisbon on 17 December 1994.

3. This cooperation shall also be aimed at promoting regional energy cooperation, with special regard to the integration of the Central Asian countries with each other and into international markets and corridors.

ARTICLE 254

Cooperation in the energy sector

Cooperation in the energy sector shall cover, inter alia, the following areas:

(a) enhancing renewable energy sources, energy efficiency and energy security, especially reliability, safety and sustainability of energy supply, by promoting regional energy cooperation, including the establishment of the regional energy markets and facilitating intra- and inter-regional energy trade and exchanges;

(b) implementation of energy strategies and policies, discussion of outlooks and scenarios, including global market conditions for energy products, as well as improvement of the statistical system in the energy sector;

(c) 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;

(d) exchanges with the European Investment Bank, the European Bank for Reconstruction and Development and other relevant international financial institutions and instruments in the field of energy;

(e) scientific and technical exchanges for the development of energy technologies with particular attention to energy efficient and environmentally friendly technologies;

(f) collaboration in multilateral energy fora, initiatives and institutions;

(g) exchange of knowledge and experience as well as technology transfer in innovation, including in the areas of management and energy technologies.

ARTICLE 255

Renewable energy sources

Cooperation shall be pursued, inter alia, through:

(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 and research cooperation between institutions, laboratories and private sector entities of the European Union and the Kyrgyz Republic, including through joint programmes, with the aim of implementing best practices towards creating the energy of the future and the green economy;

(c) conducting joint seminars, conferences and training programmes, and exchanging information and open statistical data, as well as information on the development of renewable energy sources.

ARTICLE 256

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 Agreement.

ARTICLE 257

General transport cooperation objectives

The Parties shall cooperate in the area of transport with the following objectives:

(a) promoting complementarity between their transport sectors;

(b) enhancing the sustainable regional and international connectivity of their transport networks;

(c) promoting efficient, safe and secure transport operations and systems;

(d) developing sustainable transport systems, including their social and environmental aspects, in particular regarding climate change.

ARTICLE 258

Cooperation in the area of transport

Cooperation in the area of transport shall cover, inter alia:

(a) the exchange of best practices on transport policies;

(b) the improvement of the movement of passengers and goods, the increase of fluidity of transport flows by removing administrative, technical and other obstacles, and the pursuit of closer market integration;

(c) the improvement of transport infrastructure and the promotion of interoperability along transport corridors;

(d) the exchange of information and joint activities at regional and international level and the implementation of applicable international agreements and conventions;

(e) the improvement of transport safety and environmental protection;

(f) the exchange of experience in green technologies for transport systems, including on the introduction of environmentally friendly transport;

(g) interaction in the field of air transport.

ARTICLE 259

General environment cooperation objectives

The Parties shall develop and strengthen cooperation on environmental issues, thereby contributing to sustainable development and good governance in environmental protection and disaster risk reduction.

ARTICLE 260

Cooperation in the area of the environment

1. Cooperation in the area of the environment shall be aimed at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting human health, sustainable utilisation of natural resources and promoting measures at international level to deal with regional or global environmental problems, including in the areas of:

(a) environmental governance and horizontal issues, including strategic planning, environmental impact assessment and strategic environmental assessment, education and training, monitoring and environmental information systems, inspection and enforcement, environmental liability, combating environmental crime, public access to environmental information, decision-making processes and effective administrative and judicial review procedures;

(b) air quality;

(c) water quality and water resource management, including improvement of water pollution monitoring system;

(d) resource and waste management, including hazardous waste;

(e) resource-efficiency, green and circular economy;

(f) nature protection, including forestry and conservation of biological diversity;

(g) industrial pollution and industrial hazards;

(h) chemicals management;

(i) disaster risk reduction.

2. Cooperation shall also be aimed at integrating the environment into sector policies other than environmental policy in order to contribute to the implementation of the Agenda 2030.

ARTICLE 261

Integration of the environment into other sectors

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.

ARTICLE 262

Environmental cooperation at regional and international level

The Parties shall exchange information and expertise and intensify environmental cooperation at regional and international levels and in the implementation of multilateral environmental agreements, ratified by the Parties.

ARTICLE 263

General climate change cooperation objectives

The Parties shall develop and strengthen their cooperation to combat and to adapt to climate change. Cooperation shall be conducted while taking into account the interests of the Parties on the basis of equality and mutual benefit, as well as the interdependence existing between their bilateral and multilateral commitments in that field.

ARTICLE 264

Measures at domestic, regional and international level

Cooperation shall promote measures at domestic, regional and international level, including with regard to:

(a) the mitigation of climate change;

(b) adaptation to climate change;

(c) market and non-market mechanisms for addressing climate change;

(d) the promotion of new, innovative, safe and sustainable low-carbon and adaptation technologies;

(e) the implementation of the Paris Agreement on Climate Change once ratified by the Parties;

(f) the mainstreaming of climate considerations into general and sector-specific policies;

(g) awareness raising, education and training.

ARTICLE 265

Cooperation on climate change

1. The Parties shall, inter alia:

(a) exchange information and expertise;

(b) implement joint research activities and exchanges of information on cleaner and environmentally sound technologies;

(c) implement joint activities at regional and international level, including with regard to multilateral environmental agreements ratified by the Parties, such as the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 and the Paris Agreement on Climate Change.

2. Cooperation on climate change shall cover, inter alia:

(a) measures to enhance the capacity to take effective climate action;

(b) the implementation of a climate strategy and action plan for the long-term mitigation of and adaptation to climate change, including the reduction of emissions of greenhouse gases;

(c) the development of vulnerability and adaptation assessments;

(d) measures to promote technology transfer;

(e) measures related to ozone-depleting substances and fluorinated gases.

3. The Parties shall promote regional cooperation on climate change.

ARTICLE 266

General industrial and enterprise policy cooperation objectives

The Parties shall endeavour to develop and strengthen their cooperation on industrial and enterprise policy, thereby improving the business environment for all economic operators, with particular emphasis on small and medium-sized enterprises (hereinafter referred to as "SMEs").

ARTICLE 267

Cooperation in the area of industrial and enterprise policy

Cooperation in the area of industrial and enterprise policy shall include, inter alia:

(a) the exchange of information and best practice to support entrepreneurship and SME development policies;

(b) the exchange of information and best practice on productivity and efficiency of resource use, including reduction of energy consumption and cleaner production;

(c) the exchange of information and best practice to enhance the role of business and industry in sustainable development and respect for human rights;

(d) public supporting measures for industry sectors, based on WTO requirements and other international rules applicable to the Parties;

(e) the encouragement of the development of innovation policy, via the exchange of information and best practice regarding the commercialisation of results of research and development (including support instruments for technology-based business start-ups), cluster development and access to finance;

(f) the promotion of business initiatives and industrial cooperation between enterprises of the European Union and the Kyrgyz Republic;

(g) the promotion of a more business-friendly environment, with a view to enhancing growth potential, trade and investment opportunities.

ARTICLE 268

General cooperation objectives in the area of company law

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.

ARTICLE 269

Cooperation in the area of company law

The Parties shall cooperate on the following:

(a) the exchange of best practice to promote the availability of and access to information regarding the organisation and representation of registered companies in a transparent and easily accessible way;

(b) the further development of corporate governance policy in line with international and particularly OECD standards;

(c) the continued implementation and consistent application of International Financial Reporting Standards developed by the International Accounting Standards Board for the consolidated accounts of listed companies;

(d) the approximation of accounting rules and financial reporting, including as regards SMEs;

(e) the exchange of experience and best practice in regulation and oversight of auditing and accounting activities;

(f) the application of international auditing standards and the Code of Ethics of the International Federation of Accountants , 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.

ARTICLE 270

General cooperation objectives in the area of financial services and markets

1. The Parties agree on the importance of effective legislation and practices and shall cooperate in the area of financial services and markets with the following objectives:

(a) to improve the regulation of financial services and markets;

(b) to ensure effective and adequate protection of investors and consumers of financial services;

(c) to contribute to the stability and integrity of the financial markets;

(d) to promote cooperation between different actors of the financial markets, including regulators and supervisors;

(e) to promote independent and effective supervision.

2. The Parties shall promote regulatory convergence with international standards for sound financial markets.

ARTICLE 271

General cooperation objectives in the area of the digital economy and society

The Parties shall promote cooperation on the development of the digital economy and society, including on the associated infrastructure and governance to benefit citizens and businesses through the widespread availability of information and communication technologies (hereinafter referred to as the "ICT") and through better quality of electronic services at affordable prices, in particular in the areas of trade and commerce, health and education as well as government and administration in general. This cooperation shall be aimed at promoting the development of competition in, and openness of, ICT markets and encouraging investments in this sector.

ARTICLE 272

Cooperation in the area of the digital economy and society

Cooperation in the area of the digital economy and society shall cover, inter alia:

(a) the exchange of information and best practice on the implementation of national digital strategies, including initiatives aimed at promoting broadband access, improving rules for cross-border data transfer and network security and developing public online services (e-government);

(b) the exchange of information, best practice and experience to promote the development of a comprehensive regulatory framework for electronic communications, including the role of a national regulator, foster a better use of spectrum resources and promote interoperability of electronic communications infrastructure in the European Union and the Kyrgyz Republic.

ARTICLE 273

Cooperation between regulators in the field of information and communication technologies

The Parties shall promote cooperation between regulators from the European Union and the authorised state body of the Kyrgyz Republic in the field of information and communication technologies, including electronic communications, as appropriate.

ARTICLE 274

General cooperation objectives in the area of tourism

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 275

Principles of cooperation in the area of sustainable tourism

Cooperation in the area of sustainable tourism 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, historical and natural heritage; and

(c) positive interaction between tourism and environmental preservation.

ARTICLE 276

Cooperation in the area of tourism

Cooperation in the area of tourism shall include, inter alia:

(a) exchange information on statistics in tourism, innovative technologies, business practices and new market demands;

(b) promote sustainable and responsible tourism development models and exchange best practice, experience and know-how;

(c) exchange information and best practices in training and skills development in tourism;

(d) encourage greater contacts between private, public and community stakeholders of the Member States of the European Union and the Kyrgyz Republic.

ARTICLE 277

General agriculture and rural development cooperation objectives

Cooperation between the Parties in the area of agriculture and rural development shall cover, inter alia:

(a) the facilitation of the mutual understanding of agricultural and rural development policies;

(b) the exchange of best practice in enhancing the administrative capacities at central and local level in the planning, evaluation and implementation of agricultural and rural development policies;

(c) the promotion of the modernisation and the sustainable development of agricultural production;

(d) the sharing of knowledge and best practice with regard to rural development policies to promote economic well-being for rural communities;

(e) the improvement of the competitiveness of the agricultural sector, including development of agricultural cooperatives, and the efficiency and transparency of the markets;

(f) the exchange of experience in the implementation of quality policies, including geographical indications, and control mechanisms, food safety, and the development of organic agriculture;

(g) the promotion of knowledge dissemination and provision of extension services to the subjects of the agricultural sector;

(h) the exchange of experience in policies related to sustainable development of agribusiness and the processing and distribution of agricultural products;

(i) the promotion of cooperation in projects of agro-industrial investments and innovations, in particular in the field of livestock and crop development.

ARTICLE 278

Cooperation in the area of agriculture and rural development

The Parties shall cooperate to promote agricultural and rural development, in particular through exchange of knowledge and best practices and progressive convergence of policies and legislation, in the areas of interest to the Parties.

ARTICLE 279

General cooperation objectives in the areas of mining and raw materials

The Parties shall develop and strengthen their cooperation in the areas of mining and the production of raw materials, with the objectives of promoting mutual understanding, improving the business environment, exchanging information and cooperating on non-energy issues relating in particular to the mining of metallic ores and industrial minerals.

ARTICLE 280

Cooperation in the areas of mining and raw materials

Cooperation in the areas of mining and raw materials shall cover, inter alia:

(a) the exchange of information on developments in their respective mining and raw material sectors;

(b) the exchange of information on matters related to trade in raw materials with the aim of promoting bilateral exchanges;

(c) the exchange of information and best practice in relation to the sustainable development of the mining industries, including in the application of clean technologies in the mining processes;

(d) the exchange of information and best practice in relation to health and safety in the mining industries;

(e) the exchange of information and best practice in relation to capacity building and training in the mining sector;

(f) the development of joint scientific and technological initiatives.

ARTICLE 281

Areas of research and innovation cooperation and general objectives

The Parties shall promote cooperation:

(a) in all areas of civil scientific research and technological development, on the basis of mutual benefit and subject to appropriate and effective protection of intellectual property rights; and

(b) to encourage innovation.

ARTICLE 282

Cooperation in the area of research and innovation

Cooperation in the area of research and innovation shall cover, inter alia:

(a) policy dialogue and the exchange of scientific and technological information;

(b) the exchange of information and best practice 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) the facilitation of access to the respective research and innovation programmes of the Parties;

(d) increasing the research capacity in research entities of the Kyrgyz Republic and the facilitation of 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) the development and the promotion of joint projects for research and innovation;

(f) the promotion of the commercialisation of results of joint research and innovation projects;

(g) the facilitation of new technology access to domestic markets of the Parties;

(h) the arrangement of training activities and mobility programmes for scientists, researchers and other staff engaged in research and innovation activities in the Parties;

(i) the facilitation, within the framework of applicable legislation, of 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 the area of research and innovation, including through regional approaches and initiatives, on the basis of mutual agreement.

ARTICLE 283

Synergies with other activities

In carrying out the cooperation activities set out in Article 282, synergies should be sought with activities funded by the International Science and Technology Centre and other activities carried out within the framework of financial cooperation between the European Union and the Kyrgyz Republic as set out in Article 304.

TITLE VI

OTHER AREAS OF COOPERATION

ARTICLE 284

Cooperation in the area of consumer protection

The Parties recognise the importance of ensuring a high level of consumer protection and, to that end, shall endeavour to cooperate in the field of consumer policy. The Parties agree that such cooperation in this field shall, to the extent possible, involve:

(a) the exchange of information on their respective consumer protection frameworks, including on consumer laws, consumer product safety, consumer redress, the enforcement and implementation of consumer legislation and consumer awareness;

(b) the encouragement of the development of independent consumer associations and contacts between consumer representatives.

ARTICLE 285

General cooperation objectives in the area of employment,
social policy and equal opportunities

1. The Parties, taking into account Agenda 2030 and its SDG No 8: to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, recognise that full and productive employment and decent work for all are key elements of sustainable development.

2. The Parties shall strengthen their dialogue and cooperation on promoting the ILO Decent Work Agenda, employment policy, living and working conditions, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life.

3. The Parties shall aim to enhance cooperation on decent work, employment and social policy matters in all relevant fora and organisations.

ARTICLE 286

ILO conventions and involvement of stakeholders

1. The Parties reaffirm their commitment to implement the applicable ILO conventions they have ratified and to promote further ratification.

2. The Parties shall encourage, in line with the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalisation of 2008, 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 Kyrgyz Republic under this Agreement.

ARTICLE 287

Cooperation in the area of employment, social policy and equal opportunities

Cooperation in the area of employment, social policy and equal opportunities, based on the exchange of information and best practice, shall cover, inter alia:

(a) the reduction of poverty and the enhancement of social cohesion; inclusive labour markets and the integration of vulnerable people;

(b) the promotion of more and better jobs with decent working conditions, in particular with a view to reducing the informal economy and informal employment and to improving living conditions;

(c) the improvement of working conditions, in particular the protection and enforcement of labour rights and the level of protection of health and safety at work;

(d) the enhancement of gender equality by promoting the participation of women in social and economic life and by ensuring equal opportunities between men and women in employment, education, training, economy, society and decision making;

(e) the elimination of all forms of discrimination in employment and social affairs in accordance with each Party's obligations under international standards and conventions;

(f) the enhancement of the level of social protection for all and modernising social protection systems, in terms of quality, adequacy, accessibility and financial sustainability;

(g) the enhancement of the participation of social partners and promoting social dialogue, including through strengthening the capacity of social partners.

ARTICLE 288

Cooperation on the responsible management of supply chains

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices and through the provision of an enabling environment. They shall support the dissemination and use of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises adopted on 21 June 1976 as part of the Declaration on International Investment and Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted in Geneva on 16 November 1977, the UN Global Compact launched in New York on 26 July 2000, and the Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council by Resolution 17/4 of 16 June 2011.

2. The Parties shall exchange information and best practices, and, as appropriate, cooperate with each other, regionally and in international fora, on issues covered by this Article.

ARTICLE 289

General cooperation objectives in the area of health

The Parties shall develop their cooperation in the area 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 290

Cooperation in the area of health

Cooperation in the area of health shall address the prevention and control of communicable and non-communicable diseases, including through the exchange of health information, the promotion of a health-in-all-policies approach, cooperation with international organisations, in particular the World Health Organization (hereinafter referred to as the "WHO"), and the promotion of the implementation of international health agreements such as the WHO Framework Convention on Tobacco Control done at Geneva on 21 May 2003 and the International Health Regulations adopted by the World Health Assembly of the WHO on 23 May 2005.

ARTICLE 291

General cooperation objectives in the area of education and training

1. The Parties shall cooperate in the area of education and training with a view to approximating the education and training systems in the Kyrgyz Republic with those in the European Union. The Parties shall cooperate to promote lifelong learning and encourage cooperation and transparency at all levels of education and training.

2. The aim of cooperation between the Parties in the area of education and training shall be to support education policy based on Agenda 2030 and SDG No 4 aimed at ensuring inclusive and quality education for all and promoting lifelong learning.

ARTICLE 292

Cooperation in the area of education and training

Cooperation in the area of education and training shall focus on:

(a) the promotion of lifelong learning, which is key to growth and jobs and can allow citizens to participate fully in society;

(b) the modernisation of education and training systems, including training systems for public/civil servants, and the enhancement of quality, relevance and access throughout the education ladder, from early childhood education and care to tertiary education;

(c) the promotion of convergence and coordinated reforms in higher education;

(d) the reinforcement of international academic cooperation, the increase of participation in cooperation programmes of the European Union, and the improvement of student, staff and researchers mobility;

(e) the further development of the national qualifications framework to improve the transparency and recognition of qualifications and competences;

(f) the further development of vocational education and training, while taking into consideration best practice in the European Union.

ARTICLE 293

Cooperation in the area of youth policy

Cooperation in the area of youth policy shall support Agenda 2030 and the implementation of its SDGs.

ARTICLE 294

Objectives for cooperation in the area of youth policy

The Parties shall:

(a) reinforce cooperation and exchanges in the areas of youth policy and non-formal education for young people and youth workers;

(b) facilitate the active participation of all young people in society;

(c) support mobility for young people and youth workers as a means to promote intercultural dialogue and the acquisition of knowledge, skills and competences outside the formal educational systems, including through volunteering; and

(d) promote cooperation between youth organisations to support civil society.

ARTICLE 295

Cooperation in the area of culture

1. The Parties shall promote cultural cooperation in accordance with the principles enshrined in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as "UNESCO") on 20 October 2005, in order to foster intercultural dialogue, promote cultural diversity, mutual understanding and knowledge of their respective cultures.

2. The Parties shall take appropriate measures to promote cultural exchanges and encourage joint initiatives in various cultural spheres and exchange best practice in the field of training and capacity building for artists and cultural professionals and organisations.

3. The Parties shall cooperate in the framework of multilateral international treaties and international organisations, including UNESCO, in order to support cultural diversity and preserve and valorise cultural and historical heritage.

ARTICLE 296

Cooperation in the areas of media and audiovisual policy

1. The Parties shall cooperate in the areas of media and audiovisual policy, in particular through the exchange of information and best practice regarding media and audiovisual policies and training for journalists and other media, cinema and audiovisual professionals.

2. The Parties shall cooperate to reinforce the independence and professionalism of the media, on the basis of the standards set in the applicable international conventions, including those of UNESCO and the Council of Europe, where appropriate.

3. The Parties shall cooperate in the areas of media and audiovisual policy in international fora, such as UNESCO and the WTO.

ARTICLE 297

Cooperation in the area of sport and physical activity

The Parties shall cooperate in the area of sport and physical activity in order to promote a healthy lifestyle, to promote good governance within the framework of both social and educational values, and to combat such threats to sport as doping, match-fixing, racism and violence. Cooperation in the area of sports and physical activity shall include the exchange of information and best practice, sports know-how, sports management and marketing.

ARTICLE 298

Cooperation in the area of regional development

The Parties shall promote mutual understanding and bilateral cooperation in the area of regional development policy, including methods of formulation and implementation of regional policies, multi-level governance and partnership, with special emphasis on the development of disadvantaged areas and territorial cooperation, with the objective of improving living conditions, promoting economic, social and territorial cohesion, and enhancing the exchange of information and experience between national, regional and local authorities, as well as participation of socio-economic actors and civil society.

ARTICLE 299

Regional policy and cross-border cooperation

The Parties shall support and strengthen the involvement of local and regional level authorities in regional policy cooperation and cross-border cooperation, in order to promote mutual understanding and information exchange, develop capacity building measures, promote establishment of relevant structures and legislative framework and strengthen cross-border economic and business networks.

ARTICLE 300

Cross-border cooperation in other areas

The Parties shall strengthen and encourage development of cross-border cooperation in other areas covered by this Agreement such as trade, transport, energy, water, environment, climate change, communication networks, culture, education, research, tourism, and border security.

ARTICLE 301

Sustainable connectivity

The Parties shall promote sustainable connectivity in the region of Central Asia and beyond. To that end, the Parties shall cooperate on issues of common interest, to advance connectivity strategies and initiatives that are economically, fiscally, environmentally and socially sustainable in the long term and aligned with internationally agreed rules and regulations.

ARTICLE 302

Cooperation in the area of legislative approximation

1. The Parties consider that an important aspect of strengthening the links between the Kyrgyz Republic and the European Union is a gradual convergence of existing and future legislation of the Kyrgyz Republic with that of the European Union. The Kyrgyz Republic will aim to gradually make its legislation compatible with that of the European Union, in agreed areas covered by this Agreement.

2. This cooperation shall be aimed at, inter alia, developing the administrative and institutional capacity of the Kyrgyz Republic, to the extent necessary to implement this Agreement and to carry out the necessary structural reforms and legislative approximation, as applicable.

ARTICLE 303

Technical assistance

The European Union shall endeavour to provide the Kyrgyz Republic with technical assistance for the implementation of the measures referred to in Article 302, by means of inter alia:

(a) the exchange of experts;

(b) the provision of early information especially on relevant legislation;

(c) the organisation of seminars;

(d) training activities, including online.

ARTICLE 304

Financial and technical assistance

1. With a view to achieving the objectives of this Agreement, the Kyrgyz Republic 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. The Kyrgyz Republic may also receive technical assistance.

2. Financial assistance may be provided in accordance with the relevant funding instruments of the European Union concerning the external action. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[1] shall apply to financing by the European Union.

3. Financial assistance shall be based on annual action programmes established by the European Union, following consultations with the Kyrgyz Republic.

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ EU L 193, 30.7.2018, p. 1).

4. The European Union and the Kyrgyz Republic 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.

5. The delivery of financial assistance of the European Union to the Kyrgyz Republic shall be guided by the principles of aid effectiveness, as laid down in the OECD Paris Declaration on Aid Effectiveness adopted on 2 March 2005, the New European Consensus on Development signed by the European Union and its Member States on 7 June 2017, the reports of the European Court of Auditors, and the lessons learned from implemented and ongoing cooperation programmes of the European Union in the Kyrgyz Republic.

ARTICLE 305

General principles

1. The Parties shall implement financial assistance in accordance with the principles of sound financial management and cooperate in ensuring the protection of the financial interests of the European Union and of the Kyrgyz Republic. The Parties shall take effective measures to prevent and fight fraud, corruption and any other illegal activities to the detriment of the financial interests of the European Union and of the Kyrgyz Republic.

2. Without prejudice to direct application of Article 308, 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 checks, inspections, controls and anti-fraud measures, including inter alia, those conducted by the European Court of Auditors and the European Anti-Fraud Office (hereinafter referred to as "OLAF").

ARTICLE 306

Donor coordination

To make efficient 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. To this effect, information on all sources of assistance shall be exchanged regularly between the Parties. The assistance provided by the European Union may be co-financed by the Kyrgyz Republic.

ARTICLE 307

Prevention and communication

1. When the Kyrgyz Republic is entrusted with the implementation of the funds of the European Union (hereinafter referred to as "EU funds") or is a beneficiary of EU funds under the direct management of the European Union, the authorities of the Kyrgyz Republic shall take all appropriate measures to prevent irregularities, fraud, corruption, and any other illegal activities to the detriment of EU funds and, where applicable, the co-financing funds of the Kyrgyz Republic. To that end, the European Commission and the authorities of the Kyrgyz Republic shall exchange, upon request, relevant information.

2. The authorities of the Kyrgyz Republic shall transmit to the European Union information which has come to their notice on suspected or actual cases of fraud, corruption, conflict of interest or other irregularity in connection with EU funds. Similarly, the European Union shall transmit to the authorities of the Kyrgyz Republic such information in connection with co-financing funds of the Kyrgyz Republic.

ARTICLE 308

Cooperation with OLAF

1. Within the framework of this Agreement, OLAF shall be authorised to carry out on-the-spot checks and inspections in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament of the Council[1] and Council Regulations (Euratom, EC) No 2185/96[2] and No 2988/95 (EC, Euratom)[3].

2. On-the-spot checks and inspections shall be prepared and conducted by OLAF in close cooperation with the competent authorities of the Kyrgyz Republic. Officials of the competent authorities of the Kyrgyz Republic may participate in the on-the-spot checks and inspections.

3. Where an economic operator resists an on-the-spot check or inspection, the competent authorities of the Kyrgyz Republic shall give OLAF the assistance needed to allow it to discharge its duty in carrying out on-the-spot checks or inspections.

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1 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 EU L 248, 18.9.2013, p. 1).

2 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ EC L 292, 15.11.1996, p. 2).

3 Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ EC L 312, 23.12.1995, p. 1).

4. The competent authorities of the Kyrgyz Republic shall, upon request, exchange with OLAF information which might be relevant for the protection of the financial interests of the European Union.

5. For the transfer and processing of personal data, data protection rules of the transferring party apply.

6. OLAF may agree with the competent authorities of the Kyrgyz Republic on further cooperation in the field of anti-fraud, including the conclusion of administrative arrangements.

ARTICLE 309

Investigation and prosecution

The competent authorities of the Kyrgyz Republic shall ensure investigation and prosecution of suspected and actual cases of fraud, corruption and any other illegal activities to the detriment of EU funds. Where appropriate, OLAF may assist the competent authorities of the Kyrgyz Republic in this task.

TITLE VII

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

ARTICLE 310

Cooperation Council

1. A Cooperation Council is hereby established to oversee the fulfilment of the objectives of this Agreement and supervise its implementation. It shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest.

2. The Cooperation Council shall meet at regular intervals, normally on an annual basis.

3. The Cooperation Council shall be composed of representatives of the Parties at ministerial level. The Cooperation Council shall meet in all necessary configurations, by mutual agreement.

4. The Cooperation Council shall establish its own rules of procedure, and the rules of procedure of the Cooperation Committee.

5. The Cooperation Council shall be chaired alternately by a representative of the European Union and a representative of the Kyrgyz Republic.

6. The Cooperation Council shall have the power to take decisions and make appropriate recommendations as provided for in this Agreement. Within the scope of Titles I, II, III, V, and VI, the Cooperation Council shall also have the power to take decisions and make recommendations as mutually agreed by the Parties. Decisions shall be binding on the Parties. The Cooperation Council shall take decisions and make recommendations following the completion of the Parties' respective internal procedures, as provided in their legislation.

7. The Cooperation Council may delegate to the Cooperation Committee any of its functions.

ARTICLE 311

Cooperation Committee

1. A Cooperation Committee is hereby established to assist the Cooperation Council in the performance of its duties.

2. The Cooperation Committee shall be chaired alternately by a representative of the European Union and a representative of the Kyrgyz Republic.

3. The Cooperation Committee shall be composed of representatives of the Parties at senior official level.

4. The Cooperation Committee shall meet once a year, or as mutually agreed, on a date and with an agenda agreed in advance by the Parties, in Brussels and Bishkek alternately. Special meetings may be convened, by mutual agreement, at the request of either of the Parties.

5. The Cooperation Committee may meet in a specific configuration to address all issues related to Title IV. When the Cooperation Committee addresses issues related to Title IV, it shall be composed of representatives of each of the Parties with responsibility for trade-related matters.

6. The Cooperation Committee shall have the power to take decisions as provided for in this Agreement or where such power has been delegated to it by the Cooperation Council. Decisions shall be binding on the Parties. The Cooperation Committee shall take decisions and make recommendations following the completion of the Parties' respective internal procedures, as provided in their legislation. When exercising delegated powers, the Cooperation Committee shall take its decisions in accordance with the Rules of Procedure of the Cooperation Council.

ARTICLE 312

Subcommittees and other bodies

1. The Cooperation Council may establish subcommittees or other bodies to assist in the performance of its duties and to address specific tasks or subject matters. It may change the tasks assigned to or dissolve any subcommittee or other body.

2. The Cooperation Council shall agree on the terms of reference of the subcommittees.

3. Subcommittees and other bodies shall report on their activities to the Cooperation Committee regularly or when requested.

4. Subcommittees or other bodies shall meet when requested by either Party or by the Cooperation Committee, except if otherwise agreed between the Parties.

5. The establishment or existence of any of the subcommittees and other bodies shall not prevent either Party from bringing any matter directly to the Cooperation Committee.

ARTICLE 313

Parliamentary Cooperation Committee

1. A Parliamentary Cooperation Committee is hereby established. It shall be a forum for meetings and exchange of views with the purpose of deepening and strengthening the relations of the Parties.

2. The Parliamentary Cooperation Committee shall consist of Members of the European Parliament and of the Members of the Zhogorku Kenesh of the Kyrgyz Republic.

3. The Parliamentary Cooperation Committee shall meet at intervals which it shall itself determine.

4. The Parliamentary Cooperation Committee shall establish its own rules of procedure.

5. The Parliamentary Cooperation Committee shall be chaired alternately by a representative of the European Parliament and a representative of the Zhogorku Kenesh of the Kyrgyz Republic in accordance with its rules of procedure.

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.

ARTICLE 314

Participation of civil society

With a view to informing and consulting civil society on the implementation of this Agreement as stipulated in Article 6, the Parties may establish a specific body for this purpose, in accordance with the procedure defined in Article 312.

ARTICLE 315

Territorial application

1. This Agreement shall apply:

(a) 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

(b) to the territory of the Kyrgyz Republic.

References to "territory" in this Agreement shall be understood in this sense, except as otherwise expressly provided.

References to "territory" in this Agreement shall include air space and territorial sea as provided in the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

2. As regards provisions of this Agreement concerning customs cooperation, this Agreement shall also apply with respect to the European Union to those areas of the Union customs territory as referred to in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[1], not covered by point (a) of the first subparagraph of paragraph 1 of this Article.

[1] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p.1).

ARTICLE 316

Fulfilment of obligations

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

2. If either Party considers that the other Party has failed to fulfil any of the obligations under Title IV, the specific mechanisms provided for in that Title shall apply.

3. If either Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements of this Agreement in Articles 2 and 11, it may take appropriate measures. For the purposes of this paragraph, "appropriate measures" may include the suspension, in part or in full, of this Agreement.

4. If either Party considers that the other Party has failed to fulfil any of the obligations in this Agreement, save those falling within the scope of paragraphs 2 and 3 of this Article, it shall notify the other Party. The Parties shall hold consultations under the auspices of the Cooperation Council with a view to reaching a mutually acceptable solution. Where the Cooperation Council is unable to reach a mutually acceptable solution, the notifying Party may take appropriate measures. For the purposes of this paragraph, "appropriate measures" may include the suspension only of Title I, II, III, V or VI, or of this Title.

5. Appropriate measures referred to in paragraphs 3 and 4 shall be taken in full respect of international law and shall be proportionate to the failure to fulfil obligations under this Agreement. Priority must be given to those measures which least disturb the functioning of this Agreement.

ARTICLE 317

Security exception

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in order to carry out its international obligations under the UN Charter for the purpose of maintaining international peace and security.

ARTICLE 318

Entry into force and provisional application

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other of the completion of their respective internal procedures for that purpose.

2. Notwithstanding paragraph 1, the Parties may apply this Agreement, wholly or in part, on a provisional basis, in accordance with their respective internal procedures. Provisional application shall begin on the first day of the second month following the date on which the European Union and the Kyrgyz Republic notify each other of the following:

(a) for the European Union: the completion of the internal procedures necessary for that purpose, indicating the parts of this Agreement that shall be provisionally applied; and

(b) for the Kyrgyz Republic: the completion of the internal procedures necessary for that purpose, confirming its agreement to the parts of this Agreement that shall be provisionally applied.

3. Either Party may notify the other Party in writing of its intention to terminate the provisional application of this Agreement. The termination shall take effect on the first day of the second month following that notification.

4. For the purposes of the provisional application of this Agreement, the term "entry into force of this Agreement" means the date of provisional application. The Cooperation Council and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement to the extent that these functions are necessary for ensuring the provisional application of this Agreement. Any decisions adopted in the exercise of their functions shall cease to be effective if the provisional application of this Agreement is terminated in accordance with paragraph 3.

5. Where, in accordance with paragraph 2, a provision of this Agreement is applied by the Parties pending the entry into force of this Agreement, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which the Parties agree to apply that provision on a provisional basis in accordance with paragraph 2.

6. Notifications made in accordance with this Article shall be sent, for the European Union and its Member States, to the Secretary-General of the Council of the European Union and, for the Kyrgyz Republic, to the Ministry of Foreign Affairs.

ARTICLE 319

Other agreements

1. The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, which was signed in Brussels on 9 February 1995 and entered into force on 1 July 1999, is hereby repealed and replaced by this Agreement.

2. References to the Agreement referred to in paragraph 1 in all other agreements between the Parties shall be construed as referring to this Agreement.

3. The Parties may complement this Agreement by concluding specific agreements in any area of cooperation falling within the scope of this Agreement. Such specific agreements shall form an integral part of the overall bilateral relations as governed by this Agreement and shall be subject to a common institutional framework established by this Agreement.

ARTICLE 320

Annexes, Protocols and footnotes

The Annexes, Protocols and footnotes to this Agreement shall form an integral part thereof.

ARTICLE 321

Accession of new Member States of the European Union

1. The European Union will inform the Kyrgyz Republic of any request for accession of a third country to the European Union.

2. The European Union shall notify the Kyrgyz Republic of the entry into force of any Treaty concerning the accession of a third country to the European Union (hereinafter referred to as the "Accession Treaty").

3. A new Member State of the European Union shall accede to this Agreement in accordance with the terms decided by the Cooperation Council. Save as otherwise provided in paragraph 4, the accession shall take effect from the date of accession of the new Member State to the European Union and this Agreement shall be thereby amended by a decision of the Cooperation Council establishing the terms of accession.

4. Title IV shall apply between the new Member State of the European Union and the Kyrgyz Republic from the date of accession of that new Member State to the European Union.

5. In order to facilitate the implementation of paragraph 4 of this Article, as from the date of signature of the Accession Treaty, the Cooperation Committee acting in its trade configuration shall examine any effects of the accession on this Agreement. The Cooperation Committee shall decide on necessary technical amendments to Annexes 8-A, 8-C and 9 to this Agreement, and on other necessary adjustments or transitional measures. Any decision of the Cooperation Committee shall take effect on the date of accession of the new Member State to the European Union.

ARTICLE 322

Private rights

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.

ARTICLE 323

Public access to official documents

This Agreement shall be without prejudice to the application of the relevant legislation of the Parties regarding public access to documents.

ARTICLE 324

Duration

This Agreement is valid indefinitely.

ARTICLE 325

Definition of the Parties

For the purposes of this Agreement, the term "Parties" means the European Union, or its Member States, or the European Union and its Member States, in accordance with their respective areas of competence, of the one part, and the Kyrgyz Republic, of the other part.

ARTICLE 326

Termination

Either Party may notify the other Party by means of written notification delivered through diplomatic channels of its intention to terminate this Agreement. The termination shall take effect six months after the date of receipt of the notification.

ARTICLE 327

Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish, Kyrgyz and Russian languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.