



**32nd ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT
11-17 APRIL 2025, VIENNA**

RULES BOOKLET



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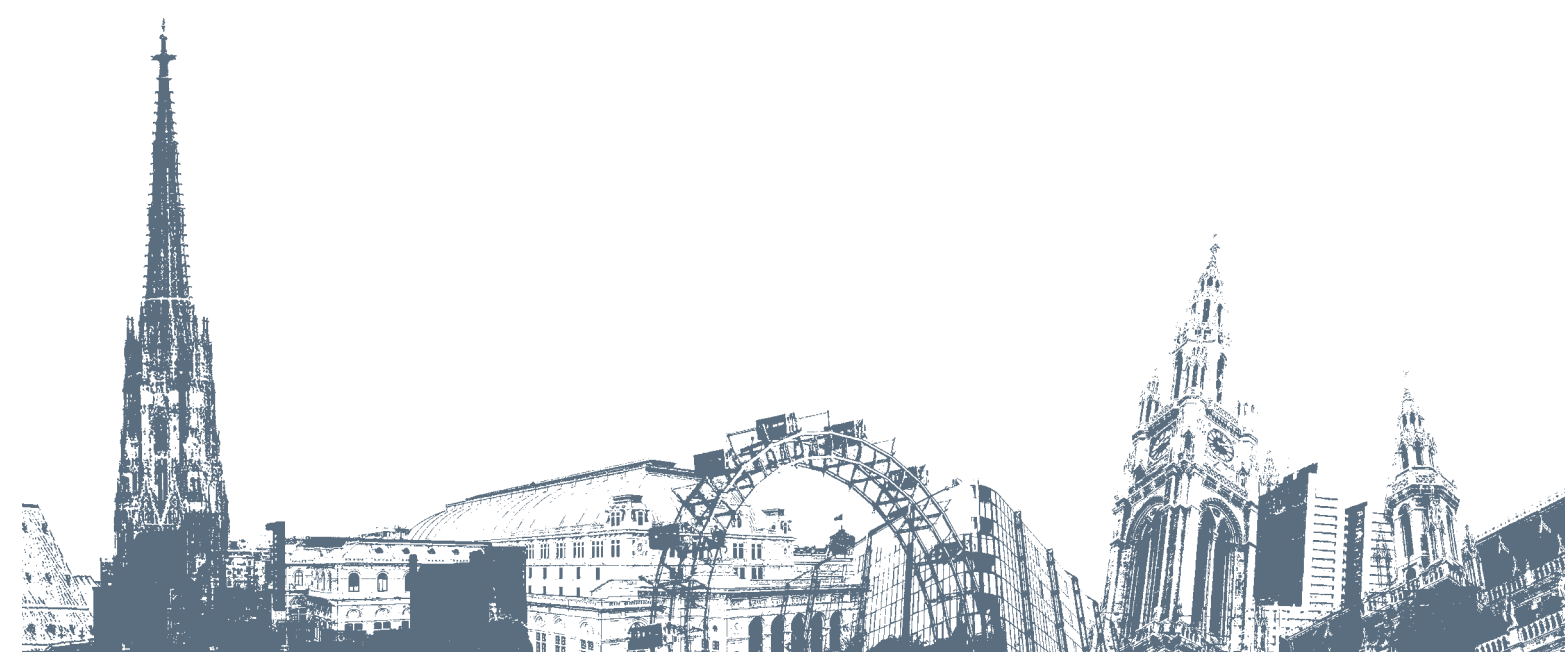
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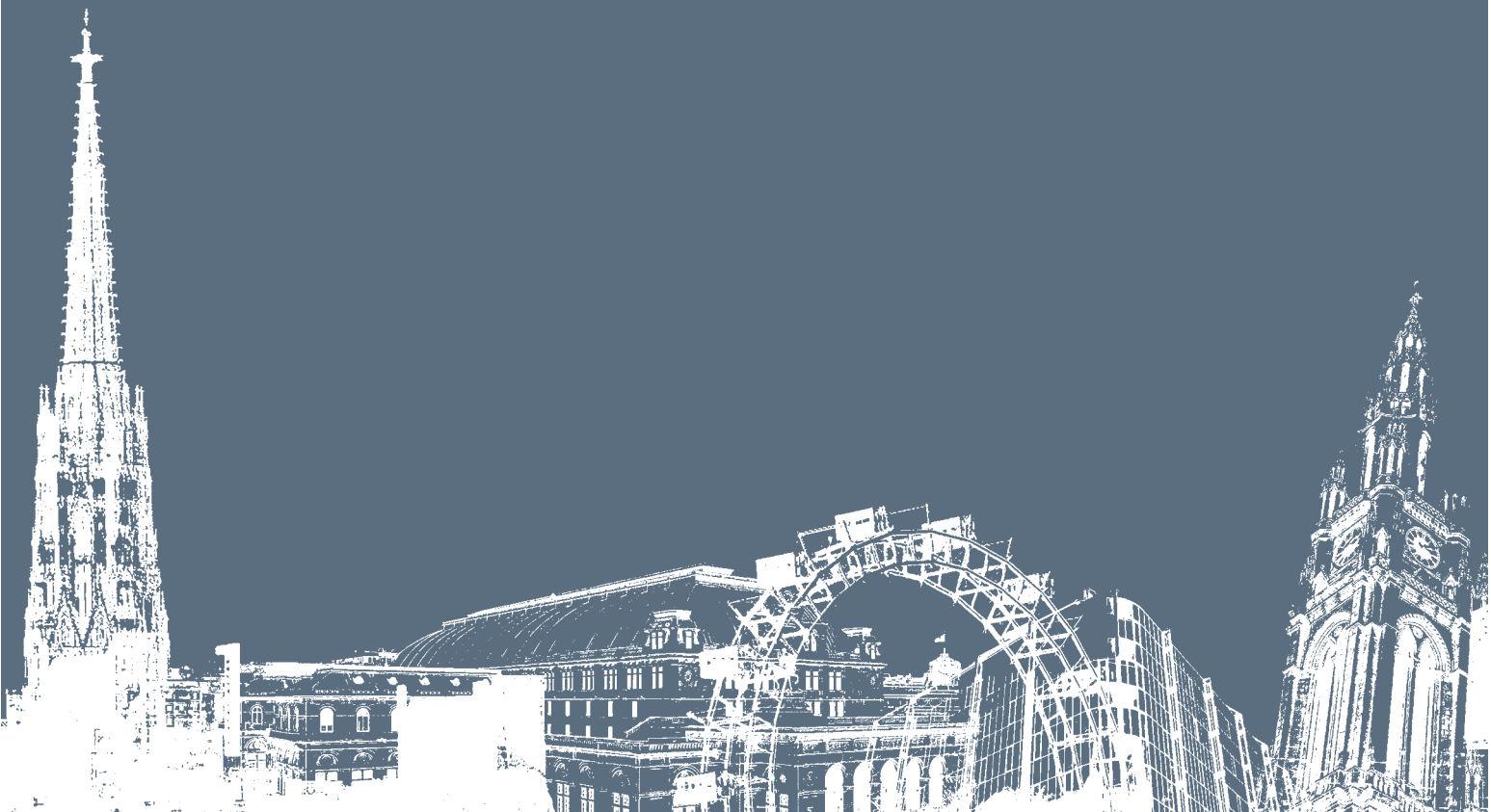
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32nd ANNUAL WILLEM C. VIS INTERNATIONAL COMMERCIAL
ARBITRATION MOOT

UNITED NATIONS CONVENTION
ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS



United Nations Convention on Contracts for the International Sale of Goods



UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on
Contracts for the
International Sale of Goods



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1. United Nations Convention on Contracts for the International Sale of Goods

PREAMBLE

The States Parties to this Convention,

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

Part I. Sphere of application and general provisions

CHAPTER I. SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

(b) by auction;

(c) on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

(e) of ships, vessels, hovercraft or aircraft;

(f) of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage;

(b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II. GENERAL PROVISIONS

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business

in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention “writing” includes telegram and telex.

Part II. Formation of the contract

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention “reaches” the addressee

when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

Part III. Sale of goods

CHAPTER I. GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

CHAPTER II. OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I. Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II. Conformity of the goods and third-party claims

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.

Article 36

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III. Remedies for breach of contract by the seller

Article 45

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

(a) exercise the rights provided in articles 46 to 52;

(b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses

advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

CHAPTER III. OBLIGATIONS OF THE BUYER*Article 53*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I. Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the

contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II. Taking delivery

Article 60

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

Section III. Remedies for breach of contract by the buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV. PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I. Anticipatory breach and instalment contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his credit-worthiness; or

(b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II. Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III. Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. Effects of avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI. Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take

possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV. FINAL PROVISIONS

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions

concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part

of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary coordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

II. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods

This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention.

Introduction

1. The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980.
2. Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification of Private Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.
3. Almost immediately upon the adoption of the two conventions there was widespread criticism of their provisions as reflecting primarily the legal traditions and economic realities of continental Western Europe, which was the region that had most actively contributed to their preparation. As a result, one of the first tasks undertaken by UNCITRAL on its organization in 1968 was to enquire of States whether or not they intended to adhere to those conventions and the reasons for their positions. In the light of the responses received, UNCITRAL decided to study the two conventions to ascertain which modifications might render them capable of wider acceptance by countries of different legal, social and economic systems. The result of this study was the adoption by diplomatic conference on 11 April 1980 of the

United Nations Convention on Contracts for the International Sale of Goods, which combines the subject matter of the two prior conventions.

4. UNCITRAL's success in preparing a Convention with wider acceptability is evidenced by the fact that the original eleven States for which the Convention came into force on 1 January 1988 included States from every geographical region, every stage of economic development and every major legal, social and economic system. The original eleven States were: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia.

5. As of 1 September 2010, 76 States are parties to the Convention. The current updated status of the Convention is available on the UNCITRAL website.¹ Authoritative information on the status of the Convention, as well as on related declarations, including with respect to territorial application and succession of States, may be found on the United Nations Treaty Collection on the Internet.²

6. The Convention is divided into four parts. Part One deals with the scope of application of the Convention and the general provisions. Part Two contains the rules governing the formation of contracts for the international sale of goods. Part Three deals with the substantive rights and obligations of buyer and seller arising from the contract. Part Four contains the final clauses of the Convention concerning such matters as how and when it comes into force, the reservations and declarations that are permitted and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

Part One. Scope of application and general provisions

A. Scope of application

7. The articles on scope of application indicate both what is covered by the Convention and what is not covered. The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the

¹www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html.

²<http://treaties.un.org/>.

practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law.

8. The final clauses make two additional restrictions on the territorial scope of application that will be relevant to a few States. One applies only if a State is a party to another international agreement that contains provisions concerning matters governed by this Convention; the other permits States that have the same or similar domestic law of sales to declare that the Convention does not apply between them.

9. Contracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

10. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sale by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft or electricity). In many States some or all of such sales are governed by special rules reflecting their special nature.

11. Several articles make clear that the subject matter of the Convention is restricted to formation of the contract and the rights and duties of the buyer and seller arising from such a contract. In particular, the Convention is not concerned with the validity of the contract, the effect which the contract may have on the property in the goods sold or the liability of the seller for death or personal injury caused by the goods to any person.

B. Party autonomy

12. The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. This exclusion will occur, for example, if parties choose the law of a non-contracting State or the substantive domestic law of a contracting State as the law applicable to the contract. Derogation from the Convention

will occur whenever a provision in the contract provides a different rule from that found in the Convention.

C. Interpretation of the Convention

13. This Convention for the unification of the law governing the international sale of goods will better fulfil its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this Convention is not expressly settled in it, the question is to be settled in conformity with the general principles on which the Convention is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.

D. Interpretation of the contract; usages

14. The Convention contains provisions on the manner in which statements and conduct of a party are to be interpreted in the context of the formation of the contract or its implementation. Usages agreed to by the parties, practices they have established between themselves and usages of which the parties knew or ought to have known and which are widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned may all be binding on the parties to the contract of sale.

E. Form of the contract

15. The Convention does not subject the contract of sale to any requirement as to form. In particular, article 11 provides that no written agreement is necessary for the conclusion of the contract. However, if the contract is in writing and it contains a provision requiring any modification or termination by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement. The only exception is that a party may be precluded by his conduct from asserting such a provision to the extent that the other person has relied on that conduct.

16. In order to accommodate those States whose legislation requires contracts of sale to be concluded in or evidenced by writing, article 96 entitles those

States to declare that neither article 11 nor the exception to article 29 applies where any party to the contract has his place of business in that State.

Part Two. Formation of the contract

17. Part Two of the Convention deals with a number of questions that arise in the formation of the contract by the exchange of an offer and an acceptance. When the formation of the contract takes place in this manner, the contract is concluded when the acceptance of the offer becomes effective.

18. In order for a proposal for concluding a contract to constitute an offer, it must be addressed to one or more specific persons and it must be sufficiently definite. For the proposal to be sufficiently definite, it must indicate the goods and expressly or implicitly fix or make provisions for determining the quantity and the price.

19. The Convention takes a middle position between the doctrine of the revocability of the offer until acceptance and its general irrevocability for some period of time. The general rule is that an offer may be revoked. However, the revocation must reach the offeree before he has dispatched an acceptance. Moreover, an offer cannot be revoked if it indicates that it is irrevocable, which it may do by stating a fixed time for acceptance or otherwise. Furthermore, an offer may not be revoked if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

20. Acceptance of an offer may be made by means of a statement or other conduct of the offeree indicating assent to the offer that is communicated to the offeror. However, in some cases the acceptance may consist of performing an act, such as dispatch of the goods or payment of the price. Such an act would normally be effective as an acceptance the moment the act was performed.

21. A frequent problem in contract formation, perhaps especially in regard to contracts of sale of goods, arises out of a reply to an offer that purports to be an acceptance but contains additional or different terms. Under the Convention, if the additional or different terms do not materially alter the terms of the offer, the reply constitutes an acceptance, unless the offeror without undue delay objects to those terms. If he does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

22. If the additional or different terms do materially alter the terms of the contract, the reply constitutes a counter-offer that must in turn be accepted

for a contract to be concluded. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or settlement of disputes are considered to alter the terms of the offer materially.

Part Three. Sale of goods

A. Obligations of the seller

23. The general obligations of the seller are to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations.

24. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or claim of a third party, including rights based on industrial property or other intellectual property.

25. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it, and at the latest two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

B. Obligations of the buyer

26. The general obligations of the buyer are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligations to pay the price.

C. Remedies for breach of contract

27. The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

28. The general pattern of remedies is the same in both cases. If all the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages or avoid the contract. The buyer also has the right to reduce the price where the goods delivered do not conform with the contract.

29. Among the more important limitations on the right of an aggrieved party to claim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances. A buyer can require the delivery of substitute goods only if the goods delivered were not in conformity with the contract and the lack of conformity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances that justifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the price or failure to take delivery by the buyer, the party in breach fails to perform within a reasonable period of time fixed by the aggrieved party.

30. Other remedies may be restricted by special circumstances. For example, if the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A party cannot recover damages that he could have mitigated by taking the proper measures. A party may be exempted from paying damages by virtue of an impediment beyond his control.

D. Passing of risk

31. Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate the issue in their contract either by an express provision or by the use of a trade term such as, for example, an INCOTERM. The effect of the choice of such a term

would be to amend the corresponding provisions of the CISG accordingly. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

32. The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposal of the buyer and the risk of their loss can be considered to have passed to him.

E. Suspension of performance and anticipatory breach

33. The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

F. Exemption from liability to pay damages

34. When a party fails to perform any of his obligations due to an impediment beyond his control that he could not reasonably have been expected to take into account at the time of the conclusion of the contract and that he could not have avoided or overcome, he is exempted from the consequences of his failure to perform, including the payment of damages. This exemption may also apply if the failure is due to the failure of a third person whom he has engaged to perform the whole or a part of the contract. However, he is subject to any other remedy, including reduction of the price, if the goods were defective in some way.

G. Preservation of the goods

35. The Convention imposes on both parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the other party is from a

foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession of the goods may sell them, or may even be required to sell them. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them and must account to the other party for the balance.

Part Four. Final clauses

36. The final clauses contain the usual provisions relating to the Secretary-General as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that signed it by 30 September 1981, that it is open to accession by all States that are not signatory States and that the text is equally authentic in Arabic, Chinese, English, French, Russian and Spanish.

37. The Convention permits a certain number of declarations. Those relative to scope of application and the requirement as to a written contract have been mentioned above. There is a special declaration for States that have different systems of law governing contracts of sale in different parts of their territory. Finally, a State may declare that it will not be bound by Part II on formation of contracts or Part III on the rights and obligations of the buyer and seller. This latter declaration was included as part of the decision to combine into one convention the subject matter of the two 1964 Hague Conventions.

Complementary texts

38. The United Nations Convention on Contracts for the International Sale of Goods is complemented by the United Nations Convention on the Limitation Period in the International Sale of Goods, 1974, as amended by a Protocol in 1980 (the Limitation Convention). The Limitation Convention establishes uniform rules governing the period of time within which a party under a contract for the international sale of goods must commence legal proceedings against another party to assert a claim arising from the contract or relating to its breach, termination or validity. The amending Protocol of 1980 ensures that the scope of application of the Limitation Convention is identical to the one of the United Nations Convention on Contracts for the International Sale of Goods.

39. The United Nations Convention on Contracts for the International Sale of Goods is also complemented, with respect to the use of electronic communications,

by the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (the Electronic Communications Convention). The Electronic Communications Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. The Electronic Communications Convention may help to avoid misinterpretation of the CISG that might occur, for example, when a State has lodged a declaration mandating the use of the traditional written form for contracts for the international sale of goods. It may also promote the understanding that the “communication” and/or “writing” under the CISG should be construed so as to include electronic communications. The Electronic Communications Convention is an enabling treaty whose effect is to remove those formal obstacles by establishing the requirements for functional equivalence between electronic and traditional written form.

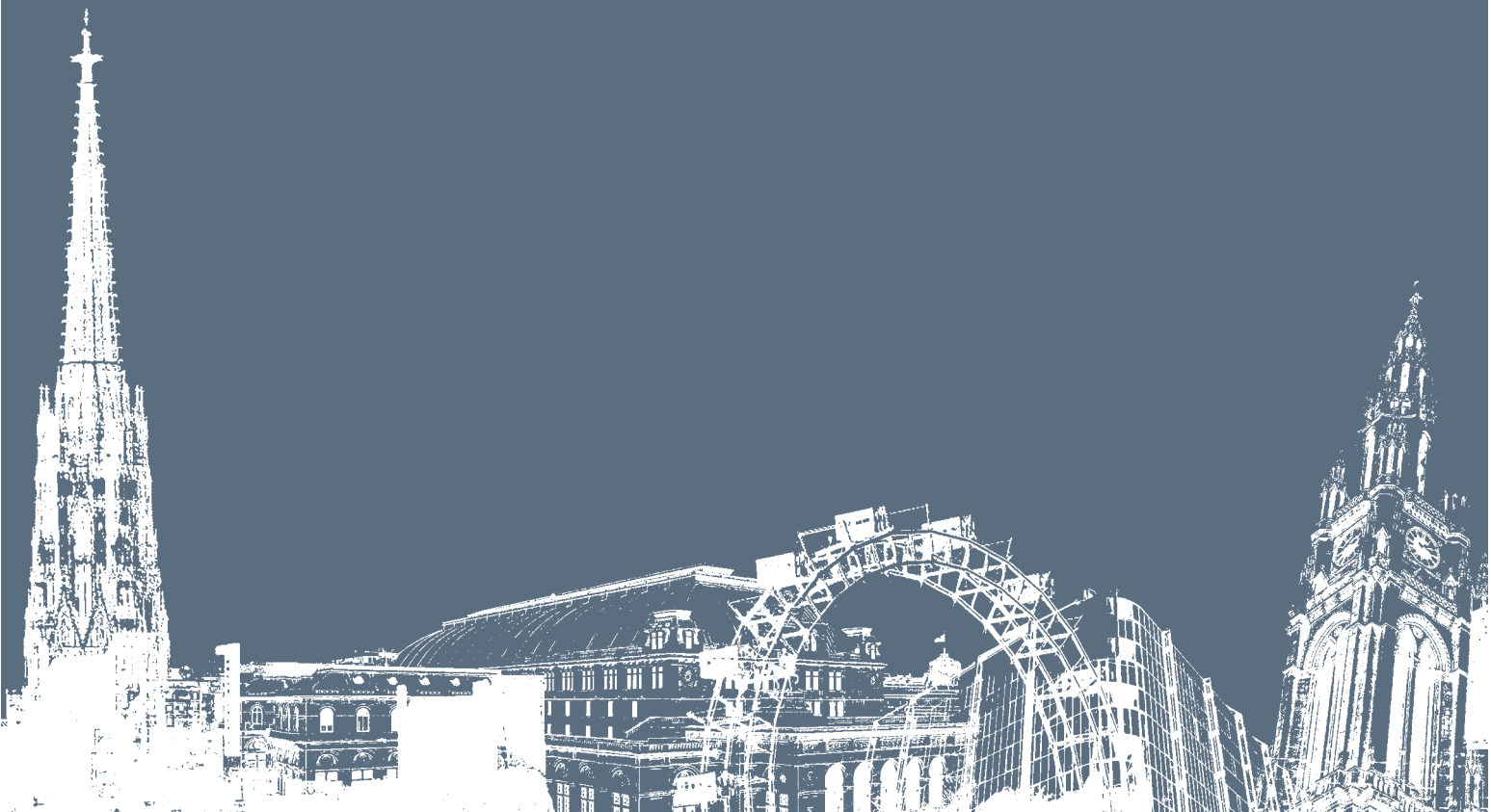
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INTERNATIONAL
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UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

PREAMBLE

(Purpose of the Principles)

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.^(*)

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators.

CHAPTER 1 — GENERAL PROVISIONS

ARTICLE 1.1

(Freedom of contract)

The parties are free to enter into a contract and to determine its content.

ARTICLE 1.2

(No form required)

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

ARTICLE 1.3

(Binding character of contract)

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

ARTICLE 1.4

(Mandatory rules)

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

ARTICLE 1.5

(Exclusion or modification by the parties)

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

^(*) Parties wishing to provide that their agreement be governed by the Principles might use one of the *Model Clauses for the use of the UNIDROIT Principles of International Commercial Contracts* (see <http://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses>).

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ARTICLE 1.6

(Interpretation and supplementation of the Principles)

(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

(2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

ARTICLE 1.7

(Good faith and fair dealing)

(1) Each party must act in accordance with good faith and fair dealing in international trade.

(2) The parties may not exclude or limit this duty.

ARTICLE 1.8

(Inconsistent behaviour)

A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.

ARTICLE 1.9

(Usages and practices)

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.

ARTICLE 1.10

(Notice)

(1) Where notice is required it may be given by any means appropriate to the circumstances.

(2) A notice is effective when it reaches the person to whom it is given.

(3) For the purpose of paragraph (2) a notice “reaches” a person when given to that person orally or delivered at that person’s place of business or mailing address.

(4) For the purpose of this Article “notice” includes a declaration, demand, request or any other communication of intention.

ARTICLE 1.11

(Definitions)

In these Principles

- “court” includes an arbitral tribunal;
- where a party has more than one place of business the relevant “place of business” is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- “long-term contract” refers to a contract which is to be performed over a period of time and which normally involves, to a varying degree, complexity of the transaction and an ongoing relationship between the parties;
- “obligor” refers to the party who is to perform an obligation and “obligee” refers to the party who is entitled to performance of that obligation;
- “writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

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ARTICLE 1.12

(Computation of time set by parties)

- (1) Official holidays or non-business days occurring during a period set by parties for an act to be performed are included in calculating the period.
- (2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to perform the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.
- (3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.

CHAPTER 2 — FORMATION AND AUTHORITY OF AGENTS

SECTION 1: FORMATION

ARTICLE 2.1.1

(Manner of formation)

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

ARTICLE 2.1.2

(Definition of offer)

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

ARTICLE 2.1.3

(Withdrawal of offer)

- (1) An offer becomes effective when it reaches the offeree.
- (2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

ARTICLE 2.1.4

(Revocation of offer)

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.
- (2) However, an offer cannot be revoked
 - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
 - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

ARTICLE 2.1.5

(Rejection of offer)

An offer is terminated when a rejection reaches the offeror.

ARTICLE 2.1.6

(Mode of acceptance)

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.
- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by

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performing an act without notice to the offeror, the acceptance is effective when the act is performed.

ARTICLE 2.1.7 *(Time of acceptance)*

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

ARTICLE 2.1.8 *(Acceptance within a fixed period of time)*

A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.

ARTICLE 2.1.9 *(Late acceptance. Delay in transmission)*

(1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.

(2) If a communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

ARTICLE 2.1.10 *(Withdrawal of acceptance)*

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

ARTICLE 2.1.11 *(Modified acceptance)*

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

ARTICLE 2.1.12 *(Writings in confirmation)*

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy.

ARTICLE 2.1.13 *(Conclusion of contract dependent on agreement on specific matters or in a particular form)*

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form.

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ARTICLE 2.1.14

(Contract with terms deliberately left open)

- (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by one of the parties or by a third person does not prevent a contract from coming into existence.
- (2) The existence of the contract is not affected by the fact that subsequently
 - (a) the parties reach no agreement on the term;
 - (b) the party who is to determine the term does not do so; or
 - (c) the third person does not determine the term,provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

ARTICLE 2.1.15

(Negotiations in bad faith)

- (1) A party is free to negotiate and is not liable for failure to reach an agreement.
- (2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.
- (3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

ARTICLE 2.1.16

(Duty of confidentiality)

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

ARTICLE 2.1.17

(Merger clauses)

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

ARTICLE 2.1.18

(Modification in a particular form)

A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.

ARTICLE 2.1.19

(Contracting under standard terms)

- (1) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.1.20 - 2.1.22.
- (2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

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ARTICLE 2.1.20

(Surprising terms)

(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.

(2) In determining whether a term is of such a character regard shall be had to its content, language and presentation.

ARTICLE 2.1.21

(Conflict between standard terms and non-standard terms)

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

ARTICLE 2.1.22

(Battle of forms)

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

SECTION 2: AUTHORITY OF AGENTS

ARTICLE 2.2.1

(Scope of the Section)

(1) This Section governs the authority of a person (“the agent”) to affect the legal relations of another person (“the principal”) by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.

(2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.

(3) It does not govern an agent’s authority conferred by law or the authority of an agent appointed by a public or judicial authority.

ARTICLE 2.2.2

(Establishment and scope of the authority of the agent)

(1) The principal’s grant of authority to an agent may be express or implied.

(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.

ARTICLE 2.2.3

(Agency disclosed)

(1) Where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party.

(2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract.

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ARTICLE 2.2.4

(Agency undisclosed)

(1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party.

(2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.

ARTICLE 2.2.5

(Agent acting without or exceeding its authority)

(1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.

(2) However, where the principal causes the third party reasonably to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

ARTICLE 2.2.6

(Liability of agent acting without or exceeding its authority)

(1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will place the third party in the same position as if the agent had acted with authority and not exceeded its authority.

(2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.

ARTICLE 2.2.7

(Conflict of interests)

(1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.2.9 and 3.2.11 to 3.2.15.

(2) However, the principal may not avoid the contract

(a) if the principal had consented to, or knew or ought to have known of, the agent's involvement in the conflict of interests; or

(b) if the agent had disclosed the conflict of interests to the principal and the latter had not objected within a reasonable time.

ARTICLE 2.2.8

(Sub-agency)

An agent has implied authority to appoint a sub-agent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this Section apply to the sub-agency.

ARTICLE 2.2.9

(Ratification)

(1) An act by an agent that acts without authority or exceeds its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.

(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period of time it can no longer do so.

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(3) If, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification.

ARTICLE 2.2.10

(Termination of authority)

(1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it.

(2) Notwithstanding the termination of its authority, an agent remains authorised to perform the acts that are necessary to prevent harm to the principal's interests.

CHAPTER 3— VALIDITY

SECTION 1: GENERAL PROVISIONS

ARTICLE 3.1.1

(Matters not covered)

This Chapter does not deal with lack of capacity.

ARTICLE 3.1.2

(Validity of mere agreement)

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement.

ARTICLE 3.1.3

(Initial impossibility)

(1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.

(2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

ARTICLE 3.1.4

(Mandatory character of the provisions)

The provisions on fraud, threat, gross disparity and illegality contained in this Chapter are mandatory.

SECTION 2: GROUNDS FOR AVOIDANCE

ARTICLE 3.2.1

(Definition of mistake)

Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.

ARTICLE 3.2.2

(Relevant mistake)

(1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and

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(a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or

(b) the other party had not at the time of avoidance reasonably acted in reliance on the contract.

(2) However, a party may not avoid the contract if

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

ARTICLE 3.2.3

(Error in expression or transmission)

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.

ARTICLE 3.2.4

(Remedies for non-performance)

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

ARTICLE 3.2.5

(Fraud)

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

ARTICLE 3.2.6

(Threat)

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

ARTICLE 3.2.7

(Gross disparity)

(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill, and

(b) the nature and purpose of the contract.

(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. Article 3.2.10(2) applies accordingly.

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ARTICLE 3.2.8

(Third persons)

(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.

(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.

ARTICLE 3.2.9

(Confirmation)

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

ARTICLE 3.2.10

(Loss of right to avoid)

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has reasonably acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

ARTICLE 3.2.11

(Notice of avoidance)

The right of a party to avoid the contract is exercised by notice to the other party.

ARTICLE 3.2.12

(Time limits)

(1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

(2) Where an individual term of the contract may be avoided by a party under Article 3.2.7, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

ARTICLE 3.2.13

(Partial avoidance)

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

ARTICLE 3.2.14

(Retroactive effect of avoidance)

Avoidance takes effect retroactively.

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ARTICLE 3.2.15

(Restitution)

(1) On avoidance either party may claim restitution of whatever it has supplied under the contract, or the part of it avoided, provided that the party concurrently makes restitution of whatever it has received under the contract, or the part of it avoided.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 3.2.16

(Damages)

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

ARTICLE 3.2.17

(Unilateral declarations)

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

SECTION 3: ILLEGALITY

ARTICLE 3.3.1

(Contracts infringing mandatory rules)

(1) Where a contract infringes a mandatory rule, whether of national, international or supranational origin, applicable under Article 1.4 of these Principles, the effects of that infringement upon the contract are the effects, if any, expressly prescribed by that mandatory rule.

(2) Where the mandatory rule does not expressly prescribe the effects of an infringement upon a contract, the parties have the right to exercise such remedies under the contract as in the circumstances are reasonable.

(3) In determining what is reasonable regard is to be had in particular to:

- (a) the purpose of the rule which has been infringed;
- (b) the category of persons for whose protection the rule exists;
- (c) any sanction that may be imposed under the rule infringed;
- (d) the seriousness of the infringement;
- (e) whether one or both parties knew or ought to have known of the infringement;
- (f) whether the performance of the contract necessitates the infringement; and
- (g) the parties' reasonable expectations.

ARTICLE 3.3.2

(Restitution)

(1) Where there has been performance under a contract infringing a mandatory rule under Article 3.3.1, restitution may be granted where this would be reasonable in the circumstances.

(2) In determining what is reasonable, regard is to be had, with the appropriate adaptations, to the criteria referred to in Article 3.3.1(3).

(3) If restitution is granted, the rules set out in Article 3.2.15 apply with appropriate adaptations.

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CHAPTER 4 — INTERPRETATION

ARTICLE 4.1

(Intention of the parties)

(1) A contract shall be interpreted according to the common intention of the parties.

(2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

ARTICLE 4.2

(Interpretation of statements and other conduct)

(1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.

(2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

ARTICLE 4.3

(Relevant circumstances)

In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned;
- (f) usages.

ARTICLE 4.4

(Reference to contract or statement as a whole)

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

ARTICLE 4.5

(All terms to be given effect)

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

ARTICLE 4.6

(Contra proferentem rule)

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

ARTICLE 4.7

(Linguistic discrepancies)

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

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ARTICLE 4.8

(Supplying an omitted term)

(1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.

(2) In determining what is an appropriate term regard shall be had, among other factors, to

- (a) the intention of the parties;
- (b) the nature and purpose of the contract;
- (c) good faith and fair dealing;
- (d) reasonableness.

CHAPTER 5 — CONTENT AND THIRD PARTY RIGHTS

SECTION 1: CONTENT

ARTICLE 5.1.1

(Express and implied obligations)

The contractual obligations of the parties may be express or implied.

ARTICLE 5.1.2

(Implied obligations)

Implied obligations stem from

- (a) the nature and purpose of the contract;
- (b) practices established between the parties and usages;
- (c) good faith and fair dealing;
- (d) reasonableness.

ARTICLE 5.1.3

(Co-operation between the parties)

Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

ARTICLE 5.1.4

(Duty to achieve a specific result.

Duty of best efforts)

(1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.

(2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

ARTICLE 5.1.5

(Determination of kind of duty involved)

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to

- (a) the way in which the obligation is expressed in the contract;
- (b) the contractual price and other terms of the contract;
- (c) the degree of risk normally involved in achieving the expected result;
- (d) the ability of the other party to influence the performance of the obligation.

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ARTICLE 5.1.6

(Determination of quality of performance)

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

ARTICLE 5.1.7

(Price determination)

(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.

(2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.

(3) Where the price is to be fixed by one party or a third person, and that party or third person does not do so, the price shall be a reasonable price.

(4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

ARTICLE 5.1.8

(Termination of a contract for an indefinite period)

A contract for an indefinite period may be terminated by either party by giving notice a reasonable time in advance. As to the effects of termination in general, and as to restitution, the provisions in Articles 7.3.5 and 7.3.7 apply.

ARTICLE 5.1.9

(Release by agreement)

(1) An obligee may release its right by agreement with the obligor.

(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.

SECTION 2: THIRD PARTY RIGHTS

ARTICLE 5.2.1

(Contracts in favour of third parties)

(1) The parties (the “promisor” and the “promisee”) may confer by express or implied agreement a right on a third party (the “beneficiary”).

(2) The existence and content of the beneficiary’s right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement.

ARTICLE 5.2.2

(Third party identifiable)

The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.

ARTICLE 5.2.3

(Exclusion and limitation clauses)

The conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary.

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ARTICLE 5.2.4 *(Defences)*

The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.

ARTICLE 5.2.5 *(Revocation)*

The parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or reasonably acted in reliance on them.

ARTICLE 5.2.6 *(Renunciation)*

The beneficiary may renounce a right conferred on it.

SECTION 3: CONDITIONS

ARTICLE 5.3.1 *(Types of condition)*

A contract or a contractual obligation may be made conditional upon the occurrence of a future uncertain event, so that the contract or the contractual obligation only takes effect if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).

ARTICLE 5.3.2 *(Effect of conditions)*

Unless the parties otherwise agree:

- (a) the relevant contract or contractual obligation takes effect upon fulfilment of a suspensive condition;
- (b) the relevant contract or contractual obligation comes to an end upon fulfilment of a resolutive condition.

ARTICLE 5.3.3 *(Interference with conditions)*

(1) If fulfilment of a condition is prevented by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the non-fulfilment of the condition.

(2) If fulfilment of a condition is brought about by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the fulfilment of the condition.

ARTICLE 5.3.4 *(Duty to preserve rights)*

Pending fulfilment of a condition, a party may not, contrary to the duty to act in accordance with good faith and fair dealing, act so as to prejudice the other party's rights in case of fulfilment of the condition.

ARTICLE 5.3.5 *(Restitution in case of fulfilment of a resolutive condition)*

(1) On fulfilment of a resolutive condition, the rules on restitution set out in Articles 7.3.6 and 7.3.7 apply with appropriate adaptations.

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(2) If the parties have agreed that the resolutive condition is to operate retroactively, the rules on restitution set out in Article 3.2.15 apply with appropriate adaptations.

CHAPTER 6 — PERFORMANCE

SECTION 1: PERFORMANCE IN GENERAL

ARTICLE 6.1.1

(Time of performance)

A party must perform its obligations:

- (a) if a time is fixed by or determinable from the contract, at that time;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time;
- (c) in any other case, within a reasonable time after the conclusion of the contract.

ARTICLE 6.1.2

(Performance at one time or in instalments)

In cases under Article 6.1.1(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

ARTICLE 6.1.3

(Partial performance)

- (1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the obligee has no legitimate interest in so doing.
- (2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.

ARTICLE 6.1.4

(Order of performance)

- (1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.
- (2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

ARTICLE 6.1.5

(Earlier performance)

- (1) The obligee may reject an earlier performance unless it has no legitimate interest in so doing.
- (2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.
- (3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

ARTICLE 6.1.6

(Place of performance)

- (1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

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- (a) a monetary obligation, at the obligee's place of business;
 - (b) any other obligation, at its own place of business.
- (2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

ARTICLE 6.1.7

(Payment by cheque or other instrument)

- (1) Payment may be made in any form used in the ordinary course of business at the place for payment.
- (2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

ARTICLE 6.1.8

(Payment by funds transfer)

- (1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.
- (2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

ARTICLE 6.1.9

(Currency of payment)

- (1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment unless
- (a) that currency is not freely convertible; or
 - (b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.
- (2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).
- (3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.
- (4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

ARTICLE 6.1.10

(Currency not expressed)

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

ARTICLE 6.1.11

(Costs of performance)

Each party shall bear the costs of performance of its obligations.

ARTICLE 6.1.12

(Imputation of payments)

- (1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied.

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However, the payment discharges first any expenses, then interest due and finally the principal.

(2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.

(3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria in the order indicated:

- (a) an obligation which is due or which is the first to fall due;
- (b) the obligation for which the obligee has least security;
- (c) the obligation which is the most burdensome for the obligor;
- (d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

ARTICLE 6.1.13

(Imputation of non-monetary obligations)

Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

ARTICLE 6.1.14

(Application for public permission)

Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise

(a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;

(b) in any other case the party whose performance requires permission shall take the necessary measures.

ARTICLE 6.1.15

(Procedure in applying for permission)

(1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.

(2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

ARTICLE 6.1.16

(Permission neither granted nor refused)

(1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.

(2) Where the permission affects some terms only, paragraph (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

ARTICLE 6.1.17

(Permission refused)

(1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.

(2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

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SECTION 2: HARDSHIP

ARTICLE 6.2.1

(Contract to be observed)

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

ARTICLE 6.2.2

(Definition of hardship)

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

- (a) the events occur or become known to the disadvantaged party after the conclusion of the contract;
- (b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;
- (c) the events are beyond the control of the disadvantaged party; and
- (d) the risk of the events was not assumed by the disadvantaged party.

ARTICLE 6.2.3

(Effects of hardship)

(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.

(2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.

(3) Upon failure to reach agreement within a reasonable time either party may resort to the court.

- (4) If the court finds hardship it may, if reasonable,
- (a) terminate the contract at a date and on terms to be fixed, or
 - (b) adapt the contract with a view to restoring its equilibrium.

CHAPTER 7 — NON-PERFORMANCE

SECTION 1: NON-PERFORMANCE IN GENERAL

ARTICLE 7.1.1

(Non-performance defined)

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

ARTICLE 7.1.2

(Interference by the other party)

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk.

ARTICLE 7.1.3

(Withholding performance)

(1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance.

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(2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

ARTICLE 7.1.4

(Cure by non-performing party)

(1) The non-performing party may, at its own expense, cure any non-performance, provided that

(a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;

(b) cure is appropriate in the circumstances;

(c) the aggrieved party has no legitimate interest in refusing cure; and

(d) cure is effected promptly.

(2) The right to cure is not precluded by notice of termination.

(3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.

(4) The aggrieved party may withhold performance pending cure.

(5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

ARTICLE 7.1.5

(Additional period for performance)

(1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.

(2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.

(3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.

(4) Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

ARTICLE 7.1.6

(Exemption clauses)

A clause which limits or excludes one party's liability for non-performance or which permits one party to render performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract.

ARTICLE 7.1.7

(Force majeure)

(1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

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(2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.

(3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

(4) Nothing in this Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

SECTION 2: RIGHT TO PERFORMANCE

ARTICLE 7.2.1

(Performance of monetary obligation)

Where a party who is obliged to pay money does not do so, the other party may require payment.

ARTICLE 7.2.2

(Performance of non-monetary obligation)

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

- (a) performance is impossible in law or in fact;
- (b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;
- (c) the party entitled to performance may reasonably obtain performance from another source;
- (d) performance is of an exclusively personal character; or
- (e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

ARTICLE 7.2.3

(Repair and replacement of defective performance)

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

ARTICLE 7.2.4

(Judicial penalty)

(1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.

(2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

ARTICLE 7.2.5

(Change of remedy)

(1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.

(2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

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SECTION 3: TERMINATION

ARTICLE 7.3.1

(Right to terminate the contract)

- (1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
- (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether
 - (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;
 - (b) strict compliance with the obligation which has not been performed is of essence under the contract;
 - (c) the non-performance is intentional or reckless;
 - (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;
 - (e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.
- (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 7.1.5 has expired.

ARTICLE 7.3.2

(Notice of termination)

- (1) The right of a party to terminate the contract is exercised by notice to the other party.
- (2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

ARTICLE 7.3.3

(Anticipatory non-performance)

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

ARTICLE 7.3.4

(Adequate assurance of due performance)

A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

ARTICLE 7.3.5

(Effects of termination in general)

- (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.
- (2) Termination does not preclude a claim for damages for non-performance.
- (3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

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ARTICLE 7.3.6

(Restitution with respect to contracts to be performed at one time)

(1) On termination of a contract to be performed at one time either party may claim restitution of whatever it has supplied under the contract, provided that such party concurrently makes restitution of whatever it has received under the contract.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 7.3.7

(Restitution with respect to long-term contracts)

(1) On termination of a long-term contract restitution can only be claimed for the period after termination has taken effect, provided the contract is divisible.

(2) As far as restitution has to be made, the provisions of Article 7.3.6 apply.

SECTION 4: DAMAGES

ARTICLE 7.4.1

(Right to damages)

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.

ARTICLE 7.4.2

(Full compensation)

(1) The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

(2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

ARTICLE 7.4.3

(Certainty of harm)

(1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.

(2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.

(3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

ARTICLE 7.4.4

(Foreseeability of harm)

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

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ARTICLE 7.4.5

(Proof of harm in case of replacement transaction)

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

ARTICLE 7.4.6

(Proof of harm by current price)

(1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.

(2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

ARTICLE 7.4.7

(Harm due in part to aggrieved party)

Where the harm is due in part to an act or omission of the aggrieved party or to another event for which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

ARTICLE 7.4.8

(Mitigation of harm)

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

ARTICLE 7.4.9

(Interest for failure to pay money)

(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.

(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

(3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

ARTICLE 7.4.10

(Interest on damages)

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

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ARTICLE 7.4.11

(Manner of monetary redress)

- (1) Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate.
- (2) Damages to be paid in instalments may be indexed.

ARTICLE 7.4.12

(Currency in which to assess damages)

Damages are to be assessed either in the currency in which the monetary obligation was expressed or in the currency in which the harm was suffered, whichever is more appropriate.

ARTICLE 7.4.13

(Agreed payment for non-performance)

- (1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.
- (2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.

CHAPTER 8 — SET-OFF

ARTICLE 8.1

(Conditions of set-off)

- (1) Where two parties owe each other money or other performances of the same kind, either of them (“the first party”) may set off its obligation against that of its obligee (“the other party”) if at the time of set-off,
 - (a) the first party is entitled to perform its obligation;
 - (b) the other party’s obligation is ascertained as to its existence and amount and performance is due.
- (2) If the obligations of both parties arise from the same contract, the first party may also set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount.

ARTICLE 8.2

(Foreign currency set-off)

Where the obligations are to pay money in different currencies, the right of set-off may be exercised, provided that both currencies are freely convertible and the parties have not agreed that the first party shall pay only in a specified currency.

ARTICLE 8.3

(Set-off by notice)

The right of set-off is exercised by notice to the other party.

ARTICLE 8.4

(Content of notice)

- (1) The notice must specify the obligations to which it relates.
- (2) If the notice does not specify the obligation against which set-off is exercised, the other party may, within a reasonable time, declare to the first party the obligation to which set-off relates. If no such declaration is made, the set-off will relate to all the obligations proportionally.

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ARTICLE 8.5

(Effect of set-off)

- (1) Set-off discharges the obligations.
- (2) If obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.
- (3) Set-off takes effect as from the time of notice.

CHAPTER 9 — ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS

SECTION 1: ASSIGNMENT OF RIGHTS

ARTICLE 9.1.1

(Definitions)

“Assignment of a right” means the transfer by agreement from one person (the “assignor”) to another person (the “assignee”), including transfer by way of security, of the assignor’s right to payment of a monetary sum or other performance from a third person (“the obligor”).

ARTICLE 9.1.2

(Exclusions)

This Section does not apply to transfers made under the special rules governing the transfers:

- (a) of instruments such as negotiable instruments, documents of title or financial instruments, or
- (b) of rights in the course of transferring a business.

ARTICLE 9.1.3

(Assignability of non-monetary rights)

A right to non-monetary performance may be assigned only if the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.4

(Partial assignment)

- (1) A right to the payment of a monetary sum may be assigned partially.
- (2) A right to other performance may be assigned partially only if it is divisible, and the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.5

(Future rights)

A future right is deemed to be transferred at the time of the agreement, provided the right, when it comes into existence, can be identified as the right to which the assignment relates.

ARTICLE 9.1.6

(Rights assigned without individual specification)

A number of rights may be assigned without individual specification, provided such rights can be identified as rights to which the assignment relates at the time of the assignment or when they come into existence.

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ARTICLE 9.1.7

(Agreement between assignor and assignee sufficient)

- (1) A right is assigned by mere agreement between the assignor and the assignee, without notice to the obligor.
- (2) The consent of the obligor is not required unless the obligation in the circumstances is of an essentially personal character.

ARTICLE 9.1.8

(Obligor's additional costs)

The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.

ARTICLE 9.1.9

(Non-assignment clauses)

- (1) The assignment of a right to the payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such an assignment. However, the assignor may be liable to the obligor for breach of contract.
- (2) The assignment of a right to other performance is ineffective if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the assignee, at the time of the assignment, neither knew nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.

ARTICLE 9.1.10

(Notice to the obligor)

- (1) Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.
- (2) After the obligor receives such a notice, it is discharged only by paying the assignee.

ARTICLE 9.1.11

(Successive assignments)

If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged by paying according to the order in which the notices were received.

ARTICLE 9.1.12

(Adequate proof of assignment)

- (1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.
- (2) Until adequate proof is provided, the obligor may withhold payment.
- (3) Unless adequate proof is provided, notice is not effective.
- (4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

ARTICLE 9.1.13

(Defences and rights of set-off)

- (1) The obligor may assert against the assignee all defences that the obligor could assert against the assignor.
- (2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.

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ARTICLE 9.1.14

(Rights related to the right assigned)

The assignment of a right transfers to the assignee:

- (a) all the assignor's rights to payment or other performance under the contract in respect of the right assigned, and
- (b) all rights securing performance of the right assigned.

ARTICLE 9.1.15

(Undertakings of the assignor)

The assignor undertakes towards the assignee, except as otherwise disclosed to the assignee, that:

- (a) the assigned right exists at the time of the assignment, unless the right is a future right;
- (b) the assignor is entitled to assign the right;
- (c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;
- (d) the obligor does not have any defences;
- (e) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give any such notice;
- (f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.

SECTION 2: TRANSFER OF OBLIGATIONS

ARTICLE 9.2.1

(Modes of transfer)

An obligation to pay money or render other performance may be transferred from one person (the "original obligor") to another person (the "new obligor") either

- (a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or
- (b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.

ARTICLE 9.2.2

(Exclusion)

This Section does not apply to transfers of obligations made under the special rules governing transfers of obligations in the course of transferring a business.

ARTICLE 9.2.3

(Requirement of obligee's consent to transfer)

The transfer of an obligation by an agreement between the original obligor and the new obligor requires the consent of the obligee.

ARTICLE 9.2.4

(Advance consent of obligee)

- (1) The obligee may give its consent in advance.
- (2) If the obligee has given its consent in advance, the transfer of the obligation becomes effective when a notice of the transfer is given to the obligee or when the obligee acknowledges it.

ARTICLE 9.2.5

(Discharge of original obligor)

- (1) The obligee may discharge the original obligor.

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- (2) The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.
- (3) Otherwise the original obligor and the new obligor are jointly and severally liable.

ARTICLE 9.2.6

(Third party performance)

- (1) Without the obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation in the circumstances has an essentially personal character.
- (2) The obligee retains its claim against the obligor.

ARTICLE 9.2.7

(Defences and rights of set-off)

- (1) The new obligor may assert against the obligee all defences which the original obligor could assert against the obligee.
- (2) The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee.

ARTICLE 9.2.8

(Rights related to the obligation transferred)

- (1) The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.
- (2) If the original obligor is discharged under Article 9.2.5(1), a security granted by any person other than the new obligor for the performance of the obligation is discharged, unless that other person agrees that it should continue to be available to the obligee.
- (3) Discharge of the original obligor also extends to any security of the original obligor given to the obligee for the performance of the obligation, unless the security is over an asset which is transferred as part of a transaction between the original obligor and the new obligor.

SECTION 3: ASSIGNMENT OF CONTRACTS

ARTICLE 9.3.1

(Definitions)

“Assignment of a contract” means the transfer by agreement from one person (the “assignor”) to another person (the “assignee”) of the assignor's rights and obligations arising out of a contract with another person (the “other party”).

ARTICLE 9.3.2

(Exclusion)

This Section does not apply to the assignment of contracts made under the special rules governing transfers of contracts in the course of transferring a business.

ARTICLE 9.3.3

(Requirement of consent of the other party)

The assignment of a contract requires the consent of the other party.

ARTICLE 9.3.4

(Advance consent of the other party)

- (1) The other party may give its consent in advance.

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(2) If the other party has given its consent in advance, the assignment of the contract becomes effective when a notice of the assignment is given to the other party or when the other party acknowledges it.

ARTICLE 9.3.5

(Discharge of the assignor)

- (1) The other party may discharge the assignor.
- (2) The other party may also retain the assignor as an obligor in case the assignee does not perform properly.
- (3) Otherwise the assignor and the assignee are jointly and severally liable.

ARTICLE 9.3.6

(Defences and rights of set-off)

- (1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.13 applies accordingly.
- (2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.7 applies accordingly.

ARTICLE 9.3.7

(Rights transferred with the contract)

- (1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.14 applies accordingly.
- (2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.8 applies accordingly.

CHAPTER 10 — LIMITATION PERIODS

ARTICLE 10.1

(Scope of the Chapter)

- (1) The exercise of rights governed by the Principles is barred by the expiration of a period of time, referred to as “limitation period”, according to the rules of this Chapter.
- (2) This Chapter does not govern the time within which one party is required under the Principles, as a condition for the acquisition or exercise of its right, to give notice to the other party or to perform any act other than the institution of legal proceedings.

ARTICLE 10.2

(Limitation periods)

- (1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee’s right can be exercised.
- (2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.

ARTICLE 10.3

(Modification of limitation periods by the parties)

- (1) The parties may modify the limitation periods.
- (2) However they may not
 - (a) shorten the general limitation period to less than one year;
 - (b) shorten the maximum limitation period to less than four years;
 - (c) extend the maximum limitation period to more than fifteen years.

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ARTICLE 10.4

(New limitation period by acknowledgement)

(1) Where the obligor before the expiration of the general limitation period acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.

(2) The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Article 10.2(1).

ARTICLE 10.5

(Suspension by judicial proceedings)

(1) The running of the limitation period is suspended

(a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognised by the law of the court as asserting the obligee's right against the obligor;

(b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or

(c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.

(2) Suspension lasts until a final decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.6

(Suspension by arbitral proceedings)

(1) The running of the limitation period is suspended when the obligee performs any act, by commencing arbitral proceedings or in arbitral proceedings already instituted, that is recognised by the law of the arbitral tribunal as asserting the obligee's right against the obligor. In the absence of regulations for arbitral proceedings or provisions determining the exact date of the commencement of arbitral proceedings, the proceedings are deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.

(2) Suspension lasts until a binding decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.7

(Alternative dispute resolution)

The provisions of Articles 10.5 and 10.6 apply with appropriate modifications to other proceedings whereby the parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.

ARTICLE 10.8

(Suspension in case of force majeure, death or incapacity)

(1) Where the obligee has been prevented by an impediment that is beyond its control and that it could neither avoid nor overcome, from causing a limitation period to cease to run under the preceding Articles, the general limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.

(2) Where the impediment consists of the incapacity or death of the obligee or obligor, suspension ceases when a representative for the incapacitated or deceased party or its estate has been appointed or a successor has inherited the respective party's position. The additional one-year period under paragraph (1) applies accordingly.

ARTICLE 10.9

(Effects of expiration of limitation period)

(1) The expiration of the limitation period does not extinguish the right.

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(2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.

(3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted.

ARTICLE 10.10

(Right of set-off)

The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.

ARTICLE 10.11

(Restitution)

Where there has been performance in order to discharge an obligation, there is no right of restitution merely because the limitation period has expired.

CHAPTER 11 — PLURALITY OF OBLIGORS AND OF OBLIGEEES

SECTION 1: PLURALITY OF OBLIGORS

ARTICLE 11.1.1

(Definitions)

When several obligors are bound by the same obligation towards an obligee:

- (a) the obligations are joint and several when each obligor is bound for the whole obligation;
- (b) the obligations are separate when each obligor is bound only for its share.

ARTICLE 11.1.2

(Presumption of joint and several obligations)

When several obligors are bound by the same obligation towards an obligee, they are presumed to be jointly and severally bound, unless the circumstances indicate otherwise.

ARTICLE 11.1.3

(Obligee's rights against joint and several obligors)

When obligors are jointly and severally bound, the obligee may require performance from any one of them, until full performance has been received.

ARTICLE 11.1.4

(Availability of defences and rights of set-off)

A joint and several obligor against whom a claim is made by the obligee may assert all the defences and rights of set-off that are personal to it or that are common to all the co-obligors, but may not assert defences or rights of set-off that are personal to one or several of the other co-obligors.

ARTICLE 11.1.5

(Effect of performance or set-off)

Performance or set-off by a joint and several obligor or set-off by the obligee against one joint and several obligor discharges the other obligors in relation to the obligee to the extent of the performance or set-off.

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ARTICLE 11.1.6

(Effect of release or settlement)

(1) Release of one joint and several obligor, or settlement with one joint and several obligor, discharges all the other obligors for the share of the released or settling obligor, unless the circumstances indicate otherwise.

(2) When the other obligors are discharged for the share of the released obligor, they no longer have a contributory claim against the released obligor under Article 11.1.10.

ARTICLE 11.1.7

(Effect of expiration or suspension of limitation period)

(1) Expiration of the limitation period of the obligee's rights against one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) If the obligee initiates proceedings under Articles 10.5, 10.6 or 10.7 against one joint and several obligor, the running of the limitation period is also suspended against the other joint and several obligors.

ARTICLE 11.1.8

(Effect of judgment)

(1) A decision by a court as to the liability to the obligee of one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) However, the other joint and several obligors may rely on such a decision, except if it was based on grounds personal to the obligor concerned. In such a case, the rights of recourse between the joint and several obligors under Article 11.1.10 are affected accordingly.

ARTICLE 11.1.9

(Apportionment among joint and several obligors)

As among themselves, joint and several obligors are bound in equal shares, unless the circumstances indicate otherwise.

ARTICLE 11.1.10

(Extent of contributory claim)

A joint and several obligor who has performed more than its share may claim the excess from any of the other obligors to the extent of each obligor's unperformed share.

ARTICLE 11.1.11

(Rights of the obligee)

(1) A joint and several obligor to whom Article 11.1.10 applies may also exercise the rights of the obligee, including all rights securing their performance, to recover the excess from all or any of the other obligors to the extent of each obligor's unperformed share.

(2) An obligee who has not received full performance retains its rights against the co-obligors to the extent of the unperformed part, with precedence over co-obligors exercising contributory claims.

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ARTICLE 11.1.12

(Defences in contributory claims)

A joint and several obligor against whom a claim is made by the co-obligor who has performed the obligation:

- (a) may raise any common defences and rights of set-off that were available to be asserted by the co-obligor against the obligee ;
- (b) may assert defences which are personal to itself ;
- (c) may not assert defences and rights of set-off which are personal to one or several of the other co-obligors.

ARTICLE 11.1.13

(Inability to recover)

If a joint and several obligor who has performed more than that obligor's share is unable, despite all reasonable efforts, to recover contribution from another joint and several obligor, the share of the others, including the one who has performed, is increased proportionally.

SECTION 2: PLURALITY OF OBLIGEEES

ARTICLE 11.2.1

(Definitions)

When several obligees can claim performance of the same obligation from an obligor:

- (a) the claims are separate when each obligee can only claim its share;
- (b) the claims are joint and several when each obligee can claim the whole performance;
- (c) the claims are joint when all obligees have to claim performance together.

ARTICLE 11.2.2

(Effects of joint and several claims)

Full performance of an obligation in favour of one of the joint and several obligees discharges the obligor towards the other obligees.

ARTICLE 11.2.3

(Availability of defences against joint and several obligees)

- (1) The obligor may assert against any of the joint and several obligees all the defences and rights of set-off that are personal to its relationship to that obligee or that it can assert against all the co-obligees, but may not assert defences and rights of set-off that are personal to its relationship to one or several of the other co-obligees.
- (2) The provisions of Articles 11.1.5, 11.1.6, 11.1.7 and 11.1.8 apply, with appropriate adaptations, to joint and several claims.

ARTICLE 11.2.4

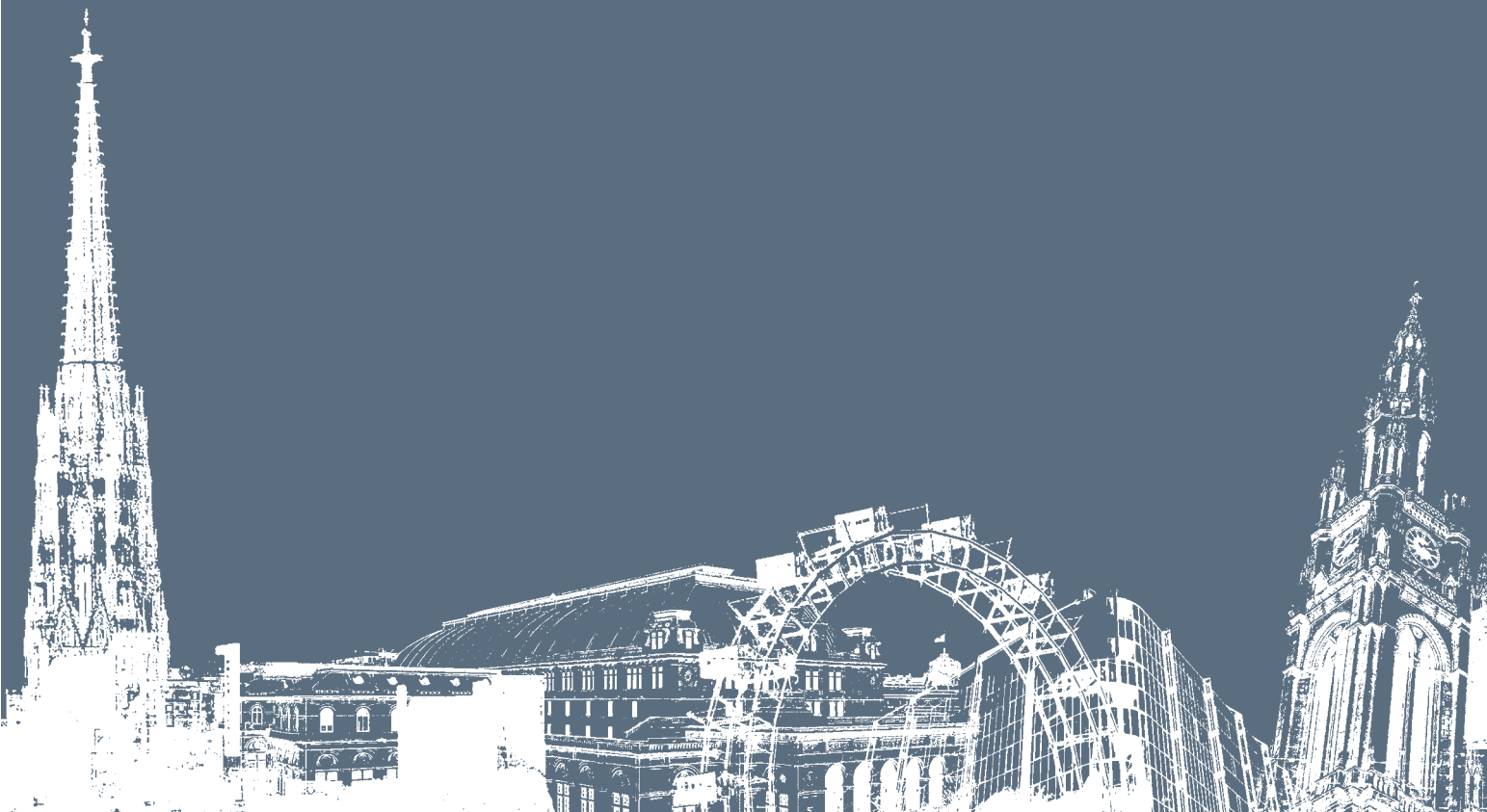
(Allocation between joint and several obligees)

- (1) As among themselves, joint and several obligees are entitled to equal shares, unless the circumstances indicate otherwise.
- (2) An obligee who has received more than its share must transfer the excess to the other obligees to the extent of their respective shares.



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of the Finland Chamber of Commerce





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The English text prevails
over other language versions.

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CHAPTER I

INTRODUCTORY PROVISIONS

1. THE ARBITRATION INSTITUTE

- 1.1 The Arbitration Institute of the Finland Chamber of Commerce (the "Institute") is an impartial body responsible for the administration of the settlement of disputes in domestic and international arbitrations pursuant to these rules (the "Rules") and the Rules for Expedited Arbitration of the Finland Chamber of Commerce (the "Expedited Rules") in cases where:
- (a) their application is provided for in an arbitration clause, a separate arbitration agreement, articles of association, or otherwise (hereinafter collectively referred to as the "arbitration agreement"); or
 - (b) an arbitration agreement provides for arbitration administered by the Institute.
- 1.2 Nothing in these Rules shall prevent the designation of the Institute as appointing authority without subjecting the arbitration to the provisions contained in these Rules.
- 1.3 The Institute is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). Detailed provisions on the organisation of the Institute are contained in Appendix I.

2. DEFINITIONS

In these Rules:

- (i) "arbitral tribunal" includes one or more arbitrators;
- (ii) "claimant" includes one or more claimants;
- (iii) "respondent" includes one or more respondents;
- (iv) "additional party" includes one or more additional parties;

- (v) "party" or "parties" include claimants, respondents and additional parties;
- (vi) "claim" or "claims" include any claim by any party against any other party;
- (vii) "award" includes, inter alia, any interim, partial or final award made by the arbitral tribunal;
- (viii) "nomination" means a proposal by one or more parties or party-nominated arbitrators that a certain candidate be confirmed as party-nominated, sole or presiding arbitrator by the Institute;
- (ix) "confirmation" means an act whereby the Institute confirms that a candidate nominated by one or more parties or by party-nominated arbitrators or a candidate appointed by the Institute may serve as arbitrator in an arbitration under the Rules;
- (x) "joinder" means joining one or more additional parties as parties to a pending arbitration under the Rules;
- (xi) "consolidation" means combining two or more arbitrations under the Rules into a single arbitration;
- (xii) "separation" means separating claims made under an arbitration agreement to be determined in a separate arbitration;
- (xiii) "bi-party proceedings" means an arbitration with two parties;
- (xiv) "multi-party proceedings" means an arbitration with more than two parties.

3. SCOPE OF APPLICATION

- 3.1 Where the parties have agreed to submit to arbitration under the Arbitration Rules of the Finland Chamber of Commerce, they shall be deemed to have agreed that the arbitration shall be governed by these Rules and administered by the Institute.
- 3.2 The Rules include Appendices I to III. The

Appendices may be separately amended from time to time by the Institute or the Finland Chamber of Commerce.

- 3.3 The Rules in effect on the date of commencement of an arbitration shall apply to that arbitration, unless otherwise agreed by the parties and subject to Article 54.2.
- 3.4 The Appendices in effect on the date of commencement of an arbitration shall apply to that arbitration, subject to the provisions of Article 54.2 regarding the entry into force of Appendix III and the parties' right to opt out of the application of the provisions contained in Appendix III.

4. NOTICES

- 4.1 The Institute, the arbitral tribunal and the parties shall transmit any written statement, notice or other communication in hard copy or by electronic means in a manner that provides a record of the transmission.
- 4.2 If a party is represented by counsel or other representative, any written statement, notice or other communication shall be made to the latter, unless that party requests otherwise. The Request for Arbitration referred to in Article 6 shall nevertheless be transmitted to the respondent itself, unless the respondent instructs the Institute in writing that the Request for Arbitration shall be transmitted only to its counsel or other representative. Correspondingly, the Request for Joinder referred to in Article 11 shall be transmitted to the additional party itself, unless the additional party instructs the Institute in writing that the Request for Joinder shall be transmitted only to its counsel or other representative.
- 4.3 Any notice or other communication from the Institute or the arbitral tribunal shall be delivered to the last known address of the party or its counsel or other representative, as notified either by the party in question or by the other party.

- 4.4 Once the case file has been transmitted to the arbitral tribunal, a party shall submit any written statement or other communication directly to the tribunal, with a simultaneous copy to the other parties.
- 4.5 The Institute or the arbitral tribunal may, if deemed necessary, separately request that a party provide a hard copy of an electronically transmitted document or other communication or that a party provide additional copies of any hard copy. The arbitral tribunal may also otherwise issue more detailed orders regarding the transmission of written statements, notices and other communications to the tribunal and the parties.
- 4.6 At any time after the commencement of the arbitration, the Institute or the arbitral tribunal may require proof of authority from counsel or any party representative in such form as the Institute or the arbitral tribunal may determine.

5. CALCULATION OF TIME PERIODS

- 5.1 Any written statement, notice or other communication transmitted in accordance with Articles 4.1, 4.2 and 4.3 shall be deemed to have been made on the day it was received by the party itself or by its counsel or other representative, or on the day it would normally have been received given the means of transmission.
- 5.2 A period of time under the Rules shall begin to run on the day following the day when a notice or other communication is made under Article 5.1. If the last day of such a period is an official holiday or a non-business day at the place of business or habitual residence of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days are included in the calculation of a period of time.
- 5.3 The Institute may, at the request of a party or on its own motion, extend or shorten any time period it has set or has the authority to set or amend.

CHAPTER II

COMMENCEMENT OF PROCEEDINGS

6. REQUEST FOR ARBITRATION

- 6.1 The party initiating arbitration (the “claimant”) shall submit a Request for Arbitration to the Institute in accordance with Article 4.1.
- 6.2 The arbitration shall be deemed to have commenced on the date on which the Request for Arbitration is received by the Institute.
- 6.3 The Request for Arbitration shall contain the following information:
- (a) the names and contact details of the parties and of their counsel or other representatives;
 - (b) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;
 - (c) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute arises;
 - (d) a brief description of the nature and circumstances of the dispute giving rise to the claims;
 - (e) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made;
 - (f) a preliminary statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
 - (g) the claimant’s observations or proposals as to the number of arbitrators, the language, the seat of arbitration and the law or rules of law applicable to the substance of the dispute;
 - (h) if the arbitration agreement provides for three arbitrators, and the parties have not agreed otherwise, the name and contact details of the

arbitrator nominated by the claimant;

- (i) the claimant's possible observations to the effect that the Expedited Rules would be more appropriate for the conduct of the arbitration than the Rules; and
- (j) proof of payment of the Filing Fee referred to in Article 7.

6.4 The Request for Arbitration shall be submitted in the language of the arbitration as agreed by the parties. Failing such agreement, the Request for Arbitration shall be submitted in the language of the arbitration agreement.

6.5 Where the Request for Arbitration fails to fulfill the requirements set forth in Articles 6.3 and 6.4, the Institute may direct the claimant to remedy the defect within the time limit set by the Institute. If the claimant fails to comply, the Board may dismiss the Request for Arbitration and terminate the proceedings.

6.6 The Institute shall transmit the Request for Arbitration and the attached documents to the respondent once the claimant has paid the Filing Fee referred to in Article 7 and provided any copies that may have been requested in accordance with Article 4.5.

7. FILING FEE TO BE PAID BY THE CLAIMANT

7.1 Upon filing the Request for Arbitration, the claimant shall pay the Filing Fee prescribed in Article 1 of Appendix II.

7.2 If the claimant fails to pay the Filing Fee upon filing the Request for Arbitration, the Institute shall direct the claimant to make the payment within the time limit set by the Institute. If the claimant fails to comply, the Board may dismiss the Request for Arbitration and terminate the proceedings.

8. ANSWER TO THE REQUEST FOR ARBITRATION

- 8.1 Within 21 days of the receipt of the Request for Arbitration, the respondent shall submit to the Institute an Answer to the Request for Arbitration (the "Answer") in accordance with Article 4.1.
- 8.2 The Answer shall contain the following information:
- (a) the names and contact details of each respondent and of their counsel or other representatives;
 - (b) to the extent possible, any plea that an arbitral tribunal to be constituted under the Rules lacks jurisdiction;
 - (c) the respondent's comments on the claimant's description of the nature and circumstances of the dispute giving rise to the claims;
 - (d) the respondent's preliminary response to the relief sought by the claimant;
 - (e) the respondent's observations or proposals as to the number of arbitrators, the language, the seat of arbitration and the law or rules of law applicable to the substance of the dispute in light of the observations or proposals made by the claimant in the Request for Arbitration;
 - (f) if the arbitration agreement provides for three arbitrators, and the parties have not agreed otherwise, the name and contact details of the arbitrator nominated by the respondent; and
 - (g) the respondent's possible observations to the effect that the Expedited Rules would be more appropriate for the conduct of the arbitration than the Rules and/or comments on the claimant's observations to this effect in the Request for Arbitration.
- 8.3 The Answer shall be submitted in the language required by Article 6.4.
- 8.4 Any counterclaim or set-off claim shall, to the extent possible, be raised in the respondent's

Answer and shall contain the following information:

- (a) identification of and, where possible and unless already produced by the claimant, a copy of the arbitration agreement under which the counterclaim or set-off claim is made;
- (b) identification of any contract, other legal instrument or relationship out of or in relation to which the counterclaim or set-off claim arises;
- (c) a brief description of the nature and circumstances of the dispute giving rise to the counterclaim or set-off claim;
- (d) where counterclaims or set-off claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each counterclaim or set-off claim is made;
- (e) a preliminary statement of the relief sought, together with the amounts of any quantified counterclaims or set-off claims and, to the extent possible, an estimate of the monetary value of any other claims; and
- (f) proof of payment of the Filing Fee referred to in Article 9.

8.5 If the Answer fails to fulfill the requirements set forth in Articles 8.2 and 8.3, or if the respondent fails to provide any copies that may have been requested in accordance with Article 4.5, the Institute may direct the respondent to remedy the defect within the time limit set by the Institute. Failure by the respondent to comply shall not prevent the arbitration from proceeding.

8.6 If the respondent's counterclaim or set-off claim fails to fulfill the requirements set forth in Article 8.4, the Institute may direct the respondent to remedy the defect within the time limit set by the Institute. If the respondent fails to comply, the Board may dismiss the counterclaim or set-off claim.

8.7 The Institute shall transmit the Answer and the attached documents to the claimant. If the respondent has raised a counterclaim or set-off claim, the claimant shall submit to the Institute a reply to such counterclaim or set-off claim (the "Reply") within the time limit set by the Institute.

9. FILING FEE TO BE PAID BY THE RESPONDENT

9.1 Upon filing a counterclaim or set-off claim, the respondent shall pay the Filing Fee prescribed in Article 1 of Appendix II.

9.2 Where the respondent raises a counterclaim or set-off claim only after the transmission of the case file to the arbitral tribunal, the tribunal shall promptly inform the Institute of such counterclaim or set-off claim.

9.3 If the respondent fails to pay the Filing Fee upon filing the counterclaim or set-off claim, the Institute shall direct the respondent to make the payment within the time limit set by the Institute. If the respondent fails to comply, the Board may dismiss the counterclaim or set-off claim or, once the case file has been transmitted to the arbitral tribunal, direct the tribunal to treat the counterclaim or set-off claim as having been withdrawn.

10. REFERRING THE ARBITRATION TO BE CONDUCTED UNDER THE EXPEDITED RULES

10.1 In addition to the provisions of Articles 6.3(i) and 8.2(g), the Institute may on its own motion request that the parties comment on whether the Expedited Rules might be more appropriate for the conduct of the arbitration than the Rules.

10.2 Where the parties agree on the application of the Expedited Rules, the arbitration may be referred to be conducted under the Expedited Rules prior to the confirmation of any arbitrator.

10.3 By agreeing to refer the arbitration to be

conducted under the Expedited Rules, the parties agree that the Expedited Rules shall take precedence over any contrary terms of the arbitration agreement.

11. JOINDER OF ADDITIONAL PARTIES

- 11.1 Where a party to a pending arbitration under the Rules (the "applicant") wishes to join an additional party to the arbitration, it shall submit its request for arbitration against the additional party (the "Request for Joinder") to the Institute in accordance with Article 4.1.
- 11.2 The Request for Joinder shall be submitted to the Institute prior to the transmission of the case file to the arbitral tribunal. Failure to comply with this time limit shall result in the dismissal of the Request for Joinder by the Institute, unless all parties to the arbitration, including the additional party, agree to the joinder.
- 11.3 The arbitration against the additional party shall be deemed to have commenced on the date on which the Request for Joinder is received by the Institute.
- 11.4 The Request for Joinder shall contain the following information:
- (a) the case number of the existing arbitration;
 - (b) the names and contact details of each of the parties, including the additional party, and of their counsel or other representatives;
 - (c) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;
 - (d) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute against the additional party arises;
 - (e) a brief description of the nature and circumstances of the dispute giving rise to the claims against the additional party;

- (f) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made;
 - (g) a preliminary statement of the relief sought against the additional party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims; and
 - (h) proof of payment of the Filing Fee referred to in Article 11.7.
- 11.5 The Request for Joinder shall be submitted in the language required by Article 6.4.
- 11.6 Where the Request for Joinder fails to fulfill the requirements set forth in Articles 11.4 and 11.5, the Institute may direct the applicant to remedy the defect within the time limit set by the Institute. If the applicant fails to comply, the Board may dismiss the Request for Joinder.
- 11.7 Upon filing the Request for Joinder, the applicant shall pay the Filing Fee prescribed in Article 1 of Appendix II.
- 11.8 If the applicant fails to pay the Filing Fee upon filing the Request for Joinder, the Institute shall direct the applicant to make the payment within the time limit set by the Institute. If the applicant fails to comply, the Board may dismiss the Request for Joinder.
- 11.9 The Institute shall transmit the Request for Joinder and the attached documents to the additional party and to all other existing parties to the arbitration once the applicant has paid the required Filing Fee and provided any copies that may have been requested in accordance with Article 4.5.
- 11.10 Within 21 days of the receipt of the Request for Joinder, the additional party shall submit to the Institute an Answer to the Request for Joinder.
- 11.11 The Answer to the Request for Joinder shall contain the following information:
- (a) the names and contact details of the additional

- party and of its counsel or other representative;
- (b) to the extent possible, any plea that an arbitral tribunal already constituted, or to be constituted under the Rules, lacks jurisdiction;
 - (c) the additional party's comments on the applicant's description of the nature and circumstances of the dispute giving rise to the claims against the additional party; and
 - (d) the additional party's preliminary response to the relief sought by the applicant against the additional party.
- 11.12 In addition to the additional party, the Institute shall give the other existing parties to the arbitration an opportunity to submit comments on the Request for Joinder within the time limit set by the Institute.
- 11.13 If the additional party wishes to submit a Request for Joinder, it shall do so within a time limit to be set by the Institute.
- 11.14 The additional party may make claims against any other party in accordance with the provisions of Article 12.
- 11.15 The Institute shall transmit the Answer to the Request for Joinder and the attached documents to the applicant and all other parties to the arbitration. The Institute may give the applicant and the other parties an opportunity to submit comments on the Answer to the Request for Joinder within the time limit set by the Institute.
- 11.16 Any joinder shall be subject to the provisions of Articles 13 and 15. Before the Board decides whether to accept a Request for Joinder, it shall consult with any confirmed arbitrator.
- 11.17 Where the Board decides to accept the Request for Joinder, all parties will be deemed to have waived their right to nominate an arbitrator, and the Board may revoke the confirmation or appointment of arbitrators and apply the provisions of Article 20 in the appointment of the arbitral tribunal.

12. CLAIMS BETWEEN MULTIPLE PARTIES

- 12.1 Where there are multiple parties in the arbitration, claims may be made by any party against any other party prior to the transmission of the case file to the arbitral tribunal, subject to the provisions of Articles 13 and 15.
- 12.2 Any party making a claim under Article 12.1 shall provide the following information:
- (a) identification of and, where possible and unless already produced to the Institute, a copy of the arbitration agreement under which a claim is made;
 - (b) identification of any contract, other legal instrument or relationship out of or in relation to which the claim arises;
 - (c) a brief description of the nature and circumstances of the dispute giving rise to the claim;
 - (d) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made; and
 - (e) a preliminary statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims.
- 12.3 The Institute shall notify a party of any claims made against it under Article 12.1 and set a time limit within which that party shall respond to such claims. The Institute may also notify the other existing parties to the arbitration of such claims and give them an opportunity to submit comments.
- 12.4 The party submitting a response to claims made against it under Article 12.1 shall provide the following information:
- (a) its comments on the nature and circumstances of the dispute giving rise to the claims; and
 - (b) its preliminary response to the relief sought.

- 12.5 Once the case file has been transmitted to the arbitral tribunal, the tribunal shall decide if and to what extent new claims may be made between different parties to the arbitration.

13. CLAIMS UNDER MULTIPLE CONTRACTS

Claims arising out of or in connection with different contracts or different arbitration agreements under the Rules may be made in a single arbitration, subject to the provisions of Article 15.

14. CONSOLIDATION OF ARBITRATIONS

- 14.1 At the request of a party, the Board may consolidate two or more arbitrations pending under the Rules into a single arbitration if:

- (a) all parties have agreed to consolidation; or
- (b) all claims in the arbitrations are made under the same arbitration agreement; or
- (c) where the claims in the arbitrations are made under different arbitration agreements, the disputes in the arbitrations arise in connection with the same legal relationship and the arbitration agreements do not contain contradictory provisions that would render the consolidation impossible.

- 14.2 When deciding whether to consolidate two or more arbitrations in the situations referred to in Article 14.1(b)–(c), the Board shall take into account:

- (a) the identity of the parties in the different arbitrations;
- (b) the connections between the claims made in the different arbitrations;
- (c) whether any arbitrator has been confirmed in any of the arbitrations and, if so, whether the same or different persons have been confirmed; and
- (d) any other relevant circumstances.

- 14.3 Before the Board decides whether to consolidate the arbitrations, it shall consult with all parties and any confirmed arbitrator in all the arbitrations.
- 14.4 Where the Board decides to consolidate the arbitrations, all parties to all the arbitrations will be deemed to have waived their right to nominate an arbitrator, and the Board may revoke the confirmation and appointment of arbitrators and apply the provisions of Article 20 in the appointment of the arbitral tribunal.
- 14.5 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

15. DETERMINATION OF JURISDICTION

- 15.1 Where any party against which a claim has been made:
- (a) fails to submit a response to any claim made against it; or
 - (b) raises any plea concerning the existence, validity or applicability of the arbitration agreement; or
 - (c) objects to the determination of all of the claims made in the arbitration together in a single arbitration,

the Board shall allow the arbitration to proceed if it is *prima facie* satisfied that an arbitration agreement under the Rules that binds the parties may exist.

- 15.2 In addition, where claims are made pursuant to Article 13 under more than one arbitration agreement, the Board shall allow the arbitration to proceed as to those claims concerning which the Board is *prima facie* satisfied that:
- (a) the arbitration agreements under which those claims are made do not contain contradictory provisions; and
 - (b) all parties to the arbitration may have agreed

that those claims can be determined together in a single arbitration.

- (c) If the Board does not allow the arbitration to proceed regarding claims made under one or several of the arbitration agreements, the Board shall separate the claims made under the arbitration agreement or each of the arbitration agreements in question to be determined in a separate arbitration or arbitrations. The separated arbitration(s) shall be deemed to have commenced on the same date as the original arbitration from which the arbitration(s) is/are separated.
 - (d) If a party wishes to continue a separated arbitration, a party making claims in the separated arbitration shall pay the Filing Fee prescribed in Article 1 of Appendix II upon the separation of the arbitration(s). If a party fails to pay the Filing Fee upon the separation of the arbitration(s), the Institute shall direct the party to make the payment within the time limit set by the Institute. If the party fails to comply, the Board may dismiss the claims made by the party in the separated arbitration.
 - (e) The Institute may direct the parties to the original arbitration and/or any separated arbitration(s) to update their Request for Arbitration, Answer and/or any other statement(s) before the proceedings shall continue.
- 15.3 The Board's decision to allow the arbitration to proceed shall not be binding on the arbitral tribunal, which shall decide on its own jurisdiction.

CHAPTER III

ARBITRAL TRIBUNAL

16. PARTY AUTONOMY IN THE CONSTITUTION OF THE ARBITRAL TRIBUNAL

- 16.1 The parties may agree on the number of arbitrators and the procedure for appointment of the arbitral tribunal.
- 16.2 To the extent that the parties have not agreed otherwise on the number of arbitrators or the procedure for appointment of the arbitral tribunal, the provisions of Articles 17 to 20 shall apply.
- 16.3 The provisions of Articles 17 to 20 shall also apply if the parties have been unable to constitute the arbitral tribunal within the time period set by the parties' agreement or, in the absence of such time period, within the time limit set by the Institute at the request of a party.
- 16.4 In all cases, the provisions of Articles 21 to 24 regarding impartiality, independence, confirmation, challenge, release and replacement of arbitrators shall apply.

17. NUMBER OF ARBITRATORS

Where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of a sole arbitrator, unless the Board determines that an arbitral tribunal composed of three arbitrators is appropriate taking into account the amount in dispute, the complexity of the case, any proposals made by the parties, and any other relevant circumstances.

18. APPOINTMENT OF A SOLE ARBITRATOR IN BI-PARTY PROCEEDINGS

- 18.1 Where the parties have agreed that the dispute shall be referred to a sole arbitrator,

the claimant and the respondent may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the Answer was received by the claimant. Failing such joint nomination within the applicable time limit, the Board shall appoint the sole arbitrator.

- 18.2 Where the parties have not agreed on the number of arbitrators, and the Board has decided that the dispute shall be referred to an arbitral tribunal composed of a sole arbitrator, the parties may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the parties received the notification from the Board of its decision. Failing such joint nomination within the applicable time limit, the Board shall appoint the sole arbitrator.

19. APPOINTMENT OF AN ARBITRAL TRIBUNAL COMPOSED OF THREE ARBITRATORS IN BI-PARTY PROCEEDINGS

- 19.1 Where the parties have agreed that the dispute shall be referred to an arbitral tribunal composed of three arbitrators, the arbitral tribunal shall be appointed as follows:
- (a) the claimant shall nominate one arbitrator for confirmation in the Request for Arbitration;
 - (b) the respondent shall nominate one arbitrator for confirmation in the Answer to the Request for Arbitration;
 - (c) if either party fails to nominate an arbitrator for confirmation in accordance with Article 19.1(a)–(b), or within the time limit set by the Institute pursuant to Article 6.5 or 8.5, the Board shall appoint the arbitrator on behalf of the defaulting party;
 - (d) the claimant and the respondent may jointly nominate the third arbitrator, who shall act as the presiding arbitrator of the arbitral tribunal, for confirmation. Failing such joint nomination within 10 days from the date on which the parties received the notification from the Board of the confirmation of the second arbitrator, the

Board shall appoint the presiding arbitrator.

- 19.2 Where the parties have not agreed on the number of arbitrators, and the Board has decided that the dispute shall be referred to an arbitral tribunal composed of three arbitrators, the arbitral tribunal shall be appointed as follows:
- (a) the claimant shall nominate one arbitrator for confirmation within 10 days from the date on which the claimant received the notification from the Institute of the number of arbitrators;
 - (b) the respondent shall nominate one arbitrator for confirmation within 10 days from the date on which the respondent received the notification from the Institute of the arbitrator nominated by the claimant;
 - (c) if either party fails to nominate an arbitrator for confirmation in accordance with Article 19.2(a)–(b), or within such other time limit as the Institute may have set, the Board shall appoint the arbitrator on behalf of the defaulting party;
 - (d) the provisions of Article 19.1(d) shall apply to the appointment of the presiding arbitrator.

20. APPOINTMENT OF AN ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

- 20.1 Where there are more than two parties in the arbitration, the arbitral tribunal shall be appointed in accordance with the provisions of Articles 20.2 and 20.3.
- 20.2 Where the dispute shall be referred to a sole arbitrator:
- (a) the claimant(s) and the respondent(s) may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the Answer was received by the claimant(s);
 - (b) where an additional party has been joined pursuant to Article 11, it may nominate the sole arbitrator for confirmation jointly with the

claimant(s) and the respondent(s);

- (c) if the claimant(s) and the respondent(s) fail to nominate the sole arbitrator for confirmation in accordance with Article 20.2(a)–(b), or within such other time limit as the Institute may have set, the Board shall appoint the sole arbitrator.

20.3 Where the dispute shall be referred to an arbitral tribunal composed of three arbitrators:

- (a) the claimant or multiple claimants, jointly, shall nominate one arbitrator for confirmation in the Request for Arbitration;
- (b) the respondent or multiple respondents, jointly, shall nominate one arbitrator for confirmation in the Answer to the Request for Arbitration;
- (c) where an additional party has been joined pursuant to Article 11, it may nominate an arbitrator for confirmation jointly with the claimant(s) or with the respondent(s);
- (d) if the claimant(s) and the respondent(s) have each nominated an arbitrator for confirmation in accordance with Article 20.3(a)–(c), or within such other time limit as the Institute may have set, the provisions of Article 19.1(d) shall apply to the appointment of the presiding arbitrator;
- (e) if the claimant(s) or the respondent(s) fail to nominate an arbitrator for confirmation within the applicable time limit, the Board may in its discretion:
 - (i) appoint the arbitrator on behalf of the defaulting claimant(s) or respondent(s), and appoint the presiding arbitrator; or
 - (ii) revoke any confirmation or appointment made, appoint all three arbitrators and designate one of them as the presiding arbitrator.

21. IMPARTIALITY AND INDEPENDENCE OF ARBITRATORS

21.1 Each arbitrator shall be and remain impartial and independent of the parties.

- 21.2 Before confirmation, a prospective arbitrator shall sign and submit to the Institute a statement of acceptance, availability, impartiality and independence (the "Statement"). The prospective arbitrator shall disclose in the Statement any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.
- 21.3 The Institute shall transmit a copy of the Statement to all parties and set a time limit within which they may submit comments on the Statement or object to the confirmation of the arbitrator.
- 21.4 An arbitrator shall promptly disclose in writing to the Institute, the parties and the other arbitrators any circumstances referred to in Article 21.2 which may arise during the course of the arbitration.
- 21.5 Each party shall promptly inform in writing the Institute, the arbitral tribunal and the other parties of the existence and identity of any third party, which has entered into an arrangement for the funding of claims or defences in the arbitration, and under which it has an economic interest in the outcome of the arbitration.
- 21.6 Each party shall promptly inform in writing the Institute, the arbitral tribunal and the other parties of any changes or additions regarding its representation in the arbitration. If justifiable doubts as to an arbitrator's impartiality and independence arise from a change or addition in the parties' representation, the Board may, after consulting with the arbitrator concerned, the other arbitrators and the parties, exclude the new or additional representation from participating in the arbitration, unless the change is based on justified grounds.

22. CONFIRMATION AND APPOINTMENT OF ARBITRATORS

- 22.1 All arbitrators are subject to confirmation by the Institute. The mandate of an arbitrator shall begin upon such confirmation.
- 22.2 The Secretariat may confirm an arbitrator if:

- (a) the prospective arbitrator's Statement contains no qualifications regarding their impartiality or independence; and
- (b) no party has objected to the confirmation within the time limit set under Article 21.3.

22.3 In all other cases, the Secretariat shall refer the matter to the Board for its decision. The Board may decline the confirmation only if the prospective arbitrator fails to fulfil the requirements of impartiality and independence set forth in Article 21.1, or if the prospective arbitrator is otherwise unsuitable to serve as arbitrator. The Board has no obligation to give reasons for its decision.

22.4 Where the Board declines the confirmation of an arbitrator nominated by a party or by arbitrators, it may:

- (a) give the nominating party, or the nominating arbitrators as the case may be, an opportunity to make a new nomination within the time limit set by the Institute; or
- (b) in exceptional circumstances, proceed directly with the appointment of an arbitrator chosen by the Board in accordance with Article 22.5.

22.5 When appointing arbitrators, the Board shall consider:

- (a) any qualifications required of the arbitrator by the agreement of the parties;
- (b) the nature and circumstances of the dispute;
- (c) the nationality of the parties and of the prospective arbitrator;
- (d) the language of the arbitration, the seat of arbitration, and the law or rules of law applicable to the substance of the dispute; and
- (e) any other relevant circumstances.

22.6 If the parties are of different nationalities:

- (a) the sole arbitrator shall be of a nationality other than those of the parties; and

- (b) the presiding arbitrator shall be of a nationality other than those of the parties and party-nominated arbitrators,

unless otherwise agreed by the parties, or unless the Board in special circumstances determines that it is appropriate to appoint a sole or presiding arbitrator with the same nationality as any of the parties or party-nominated arbitrators.

- 22.7 In the event of any failure in the constitution of the arbitral tribunal under the Rules, the Board shall have all powers to address such failure and may, in particular, revoke any confirmation or appointment already made, appoint or reappoint any of the arbitrators and designate one of them as the presiding arbitrator.

23. CHALLENGE OF ARBITRATORS

- 23.1 Any arbitrator may be challenged:

- (a) if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence; or
- (b) if the arbitrator does not possess any requisite qualification on which the parties have agreed.

- 23.2 A party may challenge an arbitrator whom it has nominated only for reasons of which it became aware after the nomination was made.

- 23.3 A party intending to challenge an arbitrator shall submit a written notice of challenge (the "Notice of Challenge") to the Institute. The Notice of Challenge shall state the reasons for the challenge and specify the date on which the party became aware of the circumstances on which the challenge is based.

- 23.4 The Notice of Challenge shall be submitted to the Institute either within 15 days from the date of receipt by the challenging party of the notification of the confirmation of the arbitrator, or within 15 days from the date when the circumstances giving rise to the challenge became known to that party if such date is subsequent to the receipt of such notification.

Failure by a party to comply with this time limit shall constitute a waiver of the right to make the challenge.

- 23.5 The Institute shall transmit the Notice of Challenge to the arbitrator being challenged, the other arbitrators and the other parties and set a time limit within which they may submit comments on the Notice of Challenge.
- 23.6 The other parties may agree to the challenge or the challenged arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced in accordance with Article 24. A withdrawal of the arbitrator or the agreement of the other parties to the challenge shall not imply acceptance of the validity of the reason for the challenge.
- 23.7 If the other parties do not agree to the challenge or the challenged arbitrator does not voluntarily withdraw within the time limit set by the Institute, the Board shall decide on the challenge. The Board has no obligation to give reasons for its decision.

24. RELEASE AND REPLACEMENT OF AN ARBITRATOR

- 24.1 The Board shall release an arbitrator from appointment where:
- (a) the Board accepts the withdrawal of the arbitrator;
 - (b) all parties jointly agree to release the arbitrator from appointment;
 - (c) the Board sustains a challenge of the arbitrator under Article 23; or
 - (d) the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's duties, or fails to perform them in accordance with the Rules.
- 24.2 Before the Board makes a decision under Article 24.1(d), it shall give the arbitrator concerned, the parties and any other arbitrators an opportunity to submit comments within the time limit set by the Institute.

- 24.3 Where an arbitrator has been released from appointment, or where an arbitrator has died, a substitute arbitrator shall be nominated or appointed pursuant to the procedure provided for in Articles 18 to 20, subject to Article 24.4.
- 24.4 In special circumstances the Board may, after consulting with the parties and any remaining arbitrators:
- (a) directly appoint the substitute arbitrator; or
 - (b) after the closing of the proceedings pursuant to Article 41, authorise the remaining arbitrators to proceed with the arbitration and make any decision or award.
- 24.5 Where an arbitrator has been replaced, the reconstituted arbitral tribunal shall, after consulting with the parties, decide if and to what extent prior proceedings will be repeated before the reconstituted arbitral tribunal.

CHAPTER IV PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

25. TRANSMISSION OF THE CASE FILE TO THE ARBITRAL TRIBUNAL

The Institute shall transmit the case file to the arbitral tribunal as soon as it has been constituted and the Filing Fee referred to in Articles 7, 9, 11.7 and 15.2(d) and the advance on costs referred to in Article 50 have been paid.

26. CONDUCT OF THE ARBITRATION

26.1 Subject to these Rules and any agreement by the parties, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate.

26.2 In all cases, the arbitral tribunal shall ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its case.

26.3 All participants in the arbitral proceedings shall act in good faith and make every effort to contribute to the efficient conduct of the proceedings in order to avoid unnecessary costs and delays.

26.4 By agreeing to arbitration under the Rules, the parties undertake to comply with any order or other direction of the arbitral tribunal without delay.

26.5 The arbitral tribunal may, after consulting with the parties, appoint a secretary when deemed appropriate. A secretary shall meet the same requirements of impartiality and independence as any arbitrator under Article 21.1. The Institute may separately issue further instructions on the appointment, duties and remuneration of a tribunal-appointed secretary.

26.6 With the agreement of all parties, the arbitral tribunal may take steps to facilitate the

settlement of the dispute. Any such agreement by a party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed steps.

- 26.7 All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made simultaneously, except as otherwise permitted by the arbitral tribunal.

27. SEAT OF ARBITRATION

- 27.1 If the parties have not agreed on the seat of arbitration, or if the designation of the seat is unclear, the Board shall determine the seat of arbitration, unless the Board finds it appropriate to leave the determination of the seat to the arbitral tribunal.
- 27.2 The arbitral tribunal may, after consulting with the parties, conduct hearings at any location it considers appropriate.
- 27.3 The arbitral tribunal may meet at any location it considers appropriate for the inspection of any site, property or documents.
- 27.4 The arbitral tribunal may deliberate at any location it considers appropriate.
- 27.5 The award shall be deemed to have been made and the arbitration to have taken place at the seat of arbitration, regardless of whether any hearing, meeting or deliberation is held elsewhere.

28. LANGUAGE OF THE ARBITRATION

- 28.1 If the parties have not agreed on the language of the arbitration, the arbitral tribunal shall determine it after consulting with the parties.
- 28.2 If any documents are to be submitted in a language other than that agreed by the parties or determined by the arbitral tribunal, the tribunal may order that such documents be accompanied by a translation into the language of the arbitration.

29. LAW OR RULES OF LAW APPLICABLE TO THE SUBSTANCE OF THE DISPUTE

- 29.1 The parties may agree upon the law or rules of law to be applied by the arbitral tribunal to the substance of the dispute.
- 29.2 In the absence of any agreement by the parties, the arbitral tribunal shall apply the law or rules of law which it determines to be appropriate.
- 29.3 The arbitral tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

30. CASE MANAGEMENT CONFERENCES

- 30.1 The arbitral tribunal shall arrange a case management conference with the parties as soon as possible, in principle within 21 days from the date on which the arbitral tribunal received the case file from the Institute. The purpose of the case management conference is to agree on the conduct and timetable of the proceedings so as to ensure the fairness, expeditiousness and cost-efficiency of the arbitration. The arbitral tribunal may refrain from arranging a case management conference only in exceptional circumstances if it determines that a case management conference is unnecessary.
- 30.2 The arbitral tribunal may, after consulting with the parties, arrange one or more additional case management conferences in the course of the proceedings when deemed appropriate.
- 30.3 Any case management conference may be conducted through a meeting in person, by video conference, telephone or similar means of communication. The arbitral tribunal shall determine the means by which the conference will be conducted after consulting with the parties.

31. PROCEDURAL TIMETABLE

- 31.1 During or following the case management conference referred to in Article 30.1, the arbitral tribunal shall establish the procedural timetable for the conduct of the arbitration. Where no case management conference has been arranged, the arbitral tribunal shall establish the procedural timetable as soon as practicable after having received the case file and consulted with the parties.
- 31.2 When establishing the procedural timetable, the arbitral tribunal shall take into account any views expressed by the parties, fair and equal treatment of the parties and the requirement that the arbitration shall be conducted in an expeditious and cost-effective manner.
- 31.3 The arbitral tribunal may, at the request of a party or on its own motion, extend, shorten or otherwise amend any time limit it has previously set if it considers that the circumstances so require for the proper conduct of the proceedings.
- 31.4 The arbitral tribunal shall communicate the procedural timetable to each of the parties and the Institute without delay.

32. WRITTEN SUBMISSIONS

- 32.1 Within the time limit set by the arbitral tribunal, the claimant shall submit a Statement of Claim to the respondent and each of the arbitrators. The Statement of Claim shall include:
- (a) a statement of the facts and the legal arguments supporting the claim;
 - (b) the relief or remedy sought by the claimant; and
 - (c) to the extent possible, the documentary evidence the claimant intends to rely on.
- 32.2 Within the time limit set by the arbitral tribunal, the respondent shall submit a Statement of Defence to the claimant and each of the arbitrators. The Statement of Defence shall include:

- (a) any objections concerning the existence, validity or applicability of the arbitration agreement;
- (b) a statement whether, and to what extent, the respondent admits or denies the relief or remedy sought by the claimant;
- (c) a statement of the facts and the legal arguments supporting the respondent's defence; and
- (d) to the extent possible, the documentary evidence the respondent intends to rely on.

32.3 Any counterclaim or set-off claim by the respondent shall be raised no later than in the Statement of Defence, unless the arbitral tribunal in exceptional circumstances determines that the respondent has a justified reason to raise a counterclaim or set-off claim at a later stage of the proceedings. Any such counterclaim or set-off claim shall comply with the requirements of Article 32.1(a)–(c).

32.4 The arbitral tribunal shall, after consulting with the parties, decide the number, sequence and schedule of further written submissions (if any) by the parties following the filing of the Statement of Claim and the Statement of Defence.

32.5 Subject to any contrary agreement by the parties, a party may amend its claims during the course of the proceedings, unless the arbitral tribunal considers it inappropriate having regard to the delay in making the amendment or any other relevant circumstances.

33. PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

33.1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections concerning the existence, validity or applicability of the arbitration agreement.

33.2 As a rule, a plea that the arbitral tribunal lacks jurisdiction shall be raised no later than in the Statement of Defence or, with respect to a counterclaim or set-off claim, in the reply to the counterclaim or set-off claim. The arbitral

tribunal may admit a later jurisdictional plea only in exceptional circumstances, if it considers the delay in making the plea justified.

34. EVIDENCE

- 34.1 The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.
- 34.2 At any time during the proceedings, the arbitral tribunal may order any party:
- (a) to identify the documentary evidence the party intends to rely on and specify the circumstances the party intends to prove by such evidence; and
 - (b) to produce any documents or other evidence that the arbitral tribunal may consider relevant to the outcome of the case.

35. CUT-OFF DATE

The arbitral tribunal may, after consulting with the parties, set a cut-off date prior to the commencement of any hearing referred to in Article 36 and order that after the cut-off date, the parties will not be allowed to present any new claims, arguments or documentary evidence on the merits of the dispute, or to invoke any new witnesses not previously nominated, unless the arbitral tribunal in exceptional circumstances decides otherwise.

36. HEARINGS

- 36.1 At any stage of the proceedings, the arbitral tribunal may hold hearings for the presentation of evidence by fact or expert witnesses, or for oral argument by the parties. The arbitral tribunal shall fix the date, time and place of any hearing, as well as decide on the possible use of a remote connection to conduct the hearing, after consulting with the parties.
- 36.2 In advance of any hearing, the arbitral tribunal may order the parties to identify each

witness they intend to call and specify the circumstances the parties intend to prove by each witness's testimony.

- 36.3 The arbitral tribunal may, after consulting with the parties, direct that witnesses may be examined through a remote connection.
- 36.4 The arbitral tribunal may, after consulting with the parties, order that the evidence of fact and expert witnesses shall be presented in the form of written witness statements or reports. Such written statements or reports shall be signed by the witness and submitted within the time limit set by the arbitral tribunal.
- 36.5 The arbitral tribunal shall establish the sequence and schedule of the hearing after consulting with the parties. Any witness who gives oral evidence may be questioned by the parties in such manner as the arbitral tribunal shall determine.
- 36.6 Hearings shall be held *in camera*, unless otherwise agreed by the parties.

37. EXPERTS APPOINTED BY THE ARBITRAL TRIBUNAL

- 37.1 After consulting with the parties, the arbitral tribunal may appoint one or more experts to report to it in writing on specific issues to be determined by the tribunal. Any tribunal-appointed expert shall be impartial and independent of the parties, their counsel and members of the arbitral tribunal.
- 37.2 Upon receipt of the expert's report, the arbitral tribunal shall transmit the report to the parties and give them an opportunity to submit comments. A party may examine any document on which the expert has relied in the report.
- 37.3 At the request of any party, the arbitral tribunal shall give the parties an opportunity to question the expert at a hearing, where the parties may also present party-appointed expert witnesses to testify on the points at issue. The provisions of Article 36 apply to such proceedings.

38. INTERIM MEASURES OF PROTECTION

- 38.1 The arbitral tribunal may, at the request of a party, grant any interim measures of protection it deems appropriate.
- 38.2 Before deciding whether to grant any interim measure of protection, the arbitral tribunal shall give the party against which the request is directed an opportunity to submit comments within the time limit set by the tribunal.
- 38.3 The arbitral tribunal may make the granting of any interim measure of protection subject to appropriate security being furnished by the requesting party for any costs or damage that such measure may cause to the party against which it is directed. The arbitral tribunal shall establish the terms of any security arrangement.
- 38.4 The arbitral tribunal's decision shall take the form of an order. The arbitral tribunal may amend or revoke an interim measure of protection it has granted at the request of a party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 38.5 A party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal may apply for the appointment of an Emergency Arbitrator in accordance with Appendix III, unless the parties have exercised their right to opt out of the application of the provisions contained in Appendix III.
- 38.6 Before the case file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim measures of protection. The application of a party to a judicial authority for such measures shall not be considered an infringement or a waiver of the arbitration agreement.

39. DEFAULT

- 39.1 If the claimant fails to submit a Statement of Claim, the arbitral tribunal shall order the termination of the proceedings, unless there are remaining matters that may require a decision and the arbitral tribunal considers it appropriate to do so.
- 39.2 If the respondent fails to submit an Answer to the Request for Arbitration, or a Statement of Defence, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations. The provisions of this Article also apply to the claimant's failure to submit a defence to a counterclaim or set-off claim raised by the respondent.
- 39.3 If any party fails to appear at a hearing without good cause, the arbitral tribunal may proceed with the hearing.
- 39.4 If any party otherwise fails to avail itself of the opportunity to present its case, the arbitral tribunal may proceed with the arbitration and make an award based on the submissions and evidence before it.
- 39.5 If a party, without good cause, fails to comply with any provision of the Rules or any order or direction issued by the arbitral tribunal, the tribunal may draw such inferences from the party's non-compliance as it considers appropriate.

40. WAIVER

A party shall without undue delay object to any failure to comply with any provision of the Rules, the arbitration agreement, or any order or direction issued by the arbitral tribunal. Failure by a party to raise an objection accordingly shall constitute a waiver of the right to make such objection, unless the party can show that, under the circumstances, its failure to object was justified.

41. CLOSING OF PROCEEDINGS

- 41.1 As soon as possible after the last hearing date, or the date on which the arbitral tribunal received the parties' last authorised written submissions, the tribunal shall:
- (a) declare the proceedings closed with respect to the matters to be decided in the award; and
 - (b) inform the parties and the Institute of the date by which it expects to issue the final award.
- 41.2 After the closing of the proceedings, no further claims, arguments or evidence may be presented with respect to the matters to be decided in the award, unless in exceptional circumstances requested or authorised by the arbitral tribunal. If the arbitral tribunal has set a prior cut-off date pursuant to Article 35, the prior cut-off date shall apply.

CHAPTER V

AWARDS AND DECISIONS

42. MAKING OF AWARDS AND DECISIONS

- 42.1 When the arbitral tribunal is composed of more than one arbitrator, any award or other decision shall be made by a majority of the arbitrators. If there is no majority, the award or decision shall be made by the presiding arbitrator alone.
- 42.2 If authorised by the arbitral tribunal, the presiding arbitrator may decide any questions of procedure, subject to revision by the arbitral tribunal.
- 42.3 If any arbitrator fails to cooperate in the making of the award or other decision, having been given a reasonable opportunity to do so, the remaining arbitrators shall proceed in their absence.

43. FORM AND EFFECT OF AN AWARD

- 43.1 An award shall be made in writing. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 43.2 An award shall be signed by the arbitrators, and it shall specify the seat of arbitration and the date on which the award was made. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
- 43.3 The arbitral tribunal shall communicate an original copy of the award to each of the parties and the Institute without delay.
- 43.4 An award shall be final and binding on the parties. By agreeing to arbitration under the Rules, the parties undertake to carry out all awards without delay.

44. TIME LIMIT FOR THE FINAL AWARD

The final award shall be made no later than nine months from the date on which the arbitral tribunal received the case file from the Institute. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

45. SEPARATE AWARDS

The arbitral tribunal may, after consulting with the parties, make separate awards on different issues at different times of the proceedings, unless all parties object to the issuance of a separate award. For example and without limitation, the arbitral tribunal may decide by a separate award:

- (a) an independent claim where several claims have been made in the arbitration;
- (b) a specific part of the claim that has been admitted by the respondent; or
- (c) a separate issue in dispute where the determination of that issue is decisive for the resolution of the other matters in dispute.

46. SETTLEMENT OR OTHER GROUNDS FOR TERMINATION OF THE ARBITRATION

46.1 The arbitral tribunal shall issue an order for the termination of the proceedings if:

- (a) the claimant withdraws its claim, unless the respondent objects to the termination of the proceedings and the arbitral tribunal determines that the respondent has a legitimate interest in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings; or
- (c) the continuation of the proceedings becomes unnecessary or impossible for any other reason.

46.2 If the parties reach a settlement before the final award is made, the arbitral tribunal may record

the settlement in the form of a consent award if so requested by all parties. The provisions of Articles 42 to 44 shall apply to any consent award.

- 46.3 The arbitral tribunal shall communicate an original copy of the order for the termination of the proceedings, or of the consent award, to each of the parties and the Institute without delay.

47. CORRECTION AND INTERPRETATION OF AN AWARD

- 47.1 Within 30 days from the date of receipt of the award, a party may, with notice to the other parties and the Institute, request that the arbitral tribunal:

- (a) correct any clerical, typographical or computational error in the award;
- (b) correct an omission to state in the award the seat of arbitration or the date on which the award was made, or an omission of an arbitrator to sign the award; or
- (c) provide an interpretation of a specific point or part of the award.

- 47.2 The arbitral tribunal shall give the other parties an opportunity to submit comments on the request within the time limit set by the tribunal.

- 47.3 If the arbitral tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days from the date of receipt of the request. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

- 47.4 The arbitral tribunal may correct any error of the type referred to in Article 47.1(a)–(b) on its own motion within 30 days of the date of an award.

- 47.5 The provisions of Articles 42 and 43 shall apply to any correction or interpretation of an award.

47.6 The provisions on correction and interpretation of an award shall also apply to an order for the termination of the proceedings.

48. ADDITIONAL AWARD

48.1 Within 30 days from the date of receipt of the award, a party may, with notice to the other parties and the Institute, request that the arbitral tribunal make an additional award as to claims presented in the arbitration but not determined in the award. The arbitral tribunal shall give the other parties an opportunity to submit comments on the request within the time limit set by the tribunal.

48.2 If the arbitral tribunal considers the request justified, it shall make the additional award within 60 days from the date of receipt of the request. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

48.3 The provisions of Articles 42 and 43 shall apply to any additional award.

CHAPTER VI

COSTS OF ARBITRATION

49. DETERMINATION OF THE COSTS OF THE ARBITRATION

49.1 The costs of the arbitration shall be fixed in the final award or, if the arbitration is terminated before the rendering of a final award, in a consent award or in an order for the termination of the arbitration.

49.2 The costs of the arbitration include:

- (a) the fees of the arbitral tribunal;
- (b) the travel and other expenses incurred by the arbitrators;
- (c) the costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) the Administrative Fee and expenses of the Institute; and
- (e) the legal and other costs incurred by the parties in relation to the arbitration, if such costs have been claimed and to the extent that the arbitral tribunal considers that the amount of such costs is reasonable.

49.3 Before rendering the final award, consent award or order for the termination of the arbitration, the arbitral tribunal shall request that the Institute determine the costs referred to in Article 49.2(a)–(d) in accordance with Appendix II. The arbitral tribunal shall include in the final award, consent award or order for the termination of the arbitration the costs of the arbitration as finally determined by the Institute and specify the individual fees and expenses payable to each arbitrator and the Institute.

49.4 Unless otherwise agreed by the parties, the costs of the arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may allocate any of the costs of the arbitration between the parties in such manner as it considers appropriate having

regard to the circumstances of the case. The arbitral tribunal may order the payment of any amount that a party may have to compensate to another party as a result of the arbitral tribunal's decision on the allocation of costs. If the arbitral tribunal determines that a party has failed to comply with its duties under Articles 26.3 and 26.4, the tribunal may, in addition to any other measures available under the Rules or otherwise, take such failure into account in its allocation of the costs of the arbitration.

- 49.5 Irrespective of any allocation of the costs of the arbitration between the parties, all parties remain jointly and severally liable for the payment of the Institute's Administrative Fee and expenses towards the Institute.

50. ADVANCE ON COSTS

- 50.1 The parties shall pay an advance on costs fixed by the Institute. The Institute shall transmit the case file to the arbitral tribunal once the advance on costs has been paid.
- 50.2 The amount of the advance on costs shall correspond to the expected costs of the arbitration pursuant to Article 49.2(a)–(d). Detailed provisions on the advance on costs fixed by the Institute are contained in Article 2 of Appendix II.
- 50.3 The Institute shall cover the costs of the arbitration referred to in Article 49.2(a)–(d) from the advance on costs after the rendering of the final award, consent award or order for the termination of the arbitration. Any amount paid by the parties as an advance on costs that exceeds the costs of the arbitration determined by the Institute shall be reimbursed to the parties.
- 50.4 The Institute may draw on the advance on costs to cover the costs of the arbitration referred to in Article 49.2(b)–(c) during the arbitration upon a reasoned request of the arbitral tribunal.

CHAPTER VII OTHER PROVISIONS

51. CONFIDENTIALITY

- 51.1 Unless otherwise agreed by the parties, the Institute and the arbitral tribunal shall maintain the confidentiality of the arbitration and the award. This obligation also applies to any expert or secretary appointed by the arbitral tribunal, the members of the Board and the representatives of the Secretariat.
- 51.2 Unless otherwise agreed by the parties, each party undertakes to keep confidential all awards, orders and other decisions of the arbitral tribunal, correspondence from the arbitral tribunal to the parties, any recordings or transcripts made of the arbitration, as well as documents and other materials submitted by another party in connection with the arbitration, except where and to the extent that:
- (a) such information (i) is publicly known or available, or subsequently becomes publicly known or available without any breach of confidentiality obligation by the receiving party, (ii) was in the lawful possession of the receiving party, without being subjected to confidentiality obligation, prior to its receipt from the disclosing party, (iii) is independently developed by the receiving party, or (iv) is received from a third party without any breach of confidentiality obligation; or
 - (b) disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority; or
 - (c) there is otherwise a demonstrated need for disclosure that outweighs any party's legitimate interest in preserving confidentiality.
- 51.3 In addition to the provisions of Article 51.2 above, upon the request of any party, the arbitral tribunal may issue orders concerning the confidentiality of the arbitration proceedings or any other matters in connection with the

arbitration.

- 51.4 The deliberations of the arbitral tribunal shall be confidential.
- 51.5 Unless otherwise agreed by the parties, the Institute may publish excerpts or summaries of selected awards, orders and other decisions, provided that all references to the parties' names and other identifying details are deleted.

52. GENERAL RULE

In all matters not expressly provided for in these Rules, the Institute, the arbitral tribunal and the parties shall act in the spirit of these Rules and shall make every effort to ensure that all awards are legally enforceable.

53. LIMITATION OF LIABILITY

Any arbitrator, Emergency Arbitrator, secretary appointed by the arbitral tribunal, the Finland Chamber of Commerce and its employees, the Institute, the members of the Board and the representatives of the Secretariat shall not be liable to any person for any act or omission in connection with the arbitration, or the Emergency Arbitrator proceedings as the case may be, except to the extent such limitation of liability is prohibited by applicable law.

54. ENTRY INTO FORCE

- 54.1 Subject to Article 54.2, these Rules shall come into force on 1 January 2024 and shall apply to all arbitrations commenced on or after that date, unless otherwise agreed by the parties.
- 54.2 If the arbitration agreement was concluded before 1 June 2013:
- (a) Articles 11, 12, 14.4 and 38.5, and Appendix III do not apply, unless otherwise agreed by the parties;

- (b) the Institute may publish anonymous excerpts or summaries of awards, orders and other decisions under Article 51.5 only with the prior written consent of all parties to the arbitration.

Appendices

APPENDIX I

ORGANISATION OF THE ARBITRATION INSTITUTE

1. GENERAL PROVISIONS

- 1.1 The Arbitration Institute of the Finland Chamber of Commerce (the "Institute") is an autonomous arbitration body of the Finland Chamber of Commerce. Although part of the organisation of the Finland Chamber of Commerce, the Institute carries out its functions in complete independence from the Finland Chamber of Commerce and its organs.
- 1.2 The Institute does not itself resolve disputes. Instead, it administers the settlement of disputes in domestic and international arbitrations under the Arbitration Rules of the Finland Chamber of Commerce (the "Rules") and the Rules for Expedited Arbitration of the Finland Chamber of Commerce (the "Expedited Rules"). In addition, the Institute may be designated as appointing authority without subjecting the arbitration to the provisions of the Rules or the Expedited Rules.
- 1.3 The Institute is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). The Board may set up one or more committees and delegate to such committees the power to take certain decisions on behalf of the Board, provided that any such decision is reported to the Board.

2. THE BOARD

- 2.1 The Board shall consist of a Chair, a maximum of three Vice-Chairs and a maximum of twelve additional members (collectively referred to as "Members"). The Board shall include both Finnish and non-Finnish nationals.
- 2.2 The Members shall be appointed by the Finland Chamber of Commerce. The term of office for the Members shall be three years and may be renewed once. In exceptional circumstances,

upon the request of the Finland Chamber of Commerce, a member of the Board may be appointed for a third term. If a member of the Board is no longer in a position to exercise the member's functions, the Finland Chamber of Commerce may appoint a substitute member.

- 2.3 The Board renders decisions as provided for under the Rules. The Board exercises its decision-making power in plenary sessions which are presided over by the Chair or, where the Chair is prevented, by one of the Vice-Chairs (the "Chairperson"). If both the Chair and each of the Vice-Chairs are prevented, the other Members shall appoint one of themselves to serve as the Chairperson of the plenary session. Three Members form a quorum, and decisions are taken by a majority vote. Failing majority, the Chairperson holds the casting vote.
- 2.4 The Board may make decisions electronically and via remote connection.
- 2.5 The Board shall not appoint any of the Members as arbitrators in proceedings conducted under the Rules. The Members may, however, be proposed for such duties by one or more of the parties or by party-nominated arbitrators, subject to confirmation by the Institute. In special circumstances, a member of the Board may be appointed as Emergency Arbitrator pursuant to Article 38.5 and Appendix III of the Rules.
- 2.6 The Members involved in any capacity whatsoever in proceedings conducted under the Rules must inform the Secretariat upon becoming aware of such involvement. Such Members must refrain from participating in the discussions and in the decisions of the Board, or any of its committees, concerning the proceedings in question. Such Members must also be absent from the session whenever the proceedings are being considered either by the Board or by any of its committees. Such Members shall not receive any documentation or information pertaining to such proceedings.

3. THE SECRETARIAT

- 3.1 The Board is assisted in its work by the Secretariat, which is responsible for the administrative tasks relating to the arbitration proceedings conducted under the Rules. The Secretariat may also take decisions on matters delegated to it by the Board.
- 3.2 The Secretariat acts under the direction of a secretary general (the "Secretary General"). The Secretary General shall be appointed by the Finland Chamber of Commerce.
- 3.3 The Secretary General or any other member of the Secretariat may not be appointed, or otherwise act, as arbitrator in proceedings conducted under the Rules.
- 3.4 All communications from the Board or any of its committees to the parties or arbitrators concerning the administration of arbitration proceedings under the Rules shall take place exclusively through the Secretariat. All decisions of the Board and any of its committees shall be communicated by the Secretariat on behalf of the Board and its committees.
- 3.5 In each case submitted to arbitration under the Rules, the Secretariat shall retain in its archives all awards and orders for the termination of the arbitration made by the arbitral tribunal, all decisions of the Institute and copies of the relevant correspondence with the Institute. Any such documents and correspondence may be destroyed after three years from the rendering of a final award or an order for the termination of the arbitration, unless a party or an arbitrator requests within the said time limit the return of such documents or correspondence. All related costs for the return of the documents or correspondence shall be paid by the requesting party or arbitrator.

4. OTHER PROVISIONS

- 4.1 The Chair or, where the Chair is prevented, one of the Vice-Chairs shall have the power to take urgent decisions on behalf of the Board, provided that any such decision is reported to

the Board at its next session.

- 4.2 The work of the Board, any of its committees and the Secretariat is of a confidential nature. The Board decides who can attend the sessions of the Board and any of its committees and who are entitled to have access to materials related to the work of the Board, its committees and the Secretariat.

APPENDIX II

SCHEDULE OF ARBITRATION FEES AND COSTS

(All amounts in this Appendix are in euros, hereinafter "EUR")

1. FILING FEE

- 1.1 A Filing Fee of EUR 3,000 must be paid upon filing a Request for Arbitration pursuant to Article 6 of the Rules, any counterclaim or set-off claim pursuant to Article 8 of the Rules, any Request for Joinder pursuant to Article 11 of the Rules, and any claim made pursuant to Article 15.2(d) of the Rules.
- 1.2 The Filing Fee is non-refundable and constitutes a part of the Administrative Fee referred to in Article 3 below. The Filing Fee shall be credited to the respective party's share of the advance on costs referred to in Article 2 below. If the Board dismisses a Request for Joinder made under Article 11 of the Rules, the Filing Fee paid upon filing the Request for Joinder shall not be credited as a part of the Administrative Fee nor shall it be taken into account in the advance on costs.
- 1.3 The payment of the Filing Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.

2. ADVANCE ON COSTS FIXED BY THE INSTITUTE

- 2.1 The advance on costs fixed by the Institute is intended to cover the fees and expenses referred to in Article 49.2(a)–(d).
- 2.2 In fixing the advance on costs, the Institute shall take into consideration Tables A and B below. The amount in dispute referred to in the Tables shall be determined in accordance with the following:
 - (a) The amount in dispute is calculated as the

aggregate value of all claims. If secondary or alternative claims have been made in respect to a certain claim, the value of the highest monetary claim shall be taken into account in determining the amount in dispute.

- (b) Interest claims shall not be taken into account for the calculation of the amount in dispute. However, when the interest claims exceed the amount claimed as principal, the interest claims alone, instead of the principal amount, shall be taken into account for the calculation of the amount in dispute.
 - (c) Amounts in currencies other than euro shall be converted into euros at the rate of exchange applicable at the time the Request for Arbitration is filed with the Institute or at the time any new claim, counterclaim, set-off claim or amendment to a claim is filed.
 - (d) Where the amount in dispute cannot be ascertained, the Institute shall determine the amount in dispute taking into account all relevant circumstances. The Institute may also determine the amount in dispute in other exceptional circumstances.
- 2.3 Subject to Articles 2.4 and 2.5 below, each party shall pay half of the advance on costs within the time limit set by the Institute.
- 2.4 Where counterclaims or set-off claims are raised by the respondent, the Institute may fix separate advances on costs for the claims, counterclaims and set-off claims and order each of the parties to pay the advance on costs corresponding to its claims.
- 2.5 Where claims are made under Articles 11 and 12 of the Rules, the Institute shall fix one or more advances on costs that shall be payable by the parties as decided by the Institute. Where the Institute has previously fixed any advance on costs, any such advance shall be replaced by the advance(s) fixed pursuant to this Article 2.5, and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the Institute pursuant to this Article 2.5.

- 2.6 The Institute may adjust the advance on costs, and order any party to pay further advances on costs, at any time during the proceedings to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitral tribunal, the evolving complexity of the arbitration, or other relevant circumstances. The arbitral tribunal shall promptly inform the Institute of any changes that may affect the amount of the advance on costs.
- 2.7 If a party fails to pay its share of the advance on costs, the Institute shall give the other party an opportunity to pay the unpaid share on behalf of the defaulting party within the time limit set by the Institute. If the other party makes such payment, the arbitral tribunal may, at the request of that party, issue a separate award for reimbursement of the payment in accordance with Article 45(a) of the Rules. In the event that any part of the advance on costs remains unpaid, the Institute may terminate the proceedings, treat the claim for which the advance on costs has remained unpaid as withdrawn or, once the case file has been transmitted to the arbitral tribunal, the Institute may direct the tribunal to order the termination of the arbitration or to treat the claim for which the advance on costs has remained unpaid as having been withdrawn.
- 2.8 Subject to Articles 2.9 and 2.10 below, each party shall pay its share of the advance on costs in cash. The payment shall be made by transfer to the bank account of the Finland Chamber of Commerce.
- 2.9 If a party's share of the advance on costs is greater than EUR 250,000, such party may post a bank guarantee for any amount above this sum.
- 2.10 A party that has already paid in full its share of the advance on costs may pay the unpaid share owed by the defaulting party by posting a bank guarantee.
- 2.11 The Institute shall establish the terms of the bank guarantees referred to in Articles 2.9 and 2.10.

- 2.12 The amounts paid as advances on costs do not yield interest for the parties or the arbitrators.

3. ADMINISTRATIVE FEE AND EXPENSES OF THE INSTITUTE

- 3.1 The Institute shall determine the Administrative Fee referred to in Article 49.2(d) of the Rules in accordance with Table A below. The amount in dispute referred to in Table A shall be determined in accordance with Article 2.2 of this Appendix.
- 3.2 In exceptional circumstances, the Institute may deviate from the fee amounts set out in Table A or require payment of administrative expenses in addition to the Administrative Fee provided in Table A.
- 3.3 The payment of the Administrative Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.

4. FEES AND EXPENSES OF THE ARBITRAL TRIBUNAL

- 4.1 The arbitral tribunal's fees shall be determined exclusively by the Institute. Separate fee arrangements between the parties and the arbitral tribunal are contrary to the Rules.
- 4.2 The Institute shall determine the fee of a sole or presiding arbitrator in accordance with Table B below. The amount in dispute referred to in Table B shall be determined in accordance with Article 2.2 of this Appendix. The Institute may deviate from the fee amounts stated in Table B only in exceptional circumstances.
- 4.3 When fixing the arbitrator's fee, in addition to the monetary value of the dispute, the Institute shall consider the complexity of the dispute, the time spent on the case, and the diligence and efficiency of the arbitrator.
- 4.4 When a case is referred to an arbitral tribunal composed of three arbitrators, the total fees of the tribunal to be determined by the Institute shall normally not exceed two and a half times the fee of the presiding arbitrator.

- 4.5 As a rule, when a case is referred to an arbitral tribunal composed of three arbitrators, the Institute shall allocate 40–50 per cent of the tribunal’s total fees to the presiding arbitrator and 25–30 per cent to each co-arbitrator. The Institute may, however, apply a different allocation of fees after consulting with the arbitral tribunal.
- 4.6 Pursuant to Article 49.2(b)–(c) of the Rules, the arbitrators shall receive reimbursement for their reasonable travel, accommodation and other expenses, as well as for costs of expert advice and of other assistance required in connection with the arbitration. The Institute shall determine the reasonableness of such expenses and decide to which extent they will be reimbursed.

5. OTHER PROVISIONS

- 5.1 If an arbitration is terminated before the rendering of a final award, the Institute shall determine the fees and expenses of the arbitrators and the Administrative Fee and expenses of the Institute at its discretion, taking into account the stage of the proceedings at which the arbitration was terminated, the amount of work done by the arbitrators and the Institute, and other relevant circumstances.
- 5.2 Where an arbitrator is replaced pursuant to Article 24 of the Rules, the Institute shall determine the fee and expenses due to the arbitrator who has been replaced, taking into account the amount of work done, the reason for the replacement, and other relevant circumstances.
- 5.3 In case of a request for the correction or interpretation of an award under Article 47 of the Rules, or for the making of an additional award under Article 48, the Institute shall decide whether any costs referred to in Article 49.2(a)–(d) will be charged to the parties. The Institute may fix a supplementary advance on costs, to be paid by the parties, to cover any additional fees and expenses of the arbitral tribunal and any additional administrative expenses of the Institute.

- 5.4 The provisions of Article 5.3 above also apply if a competent judicial authority seised with an action to set aside an arbitral award has remitted the award to an arbitral tribunal to eliminate the ground for setting it aside.
- 5.5 The Institute may set a fee payable for the appointment of an arbitrator or arbitrators to arbitrations not subject to the Rules or the Expedited Rules. The fee is non-refundable.
- 5.6 A party making or receiving any payments concerning the costs of the arbitration shall be liable for all bank charges and other fees incurred in connection with these payments.
- 5.7 The Institute may issue guidelines to supplement the provisions of this Appendix with regard to the payment of the arbitrators' fees and expenses as well as the Administrative Fee and expenses of the Institute.
- 5.8 This Appendix shall not apply to the appointment of an Emergency Arbitrator pursuant to Article 38.5 and Appendix III of the Rules.

ADMINISTRATIVE FEE

Amount in dispute (EUR)	Administrative Fee (EUR)
0 – 200,000	3,000 + 1.74% of amount over 25,000 with a maximum Administrative Fee of 6,000
200,001 – 500,000	6,000 + 2.17% of amount over 200,000 with a maximum Administrative Fee of 12,500
500,001 – 1,000,000	12,500 + 1.30% of amount over 500,000 with a maximum Administrative Fee of 19,000
1,000,001 – 2,000,000	19,000 + 0.50% of amount over 1,000,000 with a maximum Administrative Fee of 24,000
2,000,001 – 5,000,000	24,000 + 0.20% of amount over 2,000,000 with a maximum Administrative Fee of 30,000
5,000,001 – 10,000,000	30,000 + 0.16% of amount over 5,000,000 with a maximum Administrative Fee of 38,000
10,000,001 – 30,000,000	38,000 + 0.04% of amount over 10,000,000 with a maximum Administrative Fee of 45,000
30,000,001 – 50,000,000	45,000 + 0.04% of amount over 30,000,000 with a maximum Administrative Fee of 52,000
50,000,001 – 75,000,000	52,000 + 0.03% of amount over 50,000,000 with a maximum Administrative Fee of 58,000
75,000,001 – 100,000,000	58,000 + 0.02% of amount over 75,000,000 with a maximum Administrative Fee of 63,000
Over 100,000,000	63,000 + 0.01% of amount over 100,000,000 with a maximum Administrative Fee of 70,000

The Administrative Fee is not subject to VAT.

ARBITRATOR'S FEE

Fee of the sole or presiding arbitrator (EUR)		
Amount in dispute (EUR)	Minimum	Maximum
0 – 200,000	6,000	25,000
200,001 – 500,000	10,000 + 2.00% of amount over 200,000	25,000 + 5.00% of amount over 200,000
500,001 – 1,000,000	16,000 + 1.80% of amount over 500,000	40,000 + 3.00% of amount over 500,000
1,000,001 – 2,000,000	25,000 + 0.50% of amount over 1,000,000	55,000 + 2.90% of amount over 1,000,000
2,000,001 – 5,000,000	30,000 + 0.33% of amount over 2,000,000	84,000 + 1.60% of amount over 2,000,000
5,000,001 – 10,000,000	40,000 + 0.30% of amount over 5,000,000	132,000 + 0.60% of amount over 5,000,000
10,000,001 – 30,000,000	55,000 + 0.05% of amount over 10,000,000	162,000 + 0.22% of amount over 10,000,000
30,000,001 – 50,000,000	65,000 + 0.05% of amount over 30,000,000	205,000 + 0.23% of amount over 30,000,000
50,000,001 – 75,000,000	75,000 + 0.06% of amount over 50,000,000	250,000 + 0.16% of amount over 50,000,000
75,000,001 – 100,000,000	90,000 + 0.04% of amount over 75,000,000	290,000 + 0.04% of amount over 75,000,000
Over 100,000,000	To be determined by the Board	To be determined by the Board

The fee amounts mentioned in the table do not include VAT to be added to the fee of an arbitrator.

APPENDIX III

EMERGENCY ARBITRATOR RULES

1. GENERAL PROVISIONS

- 1.1 As provided in Article 38.5 of the Rules, a party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal (the "Applicant") may apply for the appointment of an Emergency Arbitrator in accordance with the provisions of this Appendix.
- 1.2 The Emergency Arbitrator shall have the same power to grant any interim measures of protection as the arbitral tribunal under Article 38.1 of the Rules. However, the Emergency Arbitrator may exercise such power only if the Emergency Arbitrator is satisfied that the Applicant's need for interim relief is so urgent that it is necessary to grant interim measures of protection prior to the constitution of the arbitral tribunal. Where the urgency requirement is not fulfilled, the Emergency Arbitrator shall dismiss the Applicant's request for interim measures of protection.
- 1.3 The provisions of this Appendix are not intended to prevent any party from seeking urgent interim measures of protection from a competent judicial authority at any time prior to making an application for the appointment of an Emergency Arbitrator pursuant to Article 38.5 of the Rules and this Appendix, and in appropriate circumstances even thereafter. Any application for such measures from a judicial authority shall not be considered an infringement or a waiver of the arbitration agreement.

2. APPLICATION FOR THE APPOINTMENT OF AN EMERGENCY ARBITRATOR

- 2.1 An application for the appointment of an Emergency Arbitrator (the "Application") shall be submitted to the Institute in hard copy or by electronic means in a manner that provides a record of the transmission. The Institute may, if deemed necessary, separately request

that the Applicant provide a hard copy of an electronically transmitted document or other communication or that the Applicant provide additional copies of any hard copy.

2.2 The Application shall contain the following information:

- (a) the name and contact details of the parties and of their counsel or other representatives;
- (b) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;
- (c) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute arises;
- (d) a brief description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
- (e) a statement of the relief sought from the Emergency Arbitrator;
- (f) the reasons why the Applicant needs urgent interim measures of protection that cannot await the constitution of an arbitral tribunal;
- (g) any agreement as to the seat of arbitration, the law or rules of law applicable to the substance of the dispute, or the language of the arbitration; and
- (h) proof of payment of the Application Deposit referred to in Article 4 below.

2.3 The Application may contain such other information or documents as the Applicant considers appropriate to contribute to the efficient examination of the Application.

2.4 The Application shall be submitted in the language of the arbitration as agreed by the parties. Failing such agreement, the Application shall be submitted in the language of the arbitration agreement.

2.5 The Application may be made either before or after the commencement of the arbitration.

However, the Application shall be submitted to the Institute prior to the transmission of the case file to the arbitral tribunal pursuant to Article 25 of the Rules. Failure to comply with this time limit shall result in the dismissal of the Application by the Institute.

- 2.6 Where the Application is submitted to the Institute before the Request for Arbitration, the Institute shall terminate the Emergency Arbitrator proceedings if the Request for Arbitration is not submitted within 10 days from the date of receipt of the Application by the Institute. In exceptional circumstances, the Institute may extend this time limit upon a reasoned request of a party or the Emergency Arbitrator.

3. APPOINTMENT OF AN EMERGENCY ARBITRATOR

- 3.1 If it is manifest that no agreement to arbitrate under the Rules exists, the Institute shall dismiss the Application.
- 3.2 If the Institute determines that it should accept the Application, it shall transmit the Application and the attached documents to the respondent once the Applicant has paid the Application Deposit referred to in Article 4 below and provided any copies that may have been requested in accordance with Article 2.1.
- 3.3 The Institute shall seek to appoint an Emergency Arbitrator within two days after receipt of both the Application and the Application Deposit.
- 3.4 Once the Emergency Arbitrator has been appointed, the Institute shall notify the parties of the appointment and transmit the Application, together with any other documents that the Institute may have received from the parties (the "File"), to the Emergency Arbitrator. After that, all written communications from the parties shall be submitted directly to the Emergency Arbitrator, with a simultaneous copy to the other party.

4. APPLICATION DEPOSIT FOR THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS

- 4.1 The Application Deposit is EUR 25,000, consisting of EUR 5,000 for the administrative fee and expenses of the Institute and EUR 20,000 for the fee and expenses of an Emergency Arbitrator.
- 4.2 In exceptional circumstances, the Institute may decide that the fee and expenses of the Emergency Arbitrator shall be more than EUR 20,000, or that the administrative fee and expenses of the Institute shall be more than EUR 5,000, taking into account the nature of the case, the amount of work done by the Emergency Arbitrator and the Institute, and other relevant circumstances. In that event, the Institute may increase the Application Deposit at any time during the Emergency Arbitrator proceedings.
- 4.3 If the Applicant fails to pay the increased Application Deposit within the time limit set by the Institute, the Emergency Arbitrator proceedings will be terminated.
- 4.4 If the Emergency Arbitrator proceedings are terminated prior to the rendering of the Emergency Arbitrator's decision (the "Emergency Arbitrator Decision"), the Institute shall determine the fees and expenses due to the Emergency Arbitrator and the Institute, taking into account the amount of work done by the Emergency Arbitrator and the Institute, the reason for the termination of the proceedings, and other relevant circumstances. Any amount paid by the Applicant which exceeds the fees and expenses as determined by the Institute shall be reimbursed to the Applicant.

5. SEAT OF EMERGENCY ARBITRATOR PROCEEDINGS

- 5.1 The seat of Emergency Arbitrator proceedings shall be the seat of arbitration as agreed by the parties.
- 5.2 If the parties have not agreed on the seat of

arbitration, or if the designation of the seat is unclear, the Institute shall determine the seat of Emergency Arbitrator proceedings.

6. PROCEEDINGS BEFORE AN EMERGENCY ARBITRATOR

- 6.1 The Emergency Arbitrator shall establish a procedural timetable for the Emergency Arbitrator proceedings as soon as possible, and normally not later than within two days, after having received the File from the Institute. The Emergency Arbitrator shall communicate the procedural timetable to the parties and the Institute without delay.
- 6.2 The Emergency Arbitrator shall conduct the Emergency Arbitrator proceedings in such manner as the Emergency Arbitrator considers appropriate, taking into account the nature of the case and urgency inherent in the proceedings. In all cases, the Emergency Arbitrator shall ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its case.
- 6.3 The Emergency Arbitrator shall have the power to rule on its jurisdiction, including any objections concerning the existence, validity or applicability of the arbitration agreement. The Emergency Arbitrator shall resolve any disputes over the applicability of this Appendix.
- 6.4 The Emergency Arbitrator shall decide the Application within 15 days from the date of receipt of the File from the Institute. The Institute may extend this time limit upon a reasoned request of the Emergency Arbitrator or, if deemed necessary, on its own motion.
- 6.5 The Emergency Arbitrator Decision may be made even if in the meantime the Institute has transmitted the case file to the arbitral tribunal.
- 6.6 The Emergency Arbitrator may make the granting of any interim measure of protection subject to appropriate security being furnished by the Applicant for any costs or damage that such measure may cause to the party against

which it is directed. The Emergency Arbitrator shall establish the terms of any security arrangement.

7. CHALLENGE OF AN EMERGENCY ARBITRATOR

7.1 An Emergency Arbitrator shall be impartial and independent of the parties.

7.2 Before accepting the appointment, a prospective Emergency Arbitrator shall disclose to the Institute in writing any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The Emergency Arbitrator shall also immediately disclose to the Institute and the parties in writing similar circumstances which may arise during the course of the Emergency Arbitrator proceedings.

7.3 A party intending to challenge an Emergency Arbitrator shall submit a written notice of challenge (the "Notice of Challenge") to the Institute. The Notice of Challenge shall state the reasons for the challenge and specify the date on which the party became aware of the circumstances on which the challenge is based.

7.4 The Notice of Challenge shall be submitted to the Institute within two days from the date when the circumstances giving rise to the challenge became known to the challenging party. Failure by a party to comply with this time limit shall constitute a waiver of the right to make the challenge.

7.5 The Institute shall decide the challenge as soon as possible after having afforded an opportunity for the Emergency Arbitrator and the other party to submit comments on the Notice of Challenge within the time limit set by the Institute. The Institute has no obligation to give reasons for its decision.

8. EMERGENCY ARBITRATOR DECISION

8.1 The Emergency Arbitrator Decision shall be made in writing and shall state the reasons

upon which it is based. It shall be dated and signed by the Emergency Arbitrator.

- 8.2 The Emergency Arbitrator shall communicate a copy of the Emergency Arbitrator Decision to each of the parties and the Institute without delay.
- 8.3 The Emergency Arbitrator Decision shall be binding on the parties when rendered. By agreeing to arbitration under the Rules, the parties undertake to comply with any Emergency Arbitrator Decision without delay.
- 8.4 The Emergency Arbitrator may amend or revoke the Emergency Arbitrator Decision at the request of a party or, in exceptional circumstances and upon prior notice to the parties, on the Emergency Arbitrator's own initiative.
- 8.5 An arbitral tribunal shall not be bound by the Emergency Arbitrator Decision or the reasoning of such Decision.
- 8.6 The Emergency Arbitrator Decision shall cease to be binding on the parties:
- (a) if the Institute terminates the Emergency Arbitrator proceedings for failure to commence the arbitration within the time limit prescribed in Article 2.6 above;
 - (b) upon the acceptance by the Institute of a challenge against the Emergency Arbitrator pursuant to Article 7 above;
 - (c) if the case file is not transmitted to the arbitral tribunal within 90 days from the date of the Emergency Arbitrator Decision;
 - (d) if the Emergency Arbitrator or an arbitral tribunal so decides;
 - (e) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise; or
 - (f) upon the termination of the arbitration before the rendering of a final award.

8.7 Subject to the provisions of Article 6.5 above, the Emergency Arbitrator shall have no further powers to act once the case file has been transmitted to the arbitral tribunal.

9. ALLOCATION OF THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS

9.1 The Emergency Arbitrator Decision shall fix the costs of the Emergency Arbitrator proceedings and state which of the parties shall bear those costs or in what proportion the costs shall be borne by the parties.

9.2 The costs of the Emergency Arbitrator proceedings include:

- (a) the fee and expenses of the Emergency Arbitrator;
- (b) the administrative fee and expenses of the Institute; and
- (c) the legal and other costs incurred by the parties in relation to the Emergency Arbitrator proceedings, if such costs have been claimed and to the extent that the Emergency Arbitrator considers that the amount of such costs is reasonable.

10. OTHER PROVISIONS

10.1 Unless otherwise agreed by the parties:

- (a) the Institute and the Emergency Arbitrator shall maintain the confidentiality of the Emergency Arbitrator proceedings and the Emergency Arbitrator Decision;
- (b) each party undertakes to keep confidential the Emergency Arbitrator Decision and all other orders and decisions made by the Emergency Arbitrator, correspondence from the Emergency Arbitrator to the parties, any recordings or transcripts made of the Emergency Arbitrator proceedings as well as documents and other materials submitted by another party in connection with the Emergency Arbitrator

proceedings, subject to the exceptions set forth in Article 51.2(a)–(c) of the Rules;

- (c) the Institute may publish excerpts or summaries of selected Emergency Arbitrator Decisions and other orders and decisions issued by an Emergency Arbitrator, provided that all references to the parties' names and other identifying details are deleted.
- 10.2 At the request of a party, the arbitral tribunal shall finally decide any party's claims related to the Emergency Arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the Emergency Arbitrator Decision.
- 10.3 Unless otherwise agreed by the parties, an Emergency Arbitrator may not serve as arbitrator in any arbitration relating to the dispute in respect of which the Emergency Arbitrator has acted.
- 10.4 Unless otherwise agreed by the parties, the provisions of this Appendix apply to Emergency Arbitrator proceedings initiated under arbitration agreements concluded on or after 1 June 2013.

Model Arbitration Clauses

MODEL ARBITRATION CLAUSES

Below are model arbitration clauses for parties who wish to submit to arbitration under the Arbitration Rules of the Finland Chamber of Commerce.

Standard arbitration clause:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

- (a) The number of arbitrators shall be [one / three].
- (b) The seat of arbitration shall be [town and country].
- (c) The language of the arbitration shall be [language].

Arbitration clause without Emergency Arbitrator:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The Emergency Arbitrator provisions shall not apply.

Note: Parties may wish to consider adding:

- (a) The number of arbitrators shall be [one / three].
- (b) The seat of arbitration shall be [town and country].
- (c) The language of the arbitration shall be [language].

Adopted by the Finland Chamber of Commerce
on 8 December 2023.



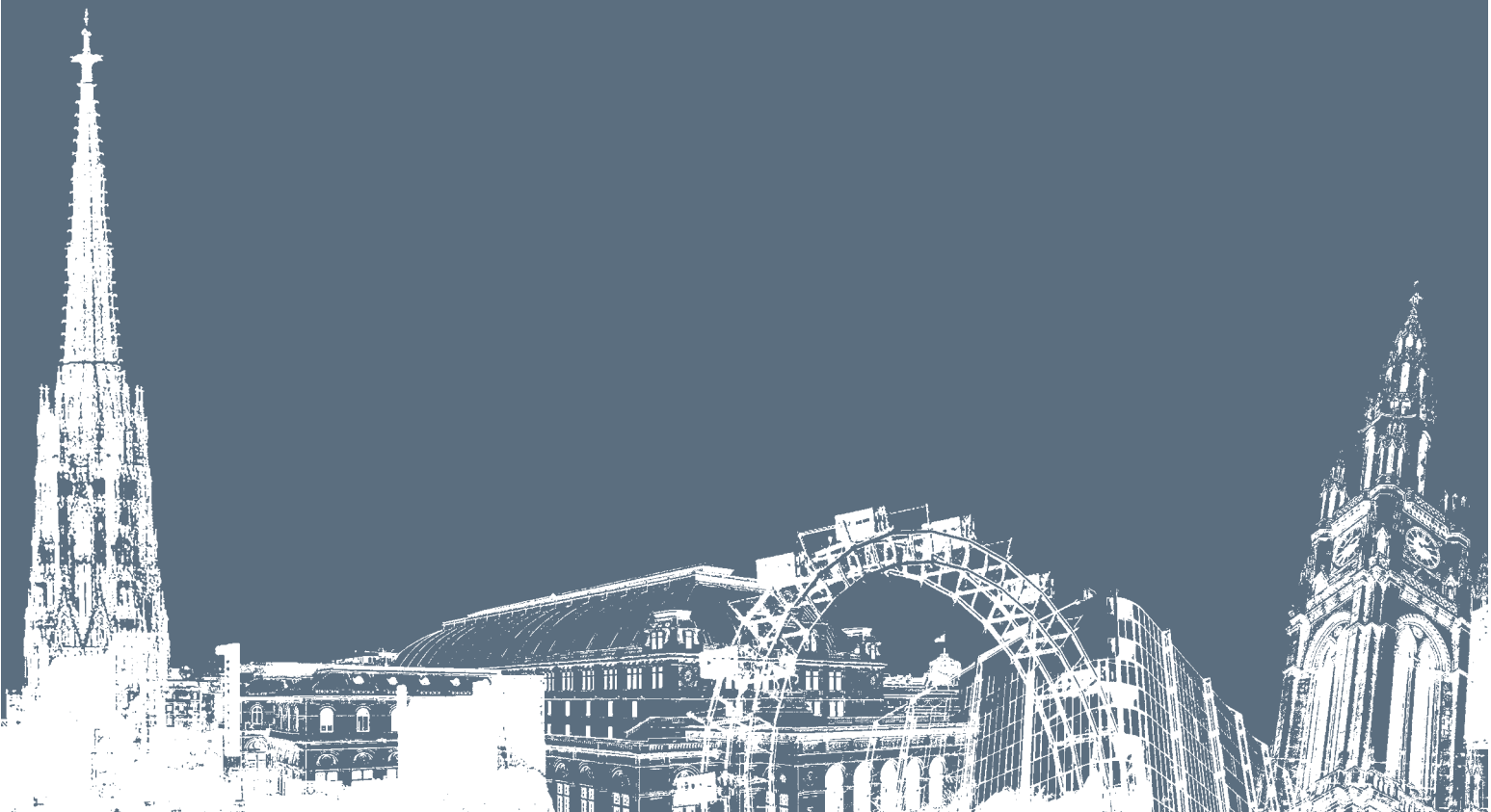
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ARBITRATION MOOT

UNCITRAL MODEL LAW ON
INTERNATIONAL COMMERCIAL
ARBITRATION



UNCITRAL Model Law on International Commercial Arbitration

1985

With amendments
as adopted in 2006



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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Model Law on International Commercial Arbitration

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Resolutions adopted by the General Assembly

40/72. Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in international commercial relations,

Convinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations,

Noting that the Model Law on International Commercial Arbitration¹ was adopted by the United Nations Commission on International Trade Law at its eighteenth session, after due deliberation and extensive consultation with arbitral institutions and individual experts on international commercial arbitration,

Convinced that the Model Law, together with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards² and the Arbitration Rules of the United Nations Commission on International Trade Law³ recommended by the General Assembly in its resolution 31/98 of 15 December 1976, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

1. *Requests* the Secretary-General to transmit the text of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, together with the *travaux préparatoires* from the eighteenth session of the Commission, to Governments and to arbitral institutions and other interested bodies, such as chambers of commerce;

2. *Recommends* that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

*112th plenary meeting
11 December 1985*

¹Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), annex I.

²United Nations, *Treaty Series*, vol. 330, No. 4739, p. 38.

³United Nations publication, Sales No. E.77.V.6.

[on the report of the Sixth Committee (A/61/453)]

61/33. Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,¹

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,² is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,³ and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on

¹*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), annex I.*

²United Nations, *Treaty Series*, vol. 330, No. 4739.

³*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17).*

International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,² the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;³

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

*64th plenary meeting
4 December 2006*

Part One

UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17,
annex I and A/61/17, annex I)

**(As adopted by the United Nations Commission on
International Trade Law on 21 June 1985,
and as amended by the United Nations Commission
on International Trade Law on 7 July 2006)**

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application¹

(1) This Law applies to international commercial² arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

¹Article headings are for reference purposes only and are not to be used for purposes of interpretation.

²The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(b) one of the following places is situated outside the State in which the parties have their places of business:

- (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
- (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;

(b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

(c) “court” means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2 A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not

limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

“Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no

appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the

matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for

the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 17 E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17 F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement³

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

- (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
- (ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
- (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

- (i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
- (ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

*Section 5. Court-ordered interim measures**Article 17 J. Court-ordered interim measures*

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in

³The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. *Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. *Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. *Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence.

The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral

tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not

valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
- (b) the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the

competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.⁴

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

⁴The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Part Two

Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006¹

1. The UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”) was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission. The General Assembly, in its resolution 40/72 of 11 December 1985, recommended “that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice”. The Model Law was amended by UNCITRAL on 7 July 2006, at the thirty-ninth session of the Commission (see below, paragraphs 4, 19, 20, 27, 29 and 53). The General Assembly, in its resolution 61/33 of 4 December 2006, recommended “that all States give favourable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws (...)”.

2. The Model Law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.

3. The form of a model law was chosen as the vehicle for harmonization and modernization in view of the flexibility it gives to States in preparing new arbitration laws. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make

¹This note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Model Law. A commentary prepared by the Secretariat on an early draft of the Model Law appears in document A/CN.9/264 (reproduced in UNCITRAL Yearbook, vol. XVI — 1985, United Nations publication, Sales No. E.87.V.4).

as few changes as possible when incorporating the Model Law into their legal systems. Efforts to minimize variation from the text adopted by UNCITRAL are also expected to increase the visibility of harmonization, thus enhancing the confidence of foreign parties, as the primary users of international arbitration, in the reliability of arbitration law in the enacting State.

4. The revision of the Model Law adopted in 2006 includes article 2 A, which is designed to facilitate interpretation by reference to internationally accepted principles and is aimed at promoting a uniform understanding of the Model Law. Other substantive amendments to the Model Law relate to the form of the arbitration agreement and to interim measures. The original 1985 version of the provision on the form of the arbitration agreement (article 7) was modelled on the language used in article II (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (“the New York Convention”). The revision of article 7 is intended to address evolving practice in international trade and technological developments. The extensive revision of article 17 on interim measures was considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration. The revision also includes an enforcement regime for such measures in recognition of the fact that the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures. The new provisions are contained in a new chapter of the Model Law on interim measures and preliminary orders (chapter IV A).

A. Background to the Model Law

5. The Model Law was developed to address considerable disparities in national laws on arbitration. The need for improvement and harmonization was based on findings that national laws were often particularly inappropriate for international cases.

1. Inadequacy of domestic laws

6. Recurrent inadequacies to be found in outdated national laws include provisions that equate the arbitral process with court litigation and fragmentary provisions that fail to address all relevant substantive law issues. Even most of those laws that appear to be up-to-date and comprehensive were drafted with domestic arbitration primarily, if not exclusively, in mind. While this approach is understandable in view of the fact that even today the bulk of cases governed by arbitration law would be of a purely domestic nature, the unfortunate consequence is that traditional local concepts are imposed on international cases and the needs of modern practice are often not met.

7. The expectations of the parties as expressed in a chosen set of arbitration rules or a “one-off” arbitration agreement may be frustrated, especially by mandatory provisions of applicable law. Unexpected and undesired restrictions found in national

laws may prevent the parties, for example, from submitting future disputes to arbitration, from selecting the arbitrator freely, or from having the arbitral proceedings conducted according to agreed rules of procedure and with no more court involvement than appropriate. Frustration may also ensue from non-mandatory provisions that may impose undesired requirements on unwary parties who may not think about the need to provide otherwise when drafting the arbitration agreement. Even the absence of any legislative provision may cause difficulties simply by leaving unanswered some of the many procedural issues relevant in arbitration and not always settled in the arbitration agreement. The Model Law is intended to reduce the risk of such possible frustration, difficulties or surprise.

2. Disparity between national laws

8. Problems stemming from inadequate arbitration laws or from the absence of specific legislation governing arbitration are aggravated by the fact that national laws differ widely. Such differences are a frequent source of concern in international arbitration, where at least one of the parties is, and often both parties are, confronted with foreign and unfamiliar provisions and procedures. Obtaining a full and precise account of the law applicable to the arbitration is, in such circumstances often expensive, impractical or impossible.

9. Uncertainty about the local law with the inherent risk of frustration may adversely affect the functioning of the arbitral process and also impact on the selection of the place of arbitration. Due to such uncertainty, a party may hesitate or refuse to agree to a place, which for practical reasons would otherwise be appropriate. The range of places of arbitration acceptable to parties is thus widened and the smooth functioning of the arbitral proceedings is enhanced where States adopt the Model Law, which is easily recognizable, meets the specific needs of international commercial arbitration and provides an international standard based on solutions acceptable to parties from different legal systems.

B. Salient features of the Model Law

1. Special procedural regime for international commercial arbitration

10. The principles and solutions adopted in the Model Law aim at reducing or eliminating the above-mentioned concerns and difficulties. As a response to the inadequacies and disparities of national laws, the Model Law presents a special legal regime tailored to international commercial arbitration, without affecting any relevant treaty in force in the State adopting the Model Law. While the Model Law was designed with international commercial arbitration in mind, it offers a set of basic rules that are not, in and of themselves, unsuitable to any other type of arbitration. States may thus consider extending their enactment of the Model Law to cover also domestic disputes, as a number of enacting States already have.

(a) *Substantive and territorial scope of application*

11. Article 1 defines the scope of application of the Model Law by reference to the notion of “international commercial arbitration”. The Model Law defines an arbitration as international if “the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States” (article 1 (3)). The vast majority of situations commonly regarded as international will meet this criterion. In addition, article 1 (3) broadens the notion of internationality so that the Model Law also covers cases where the place of arbitration, the place of contract performance, or the place of the subject-matter of the dispute is situated outside the State where the parties have their place of business, or cases where the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. Article 1 thus recognizes extensively the freedom of the parties to submit a dispute to the legal regime established pursuant to the Model Law.

12. In respect of the term “commercial”, the Model Law provides no strict definition. The footnote to article 1 (1) calls for “a wide interpretation” and offers an illustrative and open-ended list of relationships that might be described as commercial in nature, “whether contractual or not”. The purpose of the footnote is to circumvent any technical difficulty that may arise, for example, in determining which transactions should be governed by a specific body of “commercial law” that may exist in some legal systems.

13. Another aspect of applicability is the territorial scope of application. The principle embodied in article 1 (2) is that the Model Law as enacted in a given State applies only if the place of arbitration is in the territory of that State. However, article 1 (2) also contains important exceptions to that principle, to the effect that certain articles apply, irrespective of whether the place of arbitration is in the enacting State or elsewhere (or, as the case may be, even before the place of arbitration is determined). These articles are the following: articles 8 (1) and 9, which deal with the recognition of arbitration agreements, including their compatibility with interim measures ordered by a court, article 17 J on court-ordered interim measures, articles 17 H and 17 I on the recognition and enforcement of interim measures ordered by an arbitral tribunal, and articles 35 and 36 on the recognition and enforcement of arbitral awards.

14. The territorial criterion governing most of the provisions of the Model Law was adopted for the sake of certainty and in view of the following facts. In most legal systems, the place of arbitration is the exclusive criterion for determining the applicability of national law and, where the national law allows parties to choose the procedural law of a State other than that where the arbitration takes place, experience shows that parties rarely make use of that possibility. Incidentally, enactment of the Model Law reduces any need for the parties to choose a “foreign” law, since the Model Law grants the parties wide freedom in shaping the rules of the arbitral proceedings. In addition to designating the law governing the arbitral procedure, the territorial criterion is of considerable practical importance in respect of articles 11, 13, 14, 16, 27 and 34, which entrust State courts at the place of

arbitration with functions of supervision and assistance to arbitration. It should be noted that the territorial criterion legally triggered by the parties' choice regarding the place of arbitration does not limit the arbitral tribunal's ability to meet at any place it considers appropriate for the conduct of the proceedings, as provided by article 20 (2).

(b) Delimitation of court assistance and supervision

15. Recent amendments to arbitration laws reveal a trend in favour of limiting and clearly defining court involvement in international commercial arbitration. This is justified in view of the fact that the parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process.

16. In this spirit, the Model Law envisages court involvement in the following instances. A first group comprises issues of appointment, challenge and termination of the mandate of an arbitrator (articles 11, 13 and 14), jurisdiction of the arbitral tribunal (article 16) and setting aside of the arbitral award (article 34). These instances are listed in article 6 as functions that should be entrusted, for the sake of centralization, specialization and efficiency, to a specially designated court or, with respect to articles 11, 13 and 14, possibly to another authority (for example, an arbitral institution or a chamber of commerce). A second group comprises issues of court assistance in taking evidence (article 27), recognition of the arbitration agreement, including its compatibility with court-ordered interim measures (articles 8 and 9), court-ordered interim measures (article 17 J), and recognition and enforcement of interim measures (articles 17 H and 17 I) and of arbitral awards (articles 35 and 36).

17. Beyond the instances in these two groups, "no court shall intervene, in matters governed by this Law". Article 5 thus guarantees that all instances of possible court intervention are found in the piece of legislation enacting the Model Law, except for matters not regulated by it (for example, consolidation of arbitral proceedings, contractual relationship between arbitrators and parties or arbitral institutions, or fixing of costs and fees, including deposits). Protecting the arbitral process from unpredictable or disruptive court interference is essential to parties who choose arbitration (in particular foreign parties).

2. Arbitration agreement

18. Chapter II of the Model Law deals with the arbitration agreement, including its recognition by courts.

(a) Definition and form of arbitration agreement

19. The original 1985 version of the provision on the definition and form of arbitration agreement (article 7) closely followed article II (2) of the New York

Convention, which requires that an arbitration agreement be in writing. If the parties have agreed to arbitrate, but they entered into the arbitration agreement in a manner that does not meet the form requirement, any party may have grounds to object to the jurisdiction of the arbitral tribunal. It was pointed out by practitioners that, in a number of situations, the drafting of a written document was impossible or impractical. In such cases, where the willingness of the parties to arbitrate was not in question, the validity of the arbitration agreement should be recognized. For that reason, article 7 was amended in 2006 to better conform to international contract practices. In amending article 7, the Commission adopted two options, which reflect two different approaches on the question of definition and form of arbitration agreement. The first approach follows the detailed structure of the original 1985 text. It confirms the validity and effect of a commitment by the parties to submit to arbitration an existing dispute (“*compromis*”) or a future dispute (“*clause compromissoire*”). It follows the New York Convention in requiring the written form of the arbitration agreement but recognizes a record of the “contents” of the agreement “in any form” as equivalent to traditional “writing”. The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties. It modernizes the language referring to the use of electronic commerce by adopting wording inspired from the 1996 UNCITRAL Model Law on Electronic Commerce and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. It covers the situation of “an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another”. It also states that “the reference in a contract to any document” (for example, general conditions) “containing an arbitration clause constitutes an arbitration agreement in writing provided that the reference is such as to make that clause part of the contract”. It thus clarifies that applicable contract law remains available to determine the level of consent necessary for a party to become bound by an arbitration agreement allegedly made “by reference”. The second approach defines the arbitration agreement in a manner that omits any form requirement. No preference was expressed by the Commission in favour of either option I or II, both of which are offered for enacting States to consider, depending on their particular needs, and by reference to the legal context in which the Model Law is enacted, including the general contract law of the enacting State. Both options are intended to preserve the enforceability of arbitration agreements under the New York Convention.

20. In that respect, the Commission also adopted, at its thirty-ninth session in 2006, a “Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958” (A/61/17, Annex 2).² The General Assembly, in its resolution 61/33 of 4 December 2006 noted that “in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and

²Reproduced in Part Three hereafter.

Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, is particularly timely". The Recommendation was drafted in recognition of the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards. The Recommendation encourages States to apply article II (2) of the New York Convention "recognizing that the circumstances described therein are not exhaustive". In addition, the Recommendation encourages States to adopt the revised article 7 of the Model Law. Both options of the revised article 7 establish a more favourable regime for the recognition and enforcement of arbitral awards than that provided under the New York Convention. By virtue of the "more favourable law provision" contained in article VII (1) of the New York Convention, the Recommendation clarifies that "any interested party" should be allowed "to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement".

(b) Arbitration agreement and the courts

21. Articles 8 and 9 deal with two important aspects of the complex relationship between the arbitration agreement and the resort to courts. Modelled on article II (3) of the New York Convention, article 8 (1) of the Model Law places any court under an obligation to refer the parties to arbitration if the court is seized with a claim on the same subject-matter unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The referral is dependent on a request, which a party may make not later than when submitting its first statement on the substance of the dispute. This provision, where adopted by a State enacting the Model Law, is by its nature binding only on the courts of that State. However, since article 8 is not limited in scope to agreements providing for arbitration to take place in the enacting State, it promotes the universal recognition and effect of international commercial arbitration agreements.

22. Article 9 expresses the principle that any interim measures of protection that may be obtained from courts under their procedural law (for example, pre-award attachments) are compatible with an arbitration agreement. That provision is ultimately addressed to the courts of any State, insofar as it establishes the compatibility between interim measures possibly issued by any court and an arbitration agreement, irrespective of the place of arbitration. Wherever a request for interim measures may be made to a court, it may not be relied upon, under the Model Law, as a waiver or an objection against the existence or effect of the arbitration agreement.

3. Composition of arbitral tribunal

23. Chapter III contains a number of detailed provisions on appointment, challenge, termination of mandate and replacement of an arbitrator. The chapter illustrates the

general approach taken by the Model Law in eliminating difficulties that arise from inappropriate or fragmentary laws or rules. First, the approach recognizes the freedom of the parties to determine, by reference to an existing set of arbitration rules or by an ad hoc agreement, the procedure to be followed, subject to the fundamental requirements of fairness and justice. Secondly, where the parties have not exercised their freedom to lay down the rules of procedure or they have failed to cover a particular issue, the Model Law ensures, by providing a set of suppletive rules, that the arbitration may commence and proceed effectively until the dispute is resolved.

24. Where under any procedure, agreed upon by the parties or based upon the suppletive rules of the Model Law, difficulties arise in the process of appointment, challenge or termination of the mandate of an arbitrator, articles 11, 13 and 14 provide for assistance by courts or other competent authorities designated by the enacting State. In view of the urgency of matters relating to the composition of the arbitral tribunal or its ability to function, and in order to reduce the risk and effect of any dilatory tactics, short time-periods are set and decisions rendered by courts or other authorities on such matters are not appealable.

4. Jurisdiction of arbitral tribunal

(a) Competence to rule on own jurisdiction

25. Article 16 (1) adopts the two important (not yet generally recognized) principles of “*Kompetenz-Kompetenz*” and of separability or autonomy of the arbitration clause. “*Kompetenz-Kompetenz*” means that the arbitral tribunal may independently rule on the question of whether it has jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, without having to resort to a court. Separability means that an arbitration clause shall be treated as an agreement independent of the other terms of the contract. As a consequence, a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause. Detailed provisions in paragraph (2) require that any objections relating to the arbitrators’ jurisdiction be made at the earliest possible time.

26. The competence of the arbitral tribunal to rule on its own jurisdiction (i.e. on the foundation, content and extent of its mandate and power) is, of course, subject to court control. Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, article 16 (3) allows for immediate court control in order to avoid waste of time and money. However, three procedural safeguards are added to reduce the risk and effect of dilatory tactics: short time-period for resort to court (30 days), court decision not appealable, and discretion of the arbitral tribunal to continue the proceedings and make an award while the matter is pending before the court. In those cases where the arbitral tribunal decides to combine its decision on jurisdiction with an award on the merits, judicial review on the question of jurisdiction is available in setting aside proceedings under article 34 or in enforcement proceedings under article 36.

(b) *Power to order interim measures and preliminary orders*

27. Chapter IV A on interim measures and preliminary orders was adopted by the Commission in 2006. It replaces article 17 of the original 1985 version of the Model Law. Section 1 provides a generic definition of interim measures and sets out the conditions for granting such measures. An important innovation of the revision lies in the establishment (in section 4) of a regime for the recognition and enforcement of interim measures, which was modelled, as appropriate, on the regime for the recognition and enforcement of arbitral awards under articles 35 and 36 of the Model Law.

28. Section 2 of chapter IV A deals with the application for, and conditions for the granting of, preliminary orders. Preliminary orders provide a means for preserving the status quo until the arbitral tribunal issues an interim measure adopting or modifying the preliminary order. Article 17 B (1) provides that “a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested”. Article 17 B (2) permits an arbitral tribunal to grant a preliminary order if “it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure”. Article 17 C contains carefully drafted safeguards for the party against whom the preliminary order is directed, such as prompt notification of the application for the preliminary order and of the preliminary order itself (if any), and an opportunity for that party to present its case “at the earliest practicable time”. In any event, a preliminary order has a maximum duration of twenty days and, while binding on the parties, is not subject to court enforcement and does not constitute an award. The term “preliminary order” is used to emphasize its limited nature.

29. Section 3 sets out rules applicable to both preliminary orders and interim measures.

30. Section 5 includes article 17 J on interim measures ordered by courts in support of arbitration, and provides that “a court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of the enacting State, as it has in relation to proceedings in courts”. That article has been added in 2006 to put it beyond any doubt that the existence of an arbitration agreement does not infringe on the powers of the competent court to issue interim measures and that the party to such an arbitration agreement is free to approach the court with a request to order interim measures.

5. *Conduct of arbitral proceedings*

31. Chapter V provides the legal framework for a fair and effective conduct of the arbitral proceedings. Article 18, which sets out fundamental requirements of procedural justice, and article 19 on the rights and powers to determine the rules of procedure, express principles that are central to the Model Law.

(a) *Fundamental procedural rights of a party*

32. Article 18 embodies the principles that the parties shall be treated with equality and given a full opportunity of presenting their case. A number of provisions illustrate those principles. For example, article 24 (1) provides that, unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral argument, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24 (1) deals only with the general entitlement of a party to oral hearings (as an alternative to proceedings conducted on the basis of documents and other materials) and not with the procedural aspects, such as the length, number or timing of hearings.

33. Another illustration of those principles relates to evidence by an expert appointed by the arbitral tribunal. Article 26 (2) requires the expert, after delivering his or her written or oral report, to participate in a hearing where the parties may put questions to the expert and present expert witnesses to testify on the points at issue, if such a hearing is requested by a party or deemed necessary by the arbitral tribunal. As another provision aimed at ensuring fairness, objectivity and impartiality, article 24 (3) provides that all statements, documents and other information supplied to the arbitral tribunal by one party shall be communicated to the other party, and that any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance (article 24 (2)).

(b) *Determination of rules of procedure*

34. Article 19 guarantees the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

35. Autonomy of the parties in determining the rules of procedure is of special importance in international cases since it allows the parties to select or tailor the rules according to their specific wishes and needs, unimpeded by traditional and possibly conflicting domestic concepts, thus obviating the earlier mentioned risk of frustration or surprise (see above, paras. 7 and 9). The supplementary discretion of the arbitral tribunal is equally important in that it allows the tribunal to tailor the conduct of the proceedings to the specific features of the case without being hindered by any restraint that may stem from traditional local law, including any domestic rule on evidence. Moreover, it provides grounds for displaying initiative in solving any procedural question not regulated in the arbitration agreement or the Model Law.

36. In addition to the general provisions of article 19, other provisions in the Model Law recognize party autonomy and, failing agreement, empower the arbitral tribunal to decide on certain matters. Examples of particular practical importance in international cases are article 20 on the place of arbitration and article 22 on the language to be used in the proceedings.

(c) Default of a party

37. The arbitral proceedings may be continued in the absence of a party, provided that due notice has been given. This applies, in particular, to the failure of the respondent to communicate its statement of defence (article 25 (b)). The arbitral tribunal may also continue the proceedings where a party fails to appear at a hearing or to produce documentary evidence without showing sufficient cause for the failure (article 25 (c)). However, if the claimant fails to submit its statement of claim, the arbitral tribunal is obliged to terminate the proceedings (article 25 (a)).

38. Provisions that empower the arbitral tribunal to carry out its task even if one of the parties does not participate are of considerable practical importance. As experience shows, it is not uncommon for one of the parties to have little interest in cooperating or expediting matters. Such provisions therefore provide international commercial arbitration its necessary effectiveness, within the limits of fundamental requirements of procedural justice.

6. Making of award and termination of proceedings

(a) Rules applicable to substance of dispute

39. Article 28 deals with the determination of the rules of law governing the substance of the dispute. Under paragraph (1), the arbitral tribunal decides the dispute in accordance with the rules of law chosen by the parties. This provision is significant in two respects. It grants the parties the freedom to choose the applicable substantive law, which is important where the national law does not clearly or fully recognize that right. In addition, by referring to the choice of “rules of law” instead of “law”, the Model Law broadens the range of options available to the parties as regards the designation of the law applicable to the substance of the dispute. For example, parties may agree on rules of law that have been elaborated by an international forum but have not yet been incorporated into any national legal system. Parties could also choose directly an instrument such as the United Nations Convention on Contracts for the International Sale of Goods as the body of substantive law governing the arbitration, without having to refer to the national law of any State party to that Convention. The power of the arbitral tribunal, on the other hand, follows more traditional lines. When the parties have not chosen the applicable law, the arbitral tribunal shall apply the law (i.e., the national law) determined by the conflict-of-laws rules that it considers applicable.

40. Article 28 (3) recognizes that the parties may authorize the arbitral tribunal to decide the dispute *ex aequo et bono* or as *amiables compositeur*. This type of arbitration (where the arbitral tribunal may decide the dispute on the basis of principles it believes to be just, without having to refer to any particular body of law) is currently not known or used in all legal systems. The Model Law does not intend to regulate this area. It simply calls the attention of the parties on the need to provide clarification in the arbitration agreement and specifically to empower the arbitral tribunal. However, paragraph (4) makes it clear that in all cases where the dispute relates to a contract (including arbitration *ex aequo et bono*) the arbitral tribunal must decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

(b) Making of award and other decisions

41. In its rules on the making of the award (articles 29-31), the Model Law focuses on the situation where the arbitral tribunal consists of more than one arbitrator. In such a situation, any award and other decision shall be made by a majority of the arbitrators, except on questions of procedure, which may be left to a presiding arbitrator. The majority principle applies also to the signing of the award, provided that the reason for any omitted signature is stated.

42. Article 31 (3) provides that the award shall state the place of arbitration and shall be deemed to have been made at that place. The effect of the deeming provision is to emphasize that the final making of the award constitutes a legal act, which in practice does not necessarily coincide with one factual event. For the same reason that the arbitral proceedings need not be carried out at the place designated as the legal “place of arbitration”, the making of the award may be completed through deliberations held at various places, by telephone or correspondence. In addition, the award does not have to be signed by the arbitrators physically gathering at the same place.

43. The arbitral award must be in writing and state its date. It must also state the reasons on which it is based, unless the parties have agreed otherwise or the award is “on agreed terms” (i.e., an award that records the terms of an amicable settlement by the parties). It may be added that the Model Law neither requires nor prohibits “dissenting opinions”.

7. *Recourse against award*

44. The disparity found in national laws as regards the types of recourse against an arbitral award available to the parties presents a major difficulty in harmonizing international arbitration legislation. Some outdated laws on arbitration, by establishing parallel regimes for recourse against arbitral awards or against court decisions, provide various types of recourse, various (and often long) time periods for exercising the recourse, and extensive lists of grounds on which recourse may be based.

That situation (of considerable concern to those involved in international commercial arbitration) is greatly improved by the Model Law, which provides uniform grounds upon which (and clear time periods within which) recourse against an arbitral award may be made.

(a) Application for setting aside as exclusive recourse

45. The first measure of improvement is to allow only one type of recourse, to the exclusion of any other recourse regulated in any procedural law of the State in question. Article 34 (1) provides that the sole recourse against an arbitral award is by application for setting aside, which must be made within three months of receipt of the award (article 34 (3)). In regulating “recourse” (i.e., the means through which a party may actively “attack” the award), article 34 does not preclude a party from seeking court control by way of defence in enforcement proceedings (articles 35 and 36). Article 34 is limited to action before a court (i.e., an organ of the judicial system of a State). However, a party is not precluded from appealing to an arbitral tribunal of second instance if the parties have agreed on such a possibility (as is common in certain commodity trades).

(b) Grounds for setting aside

46. As a further measure of improvement, the Model Law lists exhaustively the grounds on which an award may be set aside. This list essentially mirrors that contained in article 36 (1), which is taken from article V of the New York Convention. The grounds provided in article 34 (2) are set out in two categories. Grounds which are to be proven by one party are as follows: lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement; lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case; the award deals with matters not covered by the submission to arbitration; the composition of the arbitral tribunal or the conduct of arbitral proceedings are contrary to the effective agreement of the parties or, failing such agreement, to the Model Law. Grounds that a court may consider of its own initiative are as follows: non-arbitrability of the subject-matter of the dispute or violation of public policy (which is to be understood as serious departures from fundamental notions of procedural justice).

47. The approach under which the grounds for setting aside an award under the Model Law parallel the grounds for refusing recognition and enforcement of the award under article V of the New York Convention is reminiscent of the approach taken in the European Convention on International Commercial Arbitration (Geneva, 1961). Under article IX of the latter Convention, the decision of a foreign court to set aside an award for a reason other than the ones listed in article V of the New York Convention does not constitute a ground for refusing enforcement. The Model Law takes this philosophy one step further by directly limiting the reasons for setting aside.

48. Although the grounds for setting aside as set out in article 34 (2) are almost identical to those for refusing recognition or enforcement as set out in article 36 (1), a practical difference should be noted. An application for setting aside under article 34 (2) may only be made to a court in the State where the award was rendered whereas an application for enforcement might be made in a court in any State. For that reason, the grounds relating to public policy and non-arbitrability may vary in substance with the law applied by the court (in the State of setting aside or in the State of enforcement).

8. *Recognition and enforcement of awards*

49. The eighth and last chapter of the Model Law deals with the recognition and enforcement of awards. Its provisions reflect the significant policy decision that the same rules should apply to arbitral awards whether made in the country of enforcement or abroad, and that those rules should follow closely the New York Convention.

(a) Towards uniform treatment of all awards irrespective of country of origin

50. By treating awards rendered in international commercial arbitration in a uniform manner irrespective of where they were made, the Model Law distinguishes between “international” and “non-international” awards instead of relying on the traditional distinction between “foreign” and “domestic” awards. This new line is based on substantive grounds rather than territorial borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases. The place of arbitration is often chosen for reasons of convenience of the parties and the dispute may have little or no connection with the State where the arbitration legally takes place. Consequently, the recognition and enforcement of “international” awards, whether “foreign” or “domestic”, should be governed by the same provisions.

51. By modelling the recognition and enforcement rules on the relevant provisions of the New York Convention, the Model Law supplements, without conflicting with, the regime of recognition and enforcement created by that successful Convention.

(b) Procedural conditions of recognition and enforcement

52. Under article 35 (1) any arbitral award, irrespective of the country in which it was made, shall be recognized as binding and enforceable, subject to the provisions of article 35 (2) and of article 36 (the latter of which sets forth the grounds on which recognition or enforcement may be refused). Based on the above consideration of the limited importance of the place of arbitration in international cases and the desire of overcoming territorial restrictions, reciprocity is not included as a condition for recognition and enforcement.

53. The Model Law does not lay down procedural details of recognition and enforcement, which are left to national procedural laws and practices. The Model Law merely sets certain conditions for obtaining enforcement under article 35 (2). It was amended in 2006 to liberalize formal requirements and reflect the amendment made to article 7 on the form of the arbitration agreement. Presentation of a copy of the arbitration agreement is no longer required under article 35 (2).

(c) Grounds for refusing recognition or enforcement

54. Although the grounds on which recognition or enforcement may be refused under the Model Law are identical to those listed in article V of the New York Convention, the grounds listed in the Model Law are relevant not only to foreign awards but to all awards rendered in the sphere of application of the piece of legislation enacting the Model Law. Generally, it was deemed desirable to adopt, for the sake of harmony, the same approach and wording as this important Convention. However, the first ground on the list as contained in the New York Convention (which provides that recognition and enforcement may be refused if “the parties to the arbitration agreement were, under the law applicable to them, under some incapacity”) was modified since it was viewed as containing an incomplete and potentially misleading conflict-of-laws rule.

Further information on the Model Law may be obtained from:

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Part Three

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,¹ has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference “considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes”,

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

¹United Nations, *Treaty Series*, vol. 330, No. 4739.

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,² as subsequently revised, particularly with respect to article 7,³ the UNCITRAL Model Law on Electronic Commerce,⁴ the UNCITRAL Model Law on Electronic Signatures⁵ and the United Nations Convention on the Use of Electronic Communications in International Contracts,⁶

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

²*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I, and United Nations publication, Sales No. E.95.V.18.

³*Ibid.*, *Sixty-first Session, Supplement No. 17 (A/61/17)*, annex I.

⁴*Ibid.*, *Fifty-first Session, Supplement No. 17 (A/51/17)*, annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

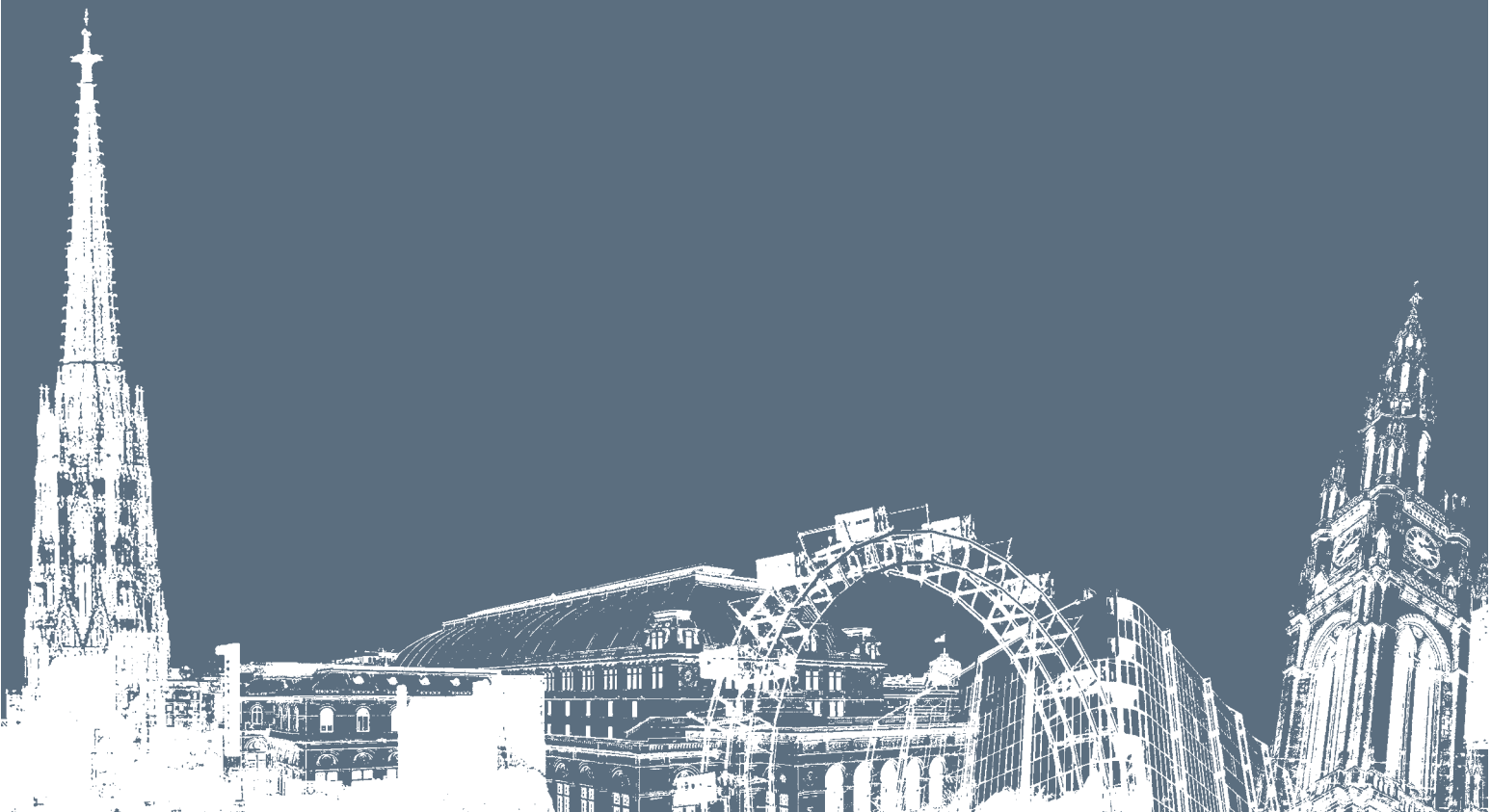
⁵*Ibid.*, *Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

⁶General Assembly resolution 60/21, annex.



32nd ANNUAL WILLEM C. VIS INTERNATIONAL COMMERCIAL
ARBITRATION MOOT

CONVENTION ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS



Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)



UNITED NATIONS

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly. It plays an important role in improving the legal framework for international trade by preparing international legislative texts for use by States in modernizing the law of international trade and non-legislative texts for use by commercial parties in negotiating transactions. UNCITRAL legislative texts address international sale of goods; international commercial dispute resolution, including both arbitration and conciliation; electronic commerce; insolvency, including cross-border insolvency; international transport of goods; international payments; procurement and infrastructure development; and security interests. Non-legislative texts include rules for conduct of arbitration and conciliation proceedings; notes on organizing and conducting arbitral proceedings; and legal guides on industrial construction contracts and countertrade.

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Convention on the Recognition and
Enforcement of Foreign Arbitral Awards
(New York, 1958)



UNITED NATIONS
New York, 2015

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Introduction

Objectives

Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term “non-domestic” appears to embrace awards which, although made in the state of enforcement, are treated as “foreign” under its law because of some foreign element in the proceedings, e.g. another State’s procedural laws are applied.

The Convention’s principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Key provisions

The Convention applies to awards made in any State other than the State in which recognition and enforcement is sought. It also applies to awards “not considered as domestic awards”. When consenting to be bound by the Convention, a State may declare that it will apply the Convention (a) in respect to awards made only in the territory of another Party and (b) only to legal relationships that are considered “commercial” under its domestic law.

The Convention contains provisions on arbitration agreements. This aspect was covered in recognition of the fact that an award could be refused enforcement on the grounds that the agreement upon which it was based might not be recognized. Article II (1) provides that Parties shall recognize

written arbitration agreements. In that respect, UNCITRAL adopted, at its thirty-ninth session in 2006, a Recommendation that seeks to provide guidance to Parties on the interpretation of the requirement in article II (2) that an arbitration agreement be in writing and to encourage application of article VII (1) to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

The central obligation imposed upon Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the *lex fori*. Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.

The Convention defines five grounds upon which recognition and enforcement may be refused at the request of the party against whom it is invoked. The grounds include incapacity of the parties, invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made. The Convention defines two additional grounds upon which the court may, on its own motion, refuse recognition and enforcement of an award. Those grounds relate to arbitrability and public policy.

The Convention seeks to encourage recognition and enforcement of awards in the greatest number of cases as possible. That purpose is achieved through article VII (1) of the Convention by removing conditions for recognition and enforcement in national laws that are more stringent than the conditions in the Convention, while allowing the continued application of any national provisions that give special or more favourable rights to a party seeking to enforce an award. That article recognizes the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention.

Entry into force

The Convention entered into force on 7 June 1959 (article XII).

How to become a party

The Convention is closed for signature. It is subject to ratification, and is open to accession by any Member State of the United Nations, any other

State which is a member of any specialized agency of the United Nations, or is a Party to the Statute of the International Court of Justice (articles VIII and IX).

Optional and/or mandatory declarations and notifications

When signing, ratifying or acceding to the Convention, or notifying a territorial extension under article X, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Party to the Convention. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration (article I).

Denunciation/Withdrawal

Any Party may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of the receipt of the notification by the Secretary-General (article XIII).

Part one

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION, NEW YORK, 20 MAY–10 JUNE 1958

Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration¹

“1. The Economic and Social Council of the United Nations, by resolution 604 (XXI) adopted on 3 May 1956, decided to convene a Conference of Plenipotentiaries for the purpose of concluding a convention on the recognition and enforcement of foreign arbitral awards, and to consider other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.

[...]

“12. The Economic and Social Council, by its resolution convening the Conference, requested it to conclude a convention on the basis of the draft convention prepared by the Committee on the Enforcement of International Arbitral Awards, taking into account the comments and suggestions made by Governments and non-governmental organizations, as well as the discussion at the twenty-first session of the Council.

“13. On the basis of the deliberations, as recorded in the reports of the working parties and in the records of the plenary meetings, the Conference prepared and opened for signature the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is annexed to this Final Act.

[...]

“16. In addition the Conference adopted, on the basis of proposals made by the Committee on Other Measures as recorded in its report, the following resolution:

¹The full text of the Final Act of the United Nations Conference on International Commercial Arbitration (E/CONF.26/8Rev.1) is available at <http://www.uncitral.org>

“The Conference,

“Believing that, in addition to the convention on the recognition and enforcement of foreign arbitral awards just concluded, which would contribute to increasing the effectiveness of arbitration in the settlement of private law disputes, additional measures should be taken in this field,

“Having considered the able survey and analysis of possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes prepared by the Secretary-General (document E/CONF.26/6),

“Having given particular attention to the suggestions made therein for possible ways in which interested governmental and other organizations may make practical contributions to the more effective use of arbitration,

“Expresses the following views with respect to the principal matters dealt with in the note of the Secretary-General:

“1. It considers that wider diffusion of information on arbitration laws, practices and facilities contributes materially to progress in commercial arbitration; recognizes that work has already been done in this field by interested organizations,² and expresses the wish that such organizations, so far as they have not concluded them, continue their activities in this regard, with particular attention to coordinating their respective efforts;

“2. It recognizes the desirability of encouraging where necessary the establishment of new arbitration facilities and the improvement of existing facilities, particularly in some geographic regions and branches of trade; and believes that useful work may be done in this field by appropriate governmental and other organizations, which may be active in arbitration matters, due regard being given to the need to avoid duplication of effort and to concentrate upon those measures of greatest practical benefit to the regions and branches of trade concerned;

“3. It recognizes the value of technical assistance in the development of effective arbitral legislation and institutions; and suggests that interested Governments and other organizations endeavour to furnish such assistance, within the means available, to those seeking it;

“4. It recognizes that regional study groups, seminars or working parties may in appropriate circumstances have productive results; believes that consideration should be given to the advisability of the convening of

²For example, the Economic Commission for Europe and the Inter-American Council of Jurists.

such meetings by the appropriate regional commissions of the United Nations and other bodies, but regards it as important that any such action be taken with careful regard to avoiding duplication and assuring economy of effort and of resources;

“5. It considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes, notes the work already done in this field by various existing organizations,³ and suggests that by way of supplementing the efforts of these bodies appropriate attention be given to defining suitable subject matter for model arbitration statutes and other appropriate measures for encouraging the development of such legislation;

“Expresses the wish that the United Nations, through its appropriate organs, take such steps as it deems feasible to encourage further study of measures for increasing the effectiveness of arbitration in the settlement of private law disputes through the facilities of existing regional bodies and non-governmental organizations and through such other institutions as may be established in the future;

“Suggests that any such steps be taken in a manner that will assure proper coordination of effort, avoidance of duplication and due observance of budgetary considerations;

“Requests that the Secretary-General submit this resolution to the appropriate organs of the United Nations.”

³For example, the International Institute for the Unification of Private Law and the Inter-American Council of Jurists.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order

to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Part two

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

General Assembly resolution 61/33 of 4 December 2006

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,¹

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

¹*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), annex I.*

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,² is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,³ and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,² the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;³

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

*64th plenary meeting
4 December 2006*

²United Nations, *Treaty Series*, vol. 330, No. 4739.

³*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17)*.

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II,
PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF
THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF
FOREIGN ARBITRAL AWARDS, DONE IN NEW YORK, 10 JUNE 1958,
ADOPTED BY THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW ON 7 JULY 2006
AT ITS THIRTY-NINTH SESSION

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,⁴ has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference “considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes”,

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to

⁴United Nations, *Treaty Series*, vol. 330, No. 4739.

the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,⁵ as subsequently revised, particularly with respect to article 7,⁶ the UNCITRAL Model Law on Electronic Commerce,⁷ the UNCITRAL Model Law on Electronic Signatures⁸ and the United Nations Convention on the Use of Electronic Communications in International Contracts,⁹

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

⁵*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I, and United Nations publication, Sales No. E.95.V.18.

⁶*Ibid.*, *Sixty-first Session, Supplement No. 17 (A/61/17)*, annex I.

⁷*Ibid.*, *Fifty-first Session, Supplement No. 17 (A/51/17)*, annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

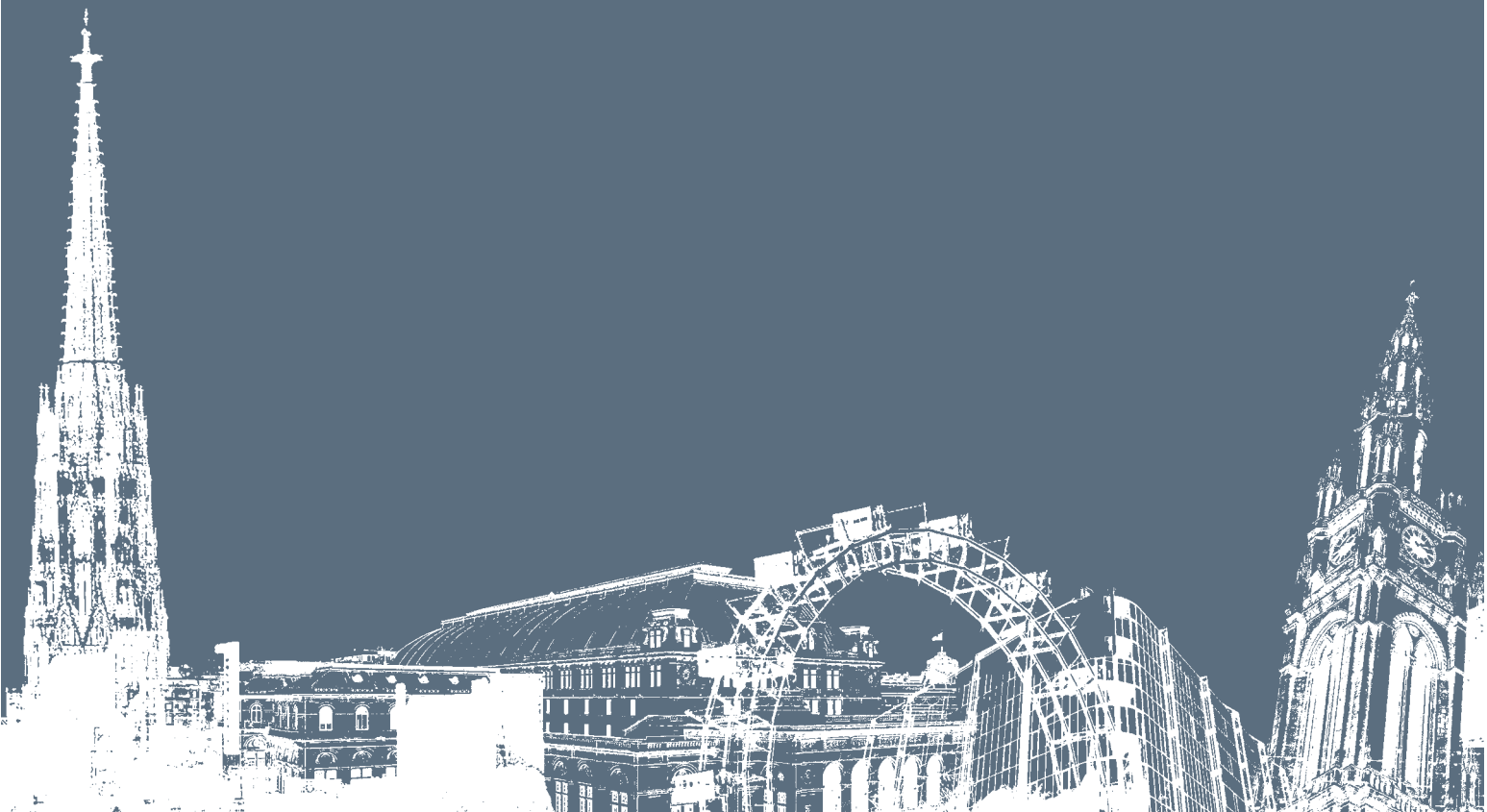
⁸*Ibid.*, *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

⁹General Assembly resolution 60/21, annex.



32nd ANNUAL WILLEM C. VIS INTERNATIONAL COMMERCIAL
ARBITRATION MOOT

EU GDPR –
EUROPEAN UNION GENERAL DATA
PROTECTION REGULATION



I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 27 April 2016****on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.
- (2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.
- (3) Directive 95/46/EC of the European Parliament and of the Council ⁽⁴⁾ seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

⁽¹⁾ OJ C 229, 31.7.2012, p. 90.

⁽²⁾ OJ C 391, 18.12.2012, p. 127.

⁽³⁾ Position of the European Parliament of 12 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 8 April 2016 (not yet published in the Official Journal). Position of the European Parliament of 14 April 2016.

⁽⁴⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.
- (5) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows of personal data. The exchange of personal data between public and private actors, including natural persons, associations and undertakings across the Union has increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.
- (6) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Natural persons increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of personal data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.
- (7) Those developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market. Natural persons should have control of their own personal data. Legal and practical certainty for natural persons, economic operators and public authorities should be enhanced.
- (8) Where this Regulation provides for specifications or restrictions of its rules by Member State law, Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of this Regulation into their national law.
- (9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity. Differences in the level of protection of the rights and freedoms of natural persons, in particular the right to the protection of personal data, with regard to the processing of personal data in the Member States may prevent the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. Such a difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.
- (10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful.

- (11) Effective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.
- (12) Article 16(2) TFEU mandates the European Parliament and the Council to lay down the rules relating to the protection of natural persons with regard to the processing of personal data and the rules relating to the free movement of personal data.
- (13) In order to ensure a consistent level of protection for natural persons throughout the Union and to prevent divergences hampering the free movement of personal data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide natural persons in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a derogation for organisations with fewer than 250 employees with regard to record-keeping. In addition, the Union institutions and bodies, and Member States and their supervisory authorities, are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw from Article 2 of the Annex to Commission Recommendation 2003/361/EC ⁽¹⁾.
- (14) The protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.
- (15) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral and should not depend on the techniques used. The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.
- (16) This Regulation does not apply to issues of protection of fundamental rights and freedoms or the free flow of personal data related to activities which fall outside the scope of Union law, such as activities concerning national security. This Regulation does not apply to the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.
- (17) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data should be adapted to the principles and rules established in this Regulation and applied in the light of this Regulation. In order to provide a strong and coherent data protection framework in the Union, the necessary adaptations of Regulation (EC) No 45/2001 should follow after the adoption of this Regulation, in order to allow application at the same time as this Regulation.
- (18) This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or

⁽¹⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.

- (19) The protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. This Regulation should not, therefore, apply to processing activities for those purposes. However, personal data processed by public authorities under this Regulation should, when used for those purposes, be governed by a more specific Union legal act, namely Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁾. Member States may entrust competent authorities within the meaning of Directive (EU) 2016/680 with tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of this Regulation.

With regard to the processing of personal data by those competent authorities for purposes falling within scope of this Regulation, Member States should be able to maintain or introduce more specific provisions to adapt the application of the rules of this Regulation. Such provisions may determine more precisely specific requirements for the processing of personal data by those competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State. When the processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories.

- (20) While this Regulation applies, inter alia, to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. It should be possible to entrust supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular ensure compliance with the rules of this Regulation, enhance awareness among members of the judiciary of their obligations under this Regulation and handle complaints in relation to such data processing operations.
- (21) This Regulation is without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council ⁽²⁾, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. That Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.
- (22) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect.

⁽¹⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data and repealing Council Framework Decision 2008/977/JHA (see page 89 of this Official Journal).

⁽²⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

- (23) In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment. In order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union. Whereas the mere accessibility of the controller's, processor's or an intermediary's website in the Union, of an email address or of other contact details, or the use of a language generally used in the third country where the controller is established, is insufficient to ascertain such intention, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering goods and services in that other language, or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to data subjects in the Union.
- (24) The processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Union. In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.
- (25) Where Member State law applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.
- (26) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.
- (27) This Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.
- (28) The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data-protection obligations. The explicit introduction of 'pseudonymisation' in this Regulation is not intended to preclude any other measures of data protection.
- (29) In order to create incentives to apply pseudonymisation when processing personal data, measures of pseudonymisation should, whilst allowing general analysis, be possible within the same controller when that controller has taken technical and organisational measures necessary to ensure, for the processing concerned, that this Regulation is implemented, and that additional information for attributing the personal data to a specific data subject is kept separately. The controller processing the personal data should indicate the authorised persons within the same controller.

- (30) Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.
- (31) Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data-protection rules according to the purposes of the processing.
- (32) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.
- (33) It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.
- (34) Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained.
- (35) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council ⁽¹⁾ to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.
- (36) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, in which case that other establishment should be considered to be

⁽¹⁾ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements. That criterion should not depend on whether the processing of personal data is carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute a main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union or, if it has no central administration in the Union, the place where the main processing activities take place in the Union. In cases involving both the controller and the processor, the competent lead supervisory authority should remain the supervisory authority of the Member State where the controller has its main establishment, but the supervisory authority of the processor should be considered to be a supervisory authority concerned and that supervisory authority should participate in the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered to be supervisory authorities concerned where the draft decision concerns only the controller. Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

- (37) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exert a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. An undertaking which controls the processing of personal data in undertakings affiliated to it should be regarded, together with those undertakings, as a group of undertakings.
- (38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.
- (39) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.
- (40) In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or

Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

- (41) Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the 'Court of Justice') and the European Court of Human Rights.
- (42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC ⁽¹⁾ a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- (43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.
- (44) Processing should be lawful where it is necessary in the context of a contract or the intention to enter into a contract.
- (45) Where processing is carried out in accordance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority, the processing should have a basis in Union or Member State law. This Regulation does not require a specific law for each individual processing. A law as a basis for several processing operations based on a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority may be sufficient. It should also be for Union or Member State law to determine the purpose of processing. Furthermore, that law could specify the general conditions of this Regulation governing the lawfulness of personal data processing, establish specifications for determining the controller, the type of personal data which are subject to the processing, the data subjects concerned, the entities to which the personal data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or Member State law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or, where it is in the public interest to do so, including for health purposes such as public health and social protection and the management of health care services, by private law, such as a professional association.
- (46) The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

- (47) The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.
- (48) Controllers that are part of a group of undertakings or institutions affiliated to a central body may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' personal data. The general principles for the transfer of personal data, within a group of undertakings, to an undertaking located in a third country remain unaffected.
- (49) The processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted personal data, and the security of the related services offered by, or accessible via, those networks and systems, by public authorities, by computer emergency response teams (CERTs), computer security incident response teams (CSIRTs), by providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.
- (50) The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their

further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.

Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes. In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

- (51) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.
- (52) Derogating from the prohibition on processing special categories of personal data should also be allowed when provided for in Union or Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where it is in the public interest to do so, in particular processing personal data in the field of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. Such a derogation may be made for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.
- (53) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems, including processing by the management and central national health authorities of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes

by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health. However, this should not hamper the free flow of personal data within the Union when those conditions apply to cross-border processing of such data.

- (54) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council ⁽¹⁾, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers or insurance and banking companies.
- (55) Moreover, the processing of personal data by official authorities for the purpose of achieving the aims, laid down by constitutional law or by international public law, of officially recognised religious associations, is carried out on grounds of public interest.
- (56) Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.
- (57) If the personal data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through authentication mechanism such as the same credentials, used by the data subject to log-in to the on-line service offered by the data controller.
- (58) The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected, such as in the case of online advertising. Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.
- (59) Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests.

⁽¹⁾ Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

- (60) The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling. Where the personal data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the personal data and of the consequences, where he or she does not provide such data. That information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner, a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.
- (61) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection from the data subject, or, where the personal data are obtained from another source, within a reasonable period, depending on the circumstances of the case. Where personal data can be legitimately disclosed to another recipient, the data subject should be informed when the personal data are first disclosed to the recipient. Where the controller intends to process the personal data for a purpose other than that for which they were collected, the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided.
- (62) However, it is not necessary to impose the obligation to provide information where the data subject already possesses the information, where the recording or disclosure of the personal data is expressly laid down by law or where the provision of information to the data subject proves to be impossible or would involve a disproportionate effort. The latter could in particular be the case where processing is carried out for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. In that regard, the number of data subjects, the age of the data and any appropriate safeguards adopted should be taken into consideration.
- (63) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing. This includes the right for data subjects to have access to data concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular with regard to the purposes for which the personal data are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data. That right should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of those considerations should not be a refusal to provide all information to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates.
- (64) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.
- (65) A data subject should have the right to have personal data concerning him or her rectified and a 'right to be forgotten' where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given

his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

- (66) To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject's request.
- (67) Methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is restricted should be clearly indicated in the system.
- (68) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.
- (69) Where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, or on grounds of the legitimate interests of a controller or a third party, a data subject should, nevertheless, be entitled to object to the processing of any personal data relating to his or her particular situation. It should be for the controller to demonstrate that its compelling legitimate interest overrides the interests or the fundamental rights and freedoms of the data subject.
- (70) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing, including profiling to the extent that it is related to such direct marketing, whether with regard to initial or further processing, at any time and free of charge. That right should be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.

- (71) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes 'profiling' that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of Union institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child.

In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.

- (72) Profiling is subject to the rules of this Regulation governing the processing of personal data, such as the legal grounds for processing or data protection principles. The European Data Protection Board established by this Regulation (the 'Board') should be able to issue guidance in that context.
- (73) Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (74) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons.

- (75) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.
- (76) The likelihood and severity of the risk to the rights and freedoms of the data subject should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.
- (77) Guidance on the implementation of appropriate measures and on the demonstration of compliance by the controller or the processor, especially as regards the identification of the risk related to the processing, their assessment in terms of origin, nature, likelihood and severity, and the identification of best practices to mitigate the risk, could be provided in particular by means of approved codes of conduct, approved certifications, guidelines provided by the Board or indications provided by a data protection officer. The Board may also issue guidelines on processing operations that are considered to be unlikely to result in a high risk to the rights and freedoms of natural persons and indicate what measures may be sufficient in such cases to address such risk.
- (78) The protection of the rights and freedoms of natural persons with regard to the processing of personal data require that appropriate technical and organisational measures be taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures which meet in particular the principles of data protection by design and data protection by default. Such measures could consist, inter alia, of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. When developing, designing, selecting and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations. The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.
- (79) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear allocation of the responsibilities under this Regulation, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.
- (80) Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the

nature, context, scope and purposes of the processing or if the controller is a public authority or body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The representative should be explicitly designated by a written mandate of the controller or of the processor to act on its behalf with regard to its obligations under this Regulation. The designation of such a representative does not affect the responsibility or liability of the controller or of the processor under this Regulation. Such a representative should perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor.

- (81) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. The adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk to the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the personal data under Union or Member State law to which the processor is subject.
- (82) In order to demonstrate compliance with this Regulation, the controller or processor should maintain records of processing activities under its responsibility. Each controller and processor should be obliged to cooperate with the supervisory authority and make those records, on request, available to it, so that it might serve for monitoring those processing operations.
- (83) In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material or non-material damage.
- (84) In order to enhance compliance with this Regulation where processing operations are likely to result in a high risk to the rights and freedoms of natural persons, the controller should be responsible for the carrying-out of a data protection impact assessment to evaluate, in particular, the origin, nature, particularity and severity of that risk. The outcome of the assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the processing of personal data complies with this Regulation. Where a data-protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of available technology and costs of implementation, a consultation of the supervisory authority should take place prior to the processing.
- (85) A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned. Therefore, as soon as the controller becomes

aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.

- (86) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the supervisory authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities. For example, the need to mitigate an immediate risk of damage would call for prompt communication with data subjects whereas the need to implement appropriate measures against continuing or similar personal data breaches may justify more time for communication.
- (87) It should be ascertained whether all appropriate technological protection and organisational measures have been implemented to establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject. The fact that the notification was made without undue delay should be established taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject. Such notification may result in an intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation.
- (88) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of that breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law-enforcement authorities where early disclosure could unnecessarily hamper the investigation of the circumstances of a personal data breach.
- (89) Directive 95/46/EC provided for a general obligation to notify the processing of personal data to the supervisory authorities. While that obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Such indiscriminate general notification obligations should therefore be abolished, and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of natural persons by virtue of their nature, scope, context and purposes. Such types of processing operations may be those which in particular, involve using new technologies, or are of a new kind and where no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing.
- (90) In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing and the sources of the risk. That impact assessment should include, in particular, the measures, safeguards and mechanisms envisaged for mitigating that risk, ensuring the protection of personal data and demonstrating compliance with this Regulation.
- (91) This should in particular apply to large-scale processing operations which aim to process a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk, for example, on account of their sensitivity, where in accordance with the achieved state of technological knowledge a new technology is used on a large scale as well as to other processing operations which result in a high risk to the rights and freedoms of data subjects, in particular where those operations render it more difficult for data subjects to exercise their rights. A data

protection impact assessment should also be made where personal data are processed for taking decisions regarding specific natural persons following any systematic and extensive evaluation of personal aspects relating to natural persons based on profiling those data or following the processing of special categories of personal data, biometric data, or data on criminal convictions and offences or related security measures. A data protection impact assessment is equally required for monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices or for any other operations where the competent supervisory authority considers that the processing is likely to result in a high risk to the rights and freedoms of data subjects, in particular because they prevent data subjects from exercising a right or using a service or a contract, or because they are carried out systematically on a large scale. The processing of personal data should not be considered to be on a large scale if the processing concerns personal data from patients or clients by an individual physician, other health care professional or lawyer. In such cases, a data protection impact assessment should not be mandatory.

- (92) There are circumstances under which it may be reasonable and economical for the subject of a data protection impact assessment to be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.
- (93) In the context of the adoption of the Member State law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question, Member States may deem it necessary to carry out such assessment prior to the processing activities.
- (94) Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the supervisory authority should be consulted prior to the start of processing activities. Such high risk is likely to result from certain types of processing and the extent and frequency of processing, which may result also in a realisation of damage or interference with the rights and freedoms of the natural person. The supervisory authority should respond to the request for consultation within a specified period. However, the absence of a reaction of the supervisory authority within that period should be without prejudice to any intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of that consultation process, the outcome of a data protection impact assessment carried out with regard to the processing at issue may be submitted to the supervisory authority, in particular the measures envisaged to mitigate the risk to the rights and freedoms of natural persons.
- (95) The processor should assist the controller, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of data protection impact assessments and from prior consultation of the supervisory authority.
- (96) A consultation of the supervisory authority should also take place in the course of the preparation of a legislative or regulatory measure which provides for the processing of personal data, in order to ensure compliance of the intended processing with this Regulation and in particular to mitigate the risk involved for the data subject.
- (97) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out

and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.

- (98) Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and the specific needs of micro, small and medium enterprises. In particular, such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of natural persons.
- (99) When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations.
- (100) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms and data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.
- (101) Flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international cooperation. The increase in such flows has raised new challenges and concerns with regard to the protection of personal data. However, when personal data are transferred from the Union to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.
- (102) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. Member States may conclude international agreements which involve the transfer of personal data to third countries or international organisations, as far as such agreements do not affect this Regulation or any other provisions of Union law and include an appropriate level of protection for the fundamental rights of the data subjects.
- (103) The Commission may decide with effect for the entire Union that a third country, a territory or specified sector within a third country, or an international organisation, offers an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third country or international organisation which is considered to provide such level of protection. In such cases, transfers of personal data to that third country or international organisation may take place without the need to obtain any further authorisation. The Commission may also decide, having given notice and a full statement setting out the reasons to the third country or international organisation, to revoke such a decision.
- (104) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or specified sector within a third country, take into account how a particular third country respects the rule of law, access to justice as well as international human rights norms and standards and its general and sectoral law, including legislation concerning public security, defence and national security as well as public order and criminal law. The adoption of an adequacy decision with regard to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees ensuring an adequate level of

protection essentially equivalent to that ensured within the Union, in particular where personal data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and should provide for cooperation mechanisms with the Member States' data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.

- (105) Apart from the international commitments the third country or international organisation has entered into, the Commission should take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular, the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult the Board when assessing the level of protection in third countries or international organisations.
- (106) The Commission should monitor the functioning of decisions on the level of protection in a third country, a territory or specified sector within a third country, or an international organisation, and monitor the functioning of decisions adopted on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. That periodic review should be conducted in consultation with the third country or international organisation in question and take into account all relevant developments in the third country or international organisation. For the purposes of monitoring and of carrying out the periodic reviews, the Commission should take into consideration the views and findings of the European Parliament and of the Council as well as of other relevant bodies and sources. The Commission should evaluate, within a reasonable time, the functioning of the latter decisions and report any relevant findings to the Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁾ as established under this Regulation, to the European Parliament and to the Council.
- (107) The Commission may recognise that a third country, a territory or a specified sector within a third country, or an international organisation no longer ensures an adequate level of data protection. Consequently the transfer of personal data to that third country or international organisation should be prohibited, unless the requirements in this Regulation relating to transfers subject to appropriate safeguards, including binding corporate rules, and derogations for specific situations are fulfilled. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.
- (108) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by public authorities or bodies with public authorities or bodies in third countries or with international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the competent supervisory authority should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.
- (109) The possibility for the controller or processor to use standard data-protection clauses adopted by the Commission or by a supervisory authority should prevent controllers or processors neither from including the

⁽¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

standard data-protection clauses in a wider contract, such as a contract between the processor and another processor, nor from adding other clauses or additional safeguards provided that they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard protection clauses.

- (110) A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.
- (111) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his or her explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.
- (112) Those derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for example in cases of international data exchange between competition authorities, tax or customs administrations, between financial supervisory authorities, between services competent for social security matters, or for public health, for example in the case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should also be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organisation. Member States should notify such provisions to the Commission. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject.
- (113) Transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, could also be possible for the purposes of the compelling legitimate interests pursued by the controller, when those interests are not overridden by the interests or rights and freedoms of the data subject and when the controller has assessed all the circumstances surrounding the data transfer. The controller should give particular consideration to the nature of the personal data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and should provide suitable safeguards to protect fundamental rights and freedoms of natural persons with regard to the processing of their personal data. Such transfers should be possible only in residual cases where none of the other grounds for transfer are applicable. For scientific or historical research purposes or statistical purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. The controller should inform the supervisory authority and the data subject about the transfer.
- (114) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards the processing of their data in the Union once those data have been transferred so that that they will continue to benefit from fundamental rights and safeguards.

- (115) Some third countries adopt laws, regulations and other legal acts which purport to directly regulate the processing activities of natural and legal persons under the jurisdiction of the Member States. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are not based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. The extraterritorial application of those laws, regulations and other legal acts may be in breach of international law and may impede the attainment of the protection of natural persons ensured in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may be the case, inter alia, where disclosure is necessary for an important ground of public interest recognised in Union or Member State law to which the controller is subject.
- (116) When personal data moves across borders outside the Union it may put at increased risk the ability of natural persons to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer cooperation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts. For the purposes of developing international cooperation mechanisms to facilitate and provide international mutual assistance for the enforcement of legislation for the protection of personal data, the Commission and the supervisory authorities should exchange information and cooperate in activities related to the exercise of their powers with competent authorities in third countries, based on reciprocity and in accordance with this Regulation.
- (117) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their powers with complete independence, is an essential component of the protection of natural persons with regard to the processing of their personal data. Member States should be able to establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.
- (118) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subject to control or monitoring mechanisms regarding their financial expenditure or to judicial review.
- (119) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth cooperation with other supervisory authorities, the Board and the Commission.
- (120) Each supervisory authority should be provided with the financial and human resources, premises and infrastructure necessary for the effective performance of their tasks, including those related to mutual assistance and cooperation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.
- (121) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members are to be appointed, by means of a transparent procedure, either by the parliament, government or the head of State of the Member State on the basis of a proposal from the government, a member of the government, the parliament or a chamber of the parliament, or by an independent body entrusted under Member State law. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, refrain from any action that is incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. The supervisory authority should have its own staff, chosen by the supervisory authority or an independent body established by Member State law, which should be subject to the exclusive direction of the member or members of the supervisory authority.
- (122) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the

processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, the processing of personal data carried out by public authorities or private bodies acting in the public interest, processing affecting data subjects on its territory or processing carried out by a controller or processor not established in the Union when targeting data subjects residing on its territory. This should include handling complaints lodged by a data subject, conducting investigations on the application of this Regulation and promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

- (123) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should cooperate with each other and with the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.
- (124) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union and the controller or processor is established in more than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It should cooperate with the other authorities concerned, because the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them. Also where a data subject not residing in that Member State has lodged a complaint, the supervisory authority with which such complaint has been lodged should also be a supervisory authority concerned. Within its tasks to issue guidelines on any question covering the application of this Regulation, the Board should be able to issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State and on what constitutes a relevant and reasoned objection.
- (125) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the supervisory authorities concerned in the decision-making process. Where the decision is to reject the complaint by the data subject in whole or in part, that decision should be adopted by the supervisory authority with which the complaint has been lodged.
- (126) The decision should be agreed jointly by the lead supervisory authority and the supervisory authorities concerned and should be directed towards the main or single establishment of the controller or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.
- (127) Each supervisory authority not acting as the lead supervisory authority should be competent to handle local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involves only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees' personal data in the specific employment context of a Member State. In such cases, the supervisory authority should inform the lead supervisory authority without delay about the matter. After being informed, the lead supervisory authority should decide, whether it will handle the case pursuant to the provision on cooperation between the lead supervisory authority and other supervisory authorities concerned ('one-stop-shop mechanism'), or whether the supervisory authority which informed it should handle the case at local level. When deciding whether it will handle the case, the lead supervisory authority should take into account whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it in order to ensure effective enforcement of a decision *vis-à-vis* the controller or processor. Where the lead supervisory authority decides to handle the case, the supervisory authority which informed it should have the

possibility to submit a draft for a decision, of which the lead supervisory authority should take utmost account when preparing its draft decision in that one-stop-shop mechanism.

- (128) The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply where the processing is carried out by public authorities or private bodies in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or private body is established.
- (129) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, and without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities should be exercised in accordance with appropriate procedural safeguards set out in Union and Member State law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in Member State procedural law, such as the requirement to obtain a prior judicial authorisation. Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head, or a member of the supervisory authority authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to Member State procedural law. The adoption of a legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.
- (130) Where the supervisory authority with which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely cooperate with the supervisory authority with which the complaint has been lodged in accordance with the provisions on cooperation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority with which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.
- (131) Where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially affect data subjects in other Member States, the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of this Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include: specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or processing that has to be assessed taking into account relevant legal obligations under Member State law.
- (132) Awareness-raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as natural persons in particular in the educational context.

- (133) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. A supervisory authority requesting mutual assistance may adopt a provisional measure if it receives no response to a request for mutual assistance within one month of the receipt of that request by the other supervisory authority.
- (134) Each supervisory authority should, where appropriate, participate in joint operations with other supervisory authorities. The requested supervisory authority should be obliged to respond to the request within a specified time period.
- (135) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for cooperation between the supervisory authorities should be established. That mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States. It should also apply where any supervisory authority concerned or the Commission requests that such matter should be handled in the consistency mechanism. That mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.
- (136) In applying the consistency mechanism, the Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The Board should also be empowered to adopt legally binding decisions where there are disputes between supervisory authorities. For that purpose, it should issue, in principle by a two-thirds majority of its members, legally binding decisions in clearly specified cases where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned on the merits of the case, in particular whether there is an infringement of this Regulation.
- (137) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. A supervisory authority should therefore be able to adopt duly justified provisional measures on its territory with a specified period of validity which should not exceed three months.
- (138) The application of such mechanism should be a condition for the lawfulness of a measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied and mutual assistance and joint operations might be carried out between the supervisory authorities concerned on a bilateral or multilateral basis without triggering the consistency mechanism.
- (139) In order to promote the consistent application of this Regulation, the Board should be set up as an independent body of the Union. To fulfil its objectives, the Board should have legal personality. The Board should be represented by its Chair. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of the head of a supervisory authority of each Member State and the European Data Protection Supervisor or their respective representatives. The Commission should participate in the Board's activities without voting rights and the European Data Protection Supervisor should have specific voting rights. The Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting cooperation of the supervisory authorities throughout the Union. The Board should act independently when performing its tasks.
- (140) The Board should be assisted by a secretariat provided by the European Data Protection Supervisor. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation should perform its tasks exclusively under the instructions of, and report to, the Chair of the Board.
- (141) Every data subject should have the right to lodge a complaint with a single supervisory authority, in particular in the Member State of his or her habitual residence, and the right to an effective judicial remedy in accordance

with Article 47 of the Charter if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.

- (142) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a not-for-profit body, organisation or association which is constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest and is active in the field of the protection of personal data to lodge a complaint on his or her behalf with a supervisory authority, exercise the right to a judicial remedy on behalf of data subjects or, if provided for in Member State law, exercise the right to receive compensation on behalf of data subjects. A Member State may provide for such a body, organisation or association to have the right to lodge a complaint in that Member State, independently of a data subject's mandate, and the right to an effective judicial remedy where it has reasons to consider that the rights of a data subject have been infringed as a result of the processing of personal data which infringes this Regulation. That body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.
- (143) Any natural or legal person has the right to bring an action for annulment of decisions of the Board before the Court of Justice under the conditions provided for in Article 263 TFEU. As addressees of such decisions, the supervisory authorities concerned which wish to challenge them have to bring action within two months of being notified of them, in accordance with Article 263 TFEU. Where decisions of the Board are of direct and individual concern to a controller, processor or complainant, the latter may bring an action for annulment against those decisions within two months of their publication on the website of the Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and should be conducted in accordance with that Member State's procedural law. Those courts should exercise full jurisdiction, which should include jurisdiction to examine all questions of fact and law relevant to the dispute before them.

Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings before the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts which consider a decision on the question necessary to enable them to give judgment, may, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law, including this Regulation. Furthermore, where a decision of a supervisory authority implementing a decision of the Board is challenged before a national court and the validity of the decision of the Board is at issue, that national court does not have the power to declare the Board's decision invalid but must refer the question of validity to the Court of Justice in accordance with Article 267 TFEU as interpreted by the Court of Justice, where it considers the decision invalid. However, a national court may not refer a question on the validity of the decision of the Board at the request of a natural or legal person which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down in Article 263 TFEU.

- (144) Where a court seized of proceedings against a decision by a supervisory authority has reason to believe that proceedings concerning the same processing, such as the same subject matter as regards processing by the same controller or processor, or the same cause of action, are brought before a competent court in another Member State, it should contact that court in order to confirm the existence of such related proceedings. If related proceedings are pending before a court in another Member State, any court other than the court first

seized may stay its proceedings or may, on request of one of the parties, decline jurisdiction in favour of the court first seized if that court has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings. Proceedings are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

- (145) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority of a Member State acting in the exercise of its public powers.
- (146) The controller or processor should compensate any damage which a person may suffer as a result of processing that infringes this Regulation. The controller or processor should be exempt from liability if it proves that it is not in any way responsible for the damage. The concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Regulation. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. Processing that infringes this Regulation also includes processing that infringes delegated and implementing acts adopted in accordance with this Regulation and Member State law specifying rules of this Regulation. Data subjects should receive full and effective compensation for the damage they have suffered. Where controllers or processors are involved in the same processing, each controller or processor should be held liable for the entire damage. However, where they are joined to the same judicial proceedings, in accordance with Member State law, compensation may be apportioned according to the responsibility of each controller or processor for the damage caused by the processing, provided that full and effective compensation of the data subject who suffered the damage is ensured. Any controller or processor which has paid full compensation may subsequently institute recourse proceedings against other controllers or processors involved in the same processing.
- (147) Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽¹⁾ should not prejudice the application of such specific rules.
- (148) In order to strengthen the enforcement of the rules of this Regulation, penalties including administrative fines should be imposed for any infringement of this Regulation, in addition to, or instead of appropriate measures imposed by the supervisory authority pursuant to this Regulation. In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor. The imposition of penalties including administrative fines should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including effective judicial protection and due process.
- (149) Member States should be able to lay down the rules on criminal penalties for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. Those criminal penalties may also allow for the deprivation of the profits obtained through infringements of this Regulation. However, the imposition of criminal penalties for infringements of such national rules and of administrative penalties should not lead to a breach of the principle of *ne bis in idem*, as interpreted by the Court of Justice.
- (150) In order to strengthen and harmonise administrative penalties for infringements of this Regulation, each supervisory authority should have the power to impose administrative fines. This Regulation should indicate

⁽¹⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. Where administrative fines are imposed on an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU for those purposes. Where administrative fines are imposed on persons that are not an undertaking, the supervisory authority should take account of the general level of income in the Member State as well as the economic situation of the person in considering the appropriate amount of the fine. The consistency mechanism may also be used to promote a consistent application of administrative fines. It should be for the Member States to determine whether and to which extent public authorities should be subject to administrative fines. Imposing an administrative fine or giving a warning does not affect the application of other powers of the supervisory authorities or of other penalties under this Regulation.

- (151) The legal systems of Denmark and Estonia do not allow for administrative fines as set out in this Regulation. The rules on administrative fines may be applied in such a manner that in Denmark the fine is imposed by competent national courts as a criminal penalty and in Estonia the fine is imposed by the supervisory authority in the framework of a misdemeanour procedure, provided that such an application of the rules in those Member States has an equivalent effect to administrative fines imposed by supervisory authorities. Therefore the competent national courts should take into account the recommendation by the supervisory authority initiating the fine. In any event, the fines imposed should be effective, proportionate and dissuasive.
- (152) Where this Regulation does not harmonise administrative penalties or where necessary in other cases, for example in cases of serious infringements of this Regulation, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties, criminal or administrative, should be determined by Member State law.
- (153) Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures which lay down the exemptions and derogations necessary for the purpose of balancing those fundamental rights. Member States should adopt such exemptions and derogations on general principles, the rights of the data subject, the controller and the processor, the transfer of personal data to third countries or international organisations, the independent supervisory authorities, cooperation and consistency, and specific data-processing situations. Where such exemptions or derogations differ from one Member State to another, the law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.
- (154) This Regulation allows the principle of public access to official documents to be taken into account when applying this Regulation. Public access to official documents may be considered to be in the public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by that authority or body if the disclosure is provided for by Union or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary reconciliation with the right to the protection of personal data pursuant to this Regulation. The reference to public authorities and bodies should in that context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council ⁽¹⁾ leaves intact and in no way affects the level of protection of natural persons with regard to the

⁽¹⁾ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

processing of personal data under the provisions of Union and Member State law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents to which access is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been provided for by law as being incompatible with the law concerning the protection of natural persons with regard to the processing of personal data.

- (155) Member State law or collective agreements, including ‘works agreements’, may provide for specific rules on the processing of employees’ personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.
- (156) The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and subject to appropriate safeguards for data subjects, specifications and derogations with regard to the information requirements and rights to rectification, to erasure, to be forgotten, to restriction of processing, to data portability, and to object when processing personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with other relevant legislation such as on clinical trials.
- (157) By coupling information from registries, researchers can obtain new knowledge of great value with regard to widespread medical conditions such as cardiovascular disease, cancer and depression. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about the long-term correlation of a number of social conditions such as unemployment and education with other life conditions. Research results obtained through registries provide solid, high-quality knowledge which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people and improve the efficiency of social services. In order to facilitate scientific research, personal data can be processed for scientific research purposes, subject to appropriate conditions and safeguards set out in Union or Member State law.
- (158) Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide for the further processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

- (159) Where personal data are processed for scientific research purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, the processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. In addition, it should take into account the Union's objective under Article 179(1) TFEU of achieving a European Research Area. Scientific research purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific research purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific research purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures.
- (160) Where personal data are processed for historical research purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.
- (161) For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Regulation (EU) No 536/2014 of the European Parliament and of the Council ⁽¹⁾ should apply.
- (162) Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union or Member State law should, within the limits of this Regulation, determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for ensuring statistical confidentiality. Statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person.
- (163) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics should also comply with Member State law. Regulation (EC) No 223/2009 of the European Parliament and of the Council ⁽²⁾ provides further specifications on statistical confidentiality for European statistics.
- (164) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to their premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law.
- (165) This Regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU.
- (166) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement

⁽¹⁾ Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ L 158, 27.5.2014, p. 1).

⁽²⁾ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

of personal data within the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, delegated acts should be adopted in respect of criteria and requirements for certification mechanisms, information to be presented by standardised icons and procedures for providing such icons. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (167) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. In that context, the Commission should consider specific measures for micro, small and medium-sized enterprises.
- (168) The examination procedure should be used for the adoption of implementing acts on standard contractual clauses between controllers and processors and between processors; codes of conduct; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country, a territory or a specified sector within that third country, or an international organisation; standard protection clauses; formats and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules; mutual assistance; and arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board.
- (169) The Commission should adopt immediately applicable implementing acts where available evidence reveals that a third country, a territory or a specified sector within that third country, or an international organisation does not ensure an adequate level of protection, and imperative grounds of urgency so require.
- (170) Since the objective of this Regulation, namely to ensure an equivalent level of protection of natural persons and the free flow of personal data throughout the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (171) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force. Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the manner in which the consent has been given is in line with the conditions of this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.
- (172) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 7 March 2012 ⁽¹⁾.
- (173) This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms *vis-à-vis* the processing of personal data which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council ⁽²⁾, including the obligations on the controller and the rights of natural persons. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, that Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation,

⁽¹⁾ OJ C 192, 30.6.2012, p. 7.

⁽²⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data:
 - (a) in the course of an activity which falls outside the scope of Union law;
 - (b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
 - (c) by a natural person in the course of a purely personal or household activity;
 - (d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
3. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 98.
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
- (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

Article 4

Definitions

For the purposes of this Regulation:

- (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (4) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (5) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (6) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (7) 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (8) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (9) 'recipient' means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the

framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;

- (10) 'third party' means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
- (11) 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
- (12) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (13) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (14) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (15) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (16) 'main establishment' means:
 - (a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;
 - (b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;
- (17) 'representative' means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;
- (18) 'enterprise' means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;
- (19) 'group of undertakings' means a controlling undertaking and its controlled undertakings;
- (20) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;
- (21) 'supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 51;

- (22) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing of personal data because:
- (a) the controller or processor is established on the territory of the Member State of that supervisory authority;
 - (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
 - (c) a complaint has been lodged with that supervisory authority;
- (23) ‘cross-border processing’ means either:
- (a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
 - (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.
- (24) ‘relevant and reasoned objection’ means an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union;
- (25) ‘information society service’ means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽¹⁾;
- (26) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

Principles

Article 5

Principles relating to processing of personal data

1. Personal data shall be:
 - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
 - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’);
 - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);
 - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);

⁽¹⁾ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
 - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

Article 6

Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
 - (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
 - (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
 - (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
 - (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
 - (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

- (a) Union law; or
- (b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific

processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, *inter alia*:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 7

Conditions for consent

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, *inter alia*, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

Article 8

Conditions applicable to child's consent in relation to information society services

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.
3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

Article 9

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
2. Paragraph 1 shall not apply if one of the following applies:
 - (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
 - (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
 - (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
 - (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
 - (e) processing relates to personal data which are manifestly made public by the data subject;
 - (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
 - (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
 - (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
 - (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

Article 10

Processing of personal data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

Article 11

Processing which does not require identification

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.

2. Where, in cases referred to in paragraph 1 of this Article, the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 15 to 20 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification.

CHAPTER III

Rights of the data subject

Section 1

Transparency and modalities

Article 12

Transparent information, communication and modalities for the exercise of the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

2. The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.

3. The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

- (a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
- (b) refuse to act on the request.

The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

6. Without prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject.

7. The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.

Section 2

Information and access to personal data

Article 13

Information to be provided where personal data are collected from the data subject

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
- (b) the contact details of the data protection officer, where applicable;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;

- (d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
- (e) the recipients or categories of recipients of the personal data, if any;
- (f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability;
- (c) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (d) the right to lodge a complaint with a supervisory authority;
- (e) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
- (f) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.

Article 14

Information to be provided where personal data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

- (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
- (b) the contact details of the data protection officer, where applicable;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- (d) the categories of personal data concerned;
- (e) the recipients or categories of recipients of the personal data, if any;

(f) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
- (c) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability;
- (d) where processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (e) the right to lodge a complaint with a supervisory authority;
- (f) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;
- (g) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. The controller shall provide the information referred to in paragraphs 1 and 2:

- (a) within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed;
- (b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or
- (c) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.

4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

5. Paragraphs 1 to 4 shall not apply where and insofar as:

- (a) the data subject already has the information;
- (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
- (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests; or
- (d) where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

*Article 15***Right of access by the data subject**

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
 - (a) the purposes of the processing;
 - (b) the categories of personal data concerned;
 - (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
 - (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
 - (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
 - (f) the right to lodge a complaint with a supervisory authority;
 - (g) where the personal data are not collected from the data subject, any available information as to their source;
 - (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.
3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Section 3

Rectification and erasure*Article 16***Right to rectification**

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

*Article 17***Right to erasure ('right to be forgotten')**

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
 - (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

- (a) for exercising the right of freedom of expression and information;
- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

Article 18

Right to restriction of processing

1. The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- (a) the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;
- (b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- (c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
- (d) the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

Article 19

Notification obligation regarding rectification or erasure of personal data or restriction of processing

The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 20

Right to data portability

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:
 - (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and
 - (b) the processing is carried out by automated means.
2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.
3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Section 4

Right to object and automated individual decision-making

Article 21

Right to object

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.
2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.
3. Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

4. At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.
5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.
6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

Article 22

Automated individual decision-making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
 - (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;
 - (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
 - (c) is based on the data subject's explicit consent.
3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Section 5

Restrictions

Article 23

Restrictions

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:
 - (a) national security;
 - (b) defence;
 - (c) public security;

- (d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- (e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- (f) the protection of judicial independence and judicial proceedings;
- (g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
- (i) the protection of the data subject or the rights and freedoms of others;
- (j) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:

- (a) the purposes of the processing or categories of processing;
- (b) the categories of personal data;
- (c) the scope of the restrictions introduced;
- (d) the safeguards to prevent abuse or unlawful access or transfer;
- (e) the specification of the controller or categories of controllers;
- (f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- (g) the risks to the rights and freedoms of data subjects; and
- (h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

CHAPTER IV

Controller and processor

Section 1

General obligations

Article 24

Responsibility of the controller

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.

2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

3. Adherence to approved codes of conduct as referred to in Article 40 or approved certification mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller.

*Article 25***Data protection by design and by default**

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.
2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.
3. An approved certification mechanism pursuant to Article 42 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.

*Article 26***Joint controllers**

1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers *vis-à-vis* the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

*Article 27***Representatives of controllers or processors not established in the Union**

1. Where Article 3(2) applies, the controller or the processor shall designate in writing a representative in the Union.
2. The obligation laid down in paragraph 1 of this Article shall not apply to:
 - (a) processing which is occasional, does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) or processing of personal data relating to criminal convictions and offences referred to in Article 10, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing; or
 - (b) a public authority or body.

3. The representative shall be established in one of the Member States where the data subjects, whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored, are.
4. The representative shall be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to processing, for the purposes of ensuring compliance with this Regulation.
5. The designation of a representative by the controller or processor shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves.

Article 28

Processor

1. Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
2. The processor shall not engage another processor without prior specific or general written authorisation of the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:
 - (a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) takes all measures required pursuant to Article 32;
 - (d) respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
 - (e) taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;
 - (f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the processor;
 - (g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
 - (h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

4. Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

5. Adherence of a processor to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.

6. Without prejudice to an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 of this Article may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8 of this Article, including when they are part of a certification granted to the controller or processor pursuant to Articles 42 and 43.

7. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the examination procedure referred to in Article 93(2).

8. A supervisory authority may adopt standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the consistency mechanism referred to in Article 63.

9. The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, including in electronic form.

10. Without prejudice to Articles 82, 83 and 84, if a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

Article 29

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the controller or of the processor, who has access to personal data, shall not process those data except on instructions from the controller, unless required to do so by Union or Member State law.

Article 30

Records of processing activities

1. Each controller and, where applicable, the controller's representative, shall maintain a record of processing activities under its responsibility. That record shall contain all of the following information:

- (a) the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer;
- (b) the purposes of the processing;
- (c) a description of the categories of data subjects and of the categories of personal data;

- (d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
 - (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (f) where possible, the envisaged time limits for erasure of the different categories of data;
 - (g) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
2. Each processor and, where applicable, the processor's representative shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:
- (a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;
 - (b) the categories of processing carried out on behalf of each controller;
 - (c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
3. The records referred to in paragraphs 1 and 2 shall be in writing, including in electronic form.
4. The controller or the processor and, where applicable, the controller's or the processor's representative, shall make the record available to the supervisory authority on request.
5. The obligations referred to in paragraphs 1 and 2 shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10.

Article 31

Cooperation with the supervisory authority

The controller and the processor and, where applicable, their representatives, shall cooperate, on request, with the supervisory authority in the performance of its tasks.

Section 2

Security of personal data

Article 32

Security of processing

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
- (a) the pseudonymisation and encryption of personal data;

- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
3. Adherence to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.
4. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

Article 33

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.
3. The notification referred to in paragraph 1 shall at least:
- (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - (c) describe the likely consequences of the personal data breach;
 - (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
5. The controller shall document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the supervisory authority to verify compliance with this Article.

Article 34

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and contain at least the information and measures referred to in points (b), (c) and (d) of Article 33(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
 - (a) the controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
 - (c) it would involve disproportionate effort. In such a case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.
4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 3 are met.

Section 3

Data protection impact assessment and prior consultation

Article 35

Data protection impact assessment

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
2. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
 - (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
 - (b) processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
 - (c) a systematic monitoring of a publicly accessible area on a large scale.
4. The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. The supervisory authority shall communicate those lists to the Board referred to in Article 68.
5. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5, the competent supervisory authority shall apply the consistency mechanism referred to in Article 63 where such lists involve processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union.

7. The assessment shall contain at least:
 - (a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
 - (c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
8. Compliance with approved codes of conduct referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.
9. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
10. Where processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or in the law of the Member State to which the controller is subject, that law regulates the specific processing operation or set of operations in question, and a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of that legal basis, paragraphs 1 to 7 shall not apply unless Member States deem it to be necessary to carry out such an assessment prior to processing activities.
11. Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

Article 36

Prior consultation

1. The controller shall consult the supervisory authority prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
2. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the supervisory authority shall, within period of up to eight weeks of receipt of the request for consultation, provide written advice to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the supervisory authority has obtained information it has requested for the purposes of the consultation.
3. When consulting the supervisory authority pursuant to paragraph 1, the controller shall provide the supervisory authority with:
 - (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;
 - (b) the purposes and means of the intended processing;
 - (c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
 - (d) where applicable, the contact details of the data protection officer;

- (e) the data protection impact assessment provided for in Article 35; and
- (f) any other information requested by the supervisory authority.

4. Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.

5. Notwithstanding paragraph 1, Member State law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to processing by a controller for the performance of a task carried out by the controller in the public interest, including processing in relation to social protection and public health.

Section 4

Data protection officer

Article 37

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:
 - (a) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
 - (b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
 - (c) the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences referred to in Article 10.
2. A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.
3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.
4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.
5. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.
6. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.
7. The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.

Article 38

Position of the data protection officer

1. The controller and the processor shall ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.

2. The controller and processor shall support the data protection officer in performing the tasks referred to in Article 39 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.
3. The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation.
5. The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.
6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.

Article 39

Tasks of the data protection officer

1. The data protection officer shall have at least the following tasks:
 - (a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
 - (b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
 - (c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
 - (d) to cooperate with the supervisory authority;
 - (e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.
2. The data protection officer shall in the performance of his or her tasks have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.

Section 5

Codes of conduct and certification

Article 40

Codes of conduct

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises.
2. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to:
 - (a) fair and transparent processing;

- (b) the legitimate interests pursued by controllers in specific contexts;
- (c) the collection of personal data;
- (d) the pseudonymisation of personal data;
- (e) the information provided to the public and to data subjects;
- (f) the exercise of the rights of data subjects;
- (g) the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained;
- (h) the measures and procedures referred to in Articles 24 and 25 and the measures to ensure security of processing referred to in Article 32;
- (i) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects;
- (j) the transfer of personal data to third countries or international organisations; or
- (k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects pursuant to Articles 77 and 79.

3. In addition to adherence by controllers or processors subject to this Regulation, codes of conduct approved pursuant to paragraph 5 of this Article and having general validity pursuant to paragraph 9 of this Article may also be adhered to by controllers or processors that are not subject to this Regulation pursuant to Article 3 in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (e) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards including with regard to the rights of data subjects.

4. A code of conduct referred to in paragraph 2 of this Article shall contain mechanisms which enable the body referred to in Article 41(1) to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of supervisory authorities competent pursuant to Article 55 or 56.

5. Associations and other bodies referred to in paragraph 2 of this Article which intend to prepare a code of conduct or to amend or extend an existing code shall submit the draft code, amendment or extension to the supervisory authority which is competent pursuant to Article 55. The supervisory authority shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.

6. Where the draft code, or amendment or extension is approved in accordance with paragraph 5, and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.

7. Where a draft code of conduct relates to processing activities in several Member States, the supervisory authority which is competent pursuant to Article 55 shall, before approving the draft code, amendment or extension, submit it in the procedure referred to in Article 63 to the Board which shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation or, in the situation referred to in paragraph 3 of this Article, provides appropriate safeguards.

8. Where the opinion referred to in paragraph 7 confirms that the draft code, amendment or extension complies with this Regulation, or, in the situation referred to in paragraph 3, provides appropriate safeguards, the Board shall submit its opinion to the Commission.

9. The Commission may, by way of implementing acts, decide that the approved code of conduct, amendment or extension submitted to it pursuant to paragraph 8 of this Article have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

10. The Commission shall ensure appropriate publicity for the approved codes which have been decided as having general validity in accordance with paragraph 9.

11. The Board shall collate all approved codes of conduct, amendments and extensions in a register and shall make them publicly available by way of appropriate means.

Article 41

Monitoring of approved codes of conduct

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, the monitoring of compliance with a code of conduct pursuant to Article 40 may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for that purpose by the competent supervisory authority.

2. A body as referred to in paragraph 1 may be accredited to monitor compliance with a code of conduct where that body has:

- (a) demonstrated its independence and expertise in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;
- (b) established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation;
- (c) established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
- (d) demonstrated to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.

3. The competent supervisory authority shall submit the draft criteria for accreditation of a body as referred to in paragraph 1 of this Article to the Board pursuant to the consistency mechanism referred to in Article 63.

4. Without prejudice to the tasks and powers of the competent supervisory authority and the provisions of Chapter VIII, a body as referred to in paragraph 1 of this Article shall, subject to appropriate safeguards, take appropriate action in cases of infringement of the code by a controller or processor, including suspension or exclusion of the controller or processor concerned from the code. It shall inform the competent supervisory authority of such actions and the reasons for taking them.

5. The competent supervisory authority shall revoke the accreditation of a body as referred to in paragraph 1 if the conditions for accreditation are not, or are no longer, met or where actions taken by the body infringe this Regulation.

6. This Article shall not apply to processing carried out by public authorities and bodies.

Article 42

Certification

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage, in particular at Union level, the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with this Regulation of processing operations by controllers and processors. The specific needs of micro, small and medium-sized enterprises shall be taken into account.

2. In addition to adherence by controllers or processors subject to this Regulation, data protection certification mechanisms, seals or marks approved pursuant to paragraph 5 of this Article may be established for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to this Regulation pursuant to Article 3 within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (f) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards, including with regard to the rights of data subjects.
3. The certification shall be voluntary and available via a process that is transparent.
4. A certification pursuant to this Article does not reduce the responsibility of the controller or the processor for compliance with this Regulation and is without prejudice to the tasks and powers of the supervisory authorities which are competent pursuant to Article 55 or 56.
5. A certification pursuant to this Article shall be issued by the certification bodies referred to in Article 43 or by the competent supervisory authority, on the basis of criteria approved by that competent supervisory authority pursuant to Article 58(3) or by the Board pursuant to Article 63. Where the criteria are approved by the Board, this may result in a common certification, the European Data Protection Seal.
6. The controller or processor which submits its processing to the certification mechanism shall provide the certification body referred to in Article 43, or where applicable, the competent supervisory authority, with all information and access to its processing activities which are necessary to conduct the certification procedure.
7. Certification shall be issued to a controller or processor for a maximum period of three years and may be renewed, under the same conditions, provided that the relevant requirements continue to be met. Certification shall be withdrawn, as applicable, by the certification bodies referred to in Article 43 or by the competent supervisory authority where the requirements for the certification are not or are no longer met.
8. The Board shall collate all certification mechanisms and data protection seals and marks in a register and shall make them publicly available by any appropriate means.

Article 43

Certification bodies

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, certification bodies which have an appropriate level of expertise in relation to data protection shall, after informing the supervisory authority in order to allow it to exercise its powers pursuant to point (h) of Article 58(2) where necessary, issue and renew certification. Member States shall ensure that those certification bodies are accredited by one or both of the following:
 - (a) the supervisory authority which is competent pursuant to Article 55 or 56;
 - (b) the national accreditation body named in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽¹⁾ in accordance with EN-ISO/IEC 17065/2012 and with the additional requirements established by the supervisory authority which is competent pursuant to Article 55 or 56.
2. Certification bodies referred to in paragraph 1 shall be accredited in accordance with that paragraph only where they have:
 - (a) demonstrated their independence and expertise in relation to the subject-matter of the certification to the satisfaction of the competent supervisory authority;

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (b) undertaken to respect the criteria referred to in Article 42(5) and approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63;
 - (c) established procedures for the issuing, periodic review and withdrawal of data protection certification, seals and marks;
 - (d) established procedures and structures to handle complaints about infringements of the certification or the manner in which the certification has been, or is being, implemented by the controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
 - (e) demonstrated, to the satisfaction of the competent supervisory authority, that their tasks and duties do not result in a conflict of interests.
3. The accreditation of certification bodies as referred to in paragraphs 1 and 2 of this Article shall take place on the basis of criteria approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63. In the case of accreditation pursuant to point (b) of paragraph 1 of this Article, those requirements shall complement those envisaged in Regulation (EC) No 765/2008 and the technical rules that describe the methods and procedures of the certification bodies.
4. The certification bodies referred to in paragraph 1 shall be responsible for the proper assessment leading to the certification or the withdrawal of such certification without prejudice to the responsibility of the controller or processor for compliance with this Regulation. The accreditation shall be issued for a maximum period of five years and may be renewed on the same conditions provided that the certification body meets the requirements set out in this Article.
5. The certification bodies referred to in paragraph 1 shall provide the competent supervisory authorities with the reasons for granting or withdrawing the requested certification.
6. The requirements referred to in paragraph 3 of this Article and the criteria referred to in Article 42(5) shall be made public by the supervisory authority in an easily accessible form. The supervisory authorities shall also transmit those requirements and criteria to the Board. The Board shall collate all certification mechanisms and data protection seals in a register and shall make them publicly available by any appropriate means.
7. Without prejudice to Chapter VIII, the competent supervisory authority or the national accreditation body shall revoke an accreditation of a certification body pursuant to paragraph 1 of this Article where the conditions for the accreditation are not, or are no longer, met or where actions taken by a certification body infringe this Regulation.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of specifying the requirements to be taken into account for the data protection certification mechanisms referred to in Article 42(1).
9. The Commission may adopt implementing acts laying down technical standards for certification mechanisms and data protection seals and marks, and mechanisms to promote and recognise those certification mechanisms, seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

CHAPTER V

Transfers of personal data to third countries or international organisations

Article 44

General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

Article 45

Transfers on the basis of an adequacy decision

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Such a transfer shall not require any specific authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;
- (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers, for assisting and advising the data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and
- (c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 93(2).

4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 of this Article and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.

5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 93(3).

6. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

7. A decision pursuant to paragraph 5 of this Article is without prejudice to transfers of personal data to the third country, a territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 46 to 49.

8. The Commission shall publish in the *Official Journal of the European Union* and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.

9. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5 of this Article.

Article 46

Transfers subject to appropriate safeguards

1. In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

- (a) a legally binding and enforceable instrument between public authorities or bodies;
- (b) binding corporate rules in accordance with Article 47;
- (c) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2);
- (d) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 93(2);
- (e) an approved code of conduct pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or
- (f) an approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.

3. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:

- (a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
- (b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

4. The supervisory authority shall apply the consistency mechanism referred to in Article 63 in the cases referred to in paragraph 3 of this Article.

5. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2 of this Article.

Article 47

Binding corporate rules

1. The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63, provided that they:

- (a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;

- (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and
 - (c) fulfil the requirements laid down in paragraph 2.
2. The binding corporate rules referred to in paragraph 1 shall specify at least:
- (a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;
 - (b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;
 - (c) their legally binding nature, both internally and externally;
 - (d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;
 - (e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;
 - (f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage;
 - (g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in addition to Articles 13 and 14;
 - (h) the tasks of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling;
 - (i) the complaint procedures;
 - (j) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority;
 - (k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;
 - (l) the cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j);
 - (m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and
 - (n) the appropriate data protection training to personnel having permanent or regular access to personal data.

3. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

Article 48

Transfers or disclosures not authorised by Union law

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.

Article 49

Derogations for specific situations

1. In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

- (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- (d) the transfer is necessary for important reasons of public interest;
- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;
- (g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation may take place only if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

2. A transfer pursuant to point (g) of the first subparagraph of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

3. Points (a), (b) and (c) of the first subparagraph of paragraph 1 and the second subparagraph thereof shall not apply to activities carried out by public authorities in the exercise of their public powers.
4. The public interest referred to in point (d) of the first subparagraph of paragraph 1 shall be recognised in Union law or in the law of the Member State to which the controller is subject.
5. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.
6. The controller or processor shall document the assessment as well as the suitable safeguards referred to in the second subparagraph of paragraph 1 of this Article in the records referred to in Article 30.

Article 50

International cooperation for the protection of personal data

In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
- (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
- (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

Article 51

Supervisory authority

1. Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').
2. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and the Commission in accordance with Chapter VII.
3. Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which is to represent those authorities in the Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 63.
4. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to this Chapter, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

*Article 52***Independence**

1. Each supervisory authority shall act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation.
2. The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody.
3. Member or members of each supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.
4. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.
5. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.
6. Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

*Article 53***General conditions for the members of the supervisory authority**

1. Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:
 - their parliament;
 - their government;
 - their head of State; or
 - an independent body entrusted with the appointment under Member State law.
2. Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform its duties and exercise its powers.
3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.
4. A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

*Article 54***Rules on the establishment of the supervisory authority**

1. Each Member State shall provide by law for all of the following:
 - (a) the establishment of each supervisory authority;

- (b) the qualifications and eligibility conditions required to be appointed as member of each supervisory authority;
- (c) the rules and procedures for the appointment of the member or members of each supervisory authority;
- (d) the duration of the term of the member or members of each supervisory authority of no less than four years, except for the first appointment after 24 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;
- (e) whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
- (f) the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Regulation.

Section 2

Competence, tasks and powers

Article 55

Competence

1. Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.
2. Where processing is carried out by public authorities or private bodies acting on the basis of point (c) or (e) of Article 6(1), the supervisory authority of the Member State concerned shall be competent. In such cases Article 56 does not apply.
3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 56

Competence of the lead supervisory authority

1. Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.
2. By derogation from paragraph 1, each supervisory authority shall be competent to handle a complaint lodged with it or a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.
3. In the cases referred to in paragraph 2 of this Article, the supervisory authority shall inform the lead supervisory authority without delay on that matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will handle the case in accordance with the procedure provided in Article 60, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.

4. Where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The lead supervisory authority shall take utmost account of that draft when preparing the draft decision referred to in Article 60(3).
5. Where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to Articles 61 and 62.
6. The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing carried out by that controller or processor.

Article 57

Tasks

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory:
 - (a) monitor and enforce the application of this Regulation;
 - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
 - (c) advise, in accordance with Member State law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - (d) promote the awareness of controllers and processors of their obligations under this Regulation;
 - (e) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;
 - (f) handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
 - (g) cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
 - (h) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
 - (i) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
 - (j) adopt standard contractual clauses referred to in Article 28(8) and in point (d) of Article 46(2);
 - (k) establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 35(4);
 - (l) give advice on the processing operations referred to in Article 36(2);
 - (m) encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 40(5);
 - (n) encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 42(1), and approve the criteria of certification pursuant to Article 42(5);
 - (o) where applicable, carry out a periodic review of certifications issued in accordance with Article 42(7);

- (p) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (q) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (r) authorise contractual clauses and provisions referred to in Article 46(3);
- (s) approve binding corporate rules pursuant to Article 47;
- (t) contribute to the activities of the Board;
- (u) keep internal records of infringements of this Regulation and of measures taken in accordance with Article 58(2); and
- (v) fulfil any other tasks related to the protection of personal data.

2. Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as a complaint submission form which can also be completed electronically, without excluding other means of communication.

3. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer.

4. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 58

Powers

1. Each supervisory authority shall have all of the following investigative powers:

- (a) to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;
- (b) to carry out investigations in the form of data protection audits;
- (c) to carry out a review on certifications issued pursuant to Article 42(7);
- (d) to notify the controller or the processor of an alleged infringement of this Regulation;
- (e) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;
- (f) to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union or Member State procedural law.

2. Each supervisory authority shall have all of the following corrective powers:

- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
- (b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;
- (c) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;

- (d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;
- (e) to order the controller to communicate a personal data breach to the data subject;
- (f) to impose a temporary or definitive limitation including a ban on processing;
- (g) to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17(2) and Article 19;
- (h) to withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met;
- (i) to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;
- (j) to order the suspension of data flows to a recipient in a third country or to an international organisation.

3. Each supervisory authority shall have all of the following authorisation and advisory powers:

- (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 36;
- (b) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with Member State law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
- (c) to authorise processing referred to in Article 36(5), if the law of the Member State requires such prior authorisation;
- (d) to issue an opinion and approve draft codes of conduct pursuant to Article 40(5);
- (e) to accredit certification bodies pursuant to Article 43;
- (f) to issue certifications and approve criteria of certification in accordance with Article 42(5);
- (g) to adopt standard data protection clauses referred to in Article 28(8) and in point (d) of Article 46(2);
- (h) to authorise contractual clauses referred to in point (a) of Article 46(3);
- (i) to authorise administrative arrangements referred to in point (b) of Article 46(3);
- (j) to approve binding corporate rules pursuant to Article 47.

4. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter.

5. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.

6. Each Member State may provide by law that its supervisory authority shall have additional powers to those referred to in paragraphs 1, 2 and 3. The exercise of those powers shall not impair the effective operation of Chapter VII.

Article 59

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of measures taken in accordance with Article 58(2). Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, to the Commission and to the Board.

CHAPTER VII

Cooperation and consistency

Section 1

Cooperation*Article 60***Cooperation between the lead supervisory authority and the other supervisory authorities concerned**

1. The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.
2. The lead supervisory authority may request at any time other supervisory authorities concerned to provide mutual assistance pursuant to Article 61 and may conduct joint operations pursuant to Article 62, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
3. The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.
4. Where any of the other supervisory authorities concerned within a period of four weeks after having been consulted in accordance with paragraph 3 of this Article, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism referred to in Article 63.
5. Where the lead supervisory authority intends to follow the relevant and reasoned objection made, it shall submit to the other supervisory authorities concerned a revised draft decision for their opinion. That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks.
6. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound by it.
7. The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.
8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.
9. Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof.
10. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other supervisory authorities concerned.

11. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 66 shall apply.

12. The lead supervisory authority and the other supervisory authorities concerned shall supply the information required under this Article to each other by electronic means, using a standardised format.

Article 61

Mutual assistance

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.

2. Each supervisory authority shall take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.

3. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

4. The requested supervisory authority shall not refuse to comply with the request unless:

(a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or

(b) compliance with the request would infringe this Regulation or Union or Member State law to which the supervisory authority receiving the request is subject.

5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.

6. Requested supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.

7. Requested supervisory authorities shall not charge a fee for any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.

8. Where a supervisory authority does not provide the information referred to in paragraph 5 of this Article within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure on the territory of its Member State in accordance with Article 55(1). In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an urgent binding decision from the Board pursuant to Article 66(2).

9. The Commission may, by means of implementing acts, specify the format and procedures for mutual assistance referred to in this Article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in paragraph 6 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Article 62

Joint operations of supervisory authorities

1. The supervisory authorities shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.

2. Where the controller or processor has establishments in several Member States or where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in joint operations. The supervisory authority which is competent pursuant to Article 56(1) or (4) shall invite the supervisory authority of each of those Member States to take part in the joint operations and shall respond without delay to the request of a supervisory authority to participate.
3. A supervisory authority may, in accordance with Member State law, and with the seconding supervisory authority's authorisation, confer powers, including investigative powers on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the law of the Member State of the host supervisory authority permits, allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the law of the Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the Member State law of the host supervisory authority.
4. Where, in accordance with paragraph 1, staff of a seconding supervisory authority operate in another Member State, the Member State of the host supervisory authority shall assume responsibility for their actions, including liability, for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
5. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall reimburse that other Member State in full any sums it has paid to the persons entitled on their behalf.
6. Without prejudice to the exercise of its rights *vis-à-vis* third parties and with the exception of paragraph 5, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement from another Member State in relation to damage referred to in paragraph 4.
7. Where a joint operation is intended and a supervisory authority does not, within one month, comply with the obligation laid down in the second sentence of paragraph 2 of this Article, the other supervisory authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 55. In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an opinion or an urgent binding decision from the Board pursuant to Article 66(2).

Section 2

Consistency

Article 63

Consistency mechanism

In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, where relevant, with the Commission, through the consistency mechanism as set out in this Section.

Article 64

Opinion of the Board

1. The Board shall issue an opinion where a competent supervisory authority intends to adopt any of the measures below. To that end, the competent supervisory authority shall communicate the draft decision to the Board, when it:
 - (a) aims to adopt a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4);
 - (b) concerns a matter pursuant to Article 40(7) whether a draft code of conduct or an amendment or extension to a code of conduct complies with this Regulation;

- (c) aims to approve the criteria for accreditation of a body pursuant to Article 41(3) or a certification body pursuant to Article 43(3);
 - (d) aims to determine standard data protection clauses referred to in point (d) of Article 46(2) and in Article 28(8);
 - (e) aims to authorise contractual clauses referred to in point (a) of Article 46(3); or
 - (f) aims to approve binding corporate rules within the meaning of Article 47.
2. Any supervisory authority, the Chair of the Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 61 or for joint operations in accordance with Article 62.
3. In the cases referred to in paragraphs 1 and 2, the Board shall issue an opinion on the matter submitted to it provided that it has not already issued an opinion on the same matter. That opinion shall be adopted within eight weeks by simple majority of the members of the Board. That period may be extended by a further six weeks, taking into account the complexity of the subject matter. Regarding the draft decision referred to in paragraph 1 circulated to the members of the Board in accordance with paragraph 5, a member which has not objected within a reasonable period indicated by the Chair, shall be deemed to be in agreement with the draft decision.
4. Supervisory authorities and the Commission shall, without undue delay, communicate by electronic means to the Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.
5. The Chair of the Board shall, without undue delay inform by electronic means:
- (a) the members of the Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the Board shall, where necessary, provide translations of relevant information; and
 - (b) the supervisory authority referred to, as the case may be, in paragraphs 1 and 2, and the Commission of the opinion and make it public.
6. The competent supervisory authority shall not adopt its draft decision referred to in paragraph 1 within the period referred to in paragraph 3.
7. The supervisory authority referred to in paragraph 1 shall take utmost account of the opinion of the Board and shall, within two weeks after receiving the opinion, communicate to the Chair of the Board by electronic means whether it will maintain or amend its draft decision and, if any, the amended draft decision, using a standardised format.
8. Where the supervisory authority concerned informs the Chair of the Board within the period referred to in paragraph 7 of this Article that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, Article 65(1) shall apply.

Article 65

Dispute resolution by the Board

1. In order to ensure the correct and consistent application of this Regulation in individual cases, the Board shall adopt a binding decision in the following cases:
- (a) where, in a case referred to in Article 60(4), a supervisory authority concerned has raised a relevant and reasoned objection to a draft decision of the lead authority or the lead authority has rejected such an objection as being not relevant or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of this Regulation;

- (b) where there are conflicting views on which of the supervisory authorities concerned is competent for the main establishment;
- (c) where a competent supervisory authority does not request the opinion of the Board in the cases referred to in Article 64(1), or does not follow the opinion of the Board issued under Article 64. In that case, any supervisory authority concerned or the Commission may communicate the matter to the Board.
2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-thirds majority of the members of the Board. That period may be extended by a further month on account of the complexity of the subject-matter. The decision referred to in paragraph 1 shall be reasoned and addressed to the lead supervisory authority and all the supervisory authorities concerned and binding on them.
3. Where the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. Where the members of the Board are split, the decision shall be adopted by the vote of its Chair.
4. The supervisory authorities concerned shall not adopt a decision on the subject matter submitted to the Board under paragraph 1 during the periods referred to in paragraphs 2 and 3.
5. The Chair of the Board shall notify, without undue delay, the decision referred to in paragraph 1 to the supervisory authorities concerned. It shall inform the Commission thereof. The decision shall be published on the website of the Board without delay after the supervisory authority has notified the final decision referred to in paragraph 6.
6. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged shall adopt its final decision on the basis of the decision referred to in paragraph 1 of this Article, without undue delay and at the latest by one month after the Board has notified its decision. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged, shall inform the Board of the date when its final decision is notified respectively to the controller or the processor and to the data subject. The final decision of the supervisory authorities concerned shall be adopted under the terms of Article 60(7), (8) and (9). The final decision shall refer to the decision referred to in paragraph 1 of this Article and shall specify that the decision referred to in that paragraph will be published on the website of the Board in accordance with paragraph 5 of this Article. The final decision shall attach the decision referred to in paragraph 1 of this Article.

Article 66

Urgency procedure

1. In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65 or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.
2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the Board, giving reasons for requesting such opinion or decision.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.
4. By derogation from Article 64(3) and Article 65(2), an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the Board.

*Article 67***Exchange of information**

The Commission may adopt implementing acts of general scope in order to specify the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in Article 64.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Section 3

European data protection board*Article 68***European Data Protection Board**

1. The European Data Protection Board (the 'Board') is hereby established as a body of the Union and shall have legal personality.
2. The Board shall be represented by its Chair.
3. The Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor, or their respective representatives.
4. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, a joint representative shall be appointed in accordance with that Member State's law.
5. The Commission shall have the right to participate in the activities and meetings of the Board without voting right. The Commission shall designate a representative. The Chair of the Board shall communicate to the Commission the activities of the Board.
6. In the cases referred to in Article 65, the European Data Protection Supervisor shall have voting rights only on decisions which concern principles and rules applicable to the Union institutions, bodies, offices and agencies which correspond in substance to those of this Regulation.

*Article 69***Independence**

1. The Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 70 and 71.
2. Without prejudice to requests by the Commission referred to in point (b) of Article 70(1) and in Article 70(2), the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.

*Article 70***Tasks of the Board**

1. The Board shall ensure the consistent application of this Regulation. To that end, the Board shall, on its own initiative or, where relevant, at the request of the Commission, in particular:
 - (a) monitor and ensure the correct application of this Regulation in the cases provided for in Articles 64 and 65 without prejudice to the tasks of national supervisory authorities;

- (b) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
- (c) advise the Commission on the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules;
- (d) issue guidelines, recommendations, and best practices on procedures for erasing links, copies or replications of personal data from publicly available communication services as referred to in Article 17(2);
- (e) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;
- (f) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for further specifying the criteria and conditions for decisions based on profiling pursuant to Article 22(2);
- (g) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing the personal data breaches and determining the undue delay referred to in Article 33(1) and (2) and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;
- (h) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph as to the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of the natural persons referred to in Article 34(1).
- (i) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for personal data transfers based on binding corporate rules adhered to by controllers and binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned referred to in Article 47;
- (j) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for the personal data transfers on the basis of Article 49(1);
- (k) draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 58(1), (2) and (3) and the setting of administrative fines pursuant to Article 83;
- (l) review the practical application of the guidelines, recommendations and best practices referred to in points (e) and (f);
- (m) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing common procedures for reporting by natural persons of infringements of this Regulation pursuant to Article 54(2);
- (n) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 40 and 42;
- (o) carry out the accreditation of certification bodies and its periodic review pursuant to Article 43 and maintain a public register of accredited bodies pursuant to Article 43(6) and of the accredited controllers or processors established in third countries pursuant to Article 42(7);
- (p) specify the requirements referred to in Article 43(3) with a view to the accreditation of certification bodies under Article 42;
- (q) provide the Commission with an opinion on the certification requirements referred to in Article 43(8);
- (r) provide the Commission with an opinion on the icons referred to in Article 12(7);
- (s) provide the Commission with an opinion for the assessment of the adequacy of the level of protection in a third country or international organisation, including for the assessment whether a third country, a territory or one or more specified sectors within that third country, or an international organisation no longer ensures an adequate level of protection. To that end, the Commission shall provide the Board with all necessary documentation, including correspondence with the government of the third country, with regard to that third country, territory or specified sector, or with the international organisation.

- (t) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 64(1), on matters submitted pursuant to Article 64(2) and to issue binding decisions pursuant to Article 65, including in cases referred to in Article 66;
 - (u) promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities;
 - (v) promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations;
 - (w) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.
 - (x) issue opinions on codes of conduct drawn up at Union level pursuant to Article 40(9); and
 - (y) maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues handled in the consistency mechanism.
2. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 93 and make them public.
4. The Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The Board shall, without prejudice to Article 76, make the results of the consultation procedure publicly available.

Article 71

Reports

1. The Board shall draw up an annual report regarding the protection of natural persons with regard to processing in the Union and, where relevant, in third countries and international organisations. The report shall be made public and be transmitted to the European Parliament, to the Council and to the Commission.
2. The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (l) of Article 70(1) as well as of the binding decisions referred to in Article 65.

Article 72

Procedure

1. The Board shall take decisions by a simple majority of its members, unless otherwise provided for in this Regulation.
2. The Board shall adopt its own rules of procedure by a two-thirds majority of its members and organise its own operational arrangements.

Article 73

Chair

1. The Board shall elect a chair and two deputy chairs from amongst its members by simple majority.
2. The term of office of the Chair and of the deputy chairs shall be five years and be renewable once.

*Article 74***Tasks of the Chair**

1. The Chair shall have the following tasks:
 - (a) to convene the meetings of the Board and prepare its agenda;
 - (b) to notify decisions adopted by the Board pursuant to Article 65 to the lead supervisory authority and the supervisory authorities concerned;
 - (c) to ensure the timely performance of the tasks of the Board, in particular in relation to the consistency mechanism referred to in Article 63.
2. The Board shall lay down the allocation of tasks between the Chair and the deputy chairs in its rules of procedure.

*Article 75***Secretariat**

1. The Board shall have a secretariat, which shall be provided by the European Data Protection Supervisor.
2. The secretariat shall perform its tasks exclusively under the instructions of the Chair of the Board.
3. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation shall be subject to separate reporting lines from the staff involved in carrying out tasks conferred on the European Data Protection Supervisor.
4. Where appropriate, the Board and the European Data Protection Supervisor shall establish and publish a Memorandum of Understanding implementing this Article, determining the terms of their cooperation, and applicable to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation.
5. The secretariat shall provide analytical, administrative and logistical support to the Board.
6. The secretariat shall be responsible in particular for:
 - (a) the day-to-day business of the Board;
 - (b) communication between the members of the Board, its Chair and the Commission;
 - (c) communication with other institutions and the public;
 - (d) the use of electronic means for the internal and external communication;
 - (e) the translation of relevant information;
 - (f) the preparation and follow-up of the meetings of the Board;
 - (g) the preparation, drafting and publication of opinions, decisions on the settlement of disputes between supervisory authorities and other texts adopted by the Board.

*Article 76***Confidentiality**

1. The discussions of the Board shall be confidential where the Board deems it necessary, as provided for in its rules of procedure.

2. Access to documents submitted to members of the Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾.

CHAPTER VIII

Remedies, liability and penalties

Article 77

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.
2. The supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78.

Article 78

Right to an effective judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.
2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to an effective judicial remedy where the supervisory authority which is competent pursuant to Articles 55 and 56 does not handle a complaint or does not inform the data subject within three months on the progress or outcome of the complaint lodged pursuant to Article 77.
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.

Article 79

Right to an effective judicial remedy against a controller or processor

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation.
2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

*Article 80***Representation of data subjects**

1. The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to exercise the rights referred to in Articles 77, 78 and 79 on his or her behalf, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

*Article 81***Suspension of proceedings**

1. Where a competent court of a Member State has information on proceedings, concerning the same subject matter as regards processing by the same controller or processor, that are pending in a court in another Member State, it shall contact that court in the other Member State to confirm the existence of such proceedings.
2. Where proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in another Member State, any competent court other than the court first seized may suspend its proceedings.
3. Where those proceedings are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.

*Article 82***Right to compensation and liability**

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.
5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.

6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

Article 83

General conditions for imposing administrative fines

1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be effective, proportionate and dissuasive.

2. Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in points (a) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:

- (a) the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
- (b) the intentional or negligent character of the infringement;
- (c) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
- (d) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
- (e) any relevant previous infringements by the controller or processor;
- (f) the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- (g) the categories of personal data affected by the infringement;
- (h) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
- (i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
- (j) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
- (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

3. If a controller or processor intentionally or negligently, for the same or linked processing operations, infringes several provisions of this Regulation, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.

4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
- (b) the obligations of the certification body pursuant to Articles 42 and 43;
- (c) the obligations of the monitoring body pursuant to Article 41(4).

5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
- (b) the data subjects' rights pursuant to Articles 12 to 22;
- (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
- (d) any obligations pursuant to Member State law adopted under Chapter IX;
- (e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).

6. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

7. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.

8. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.

9. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by 25 May 2018 and, without delay, any subsequent amendment law or amendment affecting them.

Article 84

Penalties

1. Member States shall lay down the rules on other penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 83, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

CHAPTER IX

Provisions relating to specific processing situations

Article 85

Processing and freedom of expression and information

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.

2. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.

3. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Article 86

Processing and public access to official documents

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

Article 87

Processing of the national identification number

Member States may further determine the specific conditions for the processing of a national identification number or any other identifier of general application. In that case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Article 88

Processing in the context of employment

1. Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

2. Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 89

Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

1. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in

order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

Article 90

Obligations of secrecy

1. Member States may adopt specific rules to set out the powers of the supervisory authorities laid down in points (e) and (f) of Article 58(1) in relation to controllers or processors that are subject, under Union or Member State law or rules established by national competent bodies, to an obligation of professional secrecy or other equivalent obligations of secrecy where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. Those rules shall apply only with regard to personal data which the controller or processor has received as a result of or has obtained in an activity covered by that obligation of secrecy.

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 91

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation.

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.

CHAPTER X

Delegated acts and implementing acts

Article 92

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 12(8) and Article 43(8) shall be conferred on the Commission for an indeterminate period of time from 24 May 2016.
3. The delegation of power referred to in Article 12(8) and Article 43(8) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12(8) and Article 43(8) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 93

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER XI

Final provisions

Article 94

Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed with effect from 25 May 2018.
2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Article 95

Relationship with Directive 2002/58/EC

This Regulation shall not impose additional obligations on natural or legal persons in relation to processing in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

*Article 96***Relationship with previously concluded Agreements**

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 24 May 2016, and which comply with Union law as applicable prior to that date, shall remain in force until amended, replaced or revoked.

*Article 97***Commission reports**

1. By 25 May 2020 and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Regulation to the European Parliament and to the Council. The reports shall be made public.
2. In the context of the evaluations and reviews referred to in paragraph 1, the Commission shall examine, in particular, the application and functioning of:
 - (a) Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC;
 - (b) Chapter VII on cooperation and consistency.
3. For the purpose of paragraph 1, the Commission may request information from Member States and supervisory authorities.
4. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, of the Council, and of other relevant bodies or sources.
5. The Commission shall, if necessary, submit appropriate proposals to amend this Regulation, in particular taking into account developments in information technology and in the light of the state of progress in the information society.

*Article 98***Review of other Union legal acts on data protection**

The Commission shall, if appropriate, submit legislative proposals with a view to amending other Union legal acts on the protection of personal data, in order to ensure uniform and consistent protection of natural persons with regard to processing. This shall in particular concern the rules relating to the protection of natural persons with regard to processing by Union institutions, bodies, offices and agencies and on the free movement of such data.

*Article 99***Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 25 May 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 April 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT



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