

ARBITRATOR CASE FILE



Tab No.	Document
1.	The Problem
2.	ICC Rules 2021
3.	UNCITRAL Model Law on International Commercial Arbitration
4.	New York Convention
5.	CISG
6.	UNIDROIT Principles
7.	GDPR

1

The Problem



**ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT**

THE PROBLEM

**THIRTY-FIRST ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

**VIENNA, AUSTRIA
2023 / 2024**

**ORAL HEARINGS
22 – 28 MARCH 2024**

Organised by:
Association for the Organisation and Promotion of the Willem C. Vis
International Commercial Arbitration Moot

and

**TWENTY-FIRST ANNUAL WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

HONG KONG

**ORAL ARGUMENTS
10 – 17 MARCH 2024**

Organised by:
Vis East Moot Foundation Limited





NOTICE ON THE USE OF ARTIFICIAL INTELLIGENCE (AI)

The Rules for the 31st Willem C. Vis International Commercial Arbitration Moot include updated provisions on the use of Artificial Intelligence (AI) and the mandatory submission of the Academic Integrity and Artificial Intelligence Disclosure Statement.

Please refer to Rules 64 – 66.

The Rules are available at https://www.vismoot.org/31st_vis_moot/.

UNDER NO CIRCUMSTANCES MAY THIS PROBLEM OR THE MEMORANDA OF ANY TEAM BE USED TO TRAIN ANY AI-APPLICATION. THIS PROHIBITION INCLUDES COPYING TEXT FROM THIS DOCUMENT INTO A PROMPT FOR AN AI-APPLICATION

CONTENTS

Document	Page
Letter by Langweiler (9 June 2023)	4
Request for Arbitration (9 June 2023)	5
Claimant Exhibit C 1 (Framework Agreement of 7 June 2019)	9
Claimant Exhibit C 2 (Purchase Order 9601 of 17 January 2022)	13
Claimant Exhibit C 3 (Letter by Claimant of 5 September 2022)	14
Claimant Exhibit C 4 (Letter by Respondent of 8 September 2022)	15
Claimant Exhibit C 5 (Email 28 March 2022)	16
Claimant Exhibit C 6 (Witness Statement Mr. Isetta)	17
ICC Acknowledgment of a Request for Arbitration (9 June 2023)	19
ICC Notification of a Request for Arbitration (12 June 2023)	21
ICC Letter to Parties on Co-Arbitrator nominated by Claimant (26 June 2023)	26
ICC Notification of the Answer (10 July 2023)	27
Letter by Fasttrack (15 July 2023)	29
Answer to the Request for Arbitration (10 July 2023)	30
Respondent Exhibit R 1 (Email 28 August 2020 - 11:38 a.m.)	33
Respondent Exhibit R 2 (Email 28 August 2020 - 12:25 p.m.)	34
Respondent Exhibit R 3 (Automotive Weekly 20 May 2022)	35
Respondent Exhibit R 4 (Witness Statement Mr. Toyoda)	36
ICC Letter to Parties on Co-Arbitrator nominated by Respondent (25 July 2023)	37
ICC Notification of Court decision (11 August 2023)	38
ICC Letter to the Arbitral Tribunal (11 August 2023)	40
ICC Case Information	44
Request for Authorization of New Claim (11 September 2023)	46
Claimant Exhibit C 7 (Purchase Order A-15604 of 4 January 2022)	48
Claimant Exhibit C 8 (Witness Statement Ms. Durant)	49
Letter by Presiding Arbitrator (12 September 2023)	51
ICC Letter on Consolidation (12 September 2023)	52
Rejection of Request by Respondent (2 October 2023)	54
Respondents Exhibit R 5 (Notice of defect of 4 April 2022)	56
Letter by Presiding Arbitrator (6 October 2023)	57
Procedural Order No 1 (6 October 2023)	58
Procedural Order No 2 (6 November 2023)	61

Joseph Langweiler

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
Langweiler@lawyer.me

9 June 2023

By ICC Case Connect

International Chamber of Commerce (ICC)
International Court of Arbitration
Mr. Alexander G. Fessas
Secretary General
33 – 43 avenue du Président Wilson
75116 Paris
France

Dear Mr. Fessas,

On behalf of my client, *SensorX plc*, I hereby submit the enclosed Request for Arbitration pursuant to Article 4 ICC Rules. A copy of the Power of Attorney authorizing me to represent *SensorX plc* in this arbitration is also enclosed.

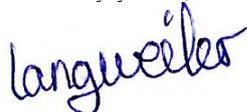
The filing fee has been paid.

The Claimant requests the performance of contractual obligations.

The contract giving rise to this arbitration provides that the seat of arbitration shall be Vindobona, Danubia, and that the arbitration shall be conducted in English. The arbitration agreement provides for three arbitrators. *SensorX plc* hereby nominates Dr. William Chevy, Geely-Street 12 Capital City, Mediterraneo as its arbitrator.

The required documents are attached.

Sincerely yours,



Joseph Langweiler

Attachments:

Request for Arbitration with Exhibits
Power of Attorney (*not reproduced*)
Confirmation of Payment of Filing Fee (*not reproduced*)

Request for Arbitration

(pursuant to Article 4 of the ICC Rules of Arbitration 2021)

in the Arbitral Proceedings

SensorX plc v. Visionic Ltd

9 June 2023

PARTIES AND REPRESENTATION

1. Claimant is:
SensorX, plc
Atwood Lane 1784
Capital City
Mediterraneo
2. Claimant is represented in this arbitration by Joseph Langweiler, 75 Court Street, Capital City, Mediterraneo.
3. Respondent is:
Visionic Ltd
Optronic Avenida 3
Oceanside
Equatoriana

STATEMENT OF FACTS

4. Claimant, SensorX plc, is one of the leading Tier 2 producers of sensors used in various applications in the automotive industry, in particular for all types of autonomous driving applications.
5. Respondent, Visionic Ltd, is a Tier 1 producer of optical systems which are used by many of the leading car manufacturers for their autonomous parking systems.
6. On 7 June 2019 the Parties entered into a Framework Agreement to regulate the future supply of Respondent with Claimant's sensors (**Claimant Exhibit C 1**).
7. According to Article 3 of the Framework Agreement Respondent was entitled to order up to 250,000 sensors per year. Individual Orders had to be placed three months in advance and could not exceed 80,000 sensors per quarter.
8. Payment was to be effected by transfer to the bank account specified in the Framework Agreement (Article 5).
9. Article 40 required that all changes to the Agreement had to be made in writing.
10. Between June 2019 and January 2022 Respondent submitted 22 different purchase orders under the Framework Agreement and Claimant delivered more than 5,000,000 sensors to Respondent

without any problems. Most of those sensors were of the S4-25899 model. There had, however, also been three orders for other models to which the Framework Agreement was then applied.

11. Notwithstanding that the Framework Agreement provided in Article 6 for a semi-annual fixing of the prices the Parties had agreed in their price fixing meeting on 1 December 2019 to shift to an annual determination for the price. Since then, the price for the coming year has always been fixed at the beginning of December of the previous year in a meeting between the lead sales and purchase managers. The Parties had agreed to such a deviation.
12. Most orders submitted since June 2019 had been in the range of 200,000 – 400,000 units. In their meeting on 2 December 2021 Claimant informed Respondent that it would prefer larger orders and was willing to give an additional discount of 1 % for any order above 1,000,000 units. Larger orders were easier to handle for Claimant and allowed for better production planning.
13. With its Purchase Order No. 9601 of 17 January 2022 Respondent ordered 1,200,000 sensors (**Claimant Exhibit C 2**) to be delivered in two instalments in April and May. The price agreed was USD 32 per unit. Claimant delivered both instalments in accordance with the contractual provisions, the first 600,000 sensors on 3 April 2022 and the second 600,000 on 30 May 2022.
14. According to Clause 6 of the Purchase Order No. 9601, payments for both deliveries were due 30 days after delivery, i.e., on 3 May 2022 and 30 June 2022 respectively. No payments were, however, received, neither on these dates nor later which was only discovered on 25 August 2022. Due to a cyberattack in the early parts of the year, Claimant's internal planning and accounting system went down and had to be thoroughly investigated and sanitized from 15 May until 30 June 2022.
15. During this period there was also an unusual number of long-term employee absences due to ill health. This included Ms. Telsa Audi, who was at the time the account manager responsible on Claimant's side for Respondent's account. She had been absent since 27 March 2022, first on holiday for 10 days and then on sick leave before leaving the company with effect of 1 July 2022. As a consequence, of Ms. Audi's sudden leave Mr. Gustaf Gabrielsson, who was her successor from 1 August onwards only discovered on 25 August 2022 that no payment had been made under Purchase Order 9601.
16. Discussions at the working level between Mr. Gabrielsson and his counterpart at Respondent revealed that Respondent had made the two instalment payments to another bank account. Respondent alleged that Claimant's Ms. Audi - or more likely someone who impersonated her - had requested payment to a different account which Respondent had then made. In light of the payments made, Respondent did not want to pay the amount a second time to the correct bank account.
17. With the letter of 5 September 2022 (**Claimant Exhibit C 3**) Claimant complained to Respondent that the payments were not received and set a deadline for payment by the following week.
18. Respondent replied on 8 September 2022 alleging that payments were made on the agreed dates to the newly communicated bank account (**Claimant Exhibit C 4**). With its letter, Respondent submitted an email which allegedly had been sent by Claimant asking for payment to a new bank account (**Claimant Exhibit C 5**). The email did not come from one of the Claimant's email addresses.

19. It seems that someone gained access to the content of the Parties' agreements and then sent an email pretending to be Ms. Audi, who was in charge on Claimant's side for the processing of Purchase Order No. 9601. In that email, "Ms. Audi" asked for a transfer of the amount due for the deliveries under Purchase Order No. 9601 to a different bank account. While at first sight, the email appears to have come from Claimant, a closer look reveals that it bore the mark of an obvious phishing attack. The top-level domain is "se~~m~~sorX.com" instead of "se~~n~~sensorX.com". Furthermore, Claimant would have never requested payment to a new bank account merely in an email. The Framework Agreement clearly stated in Article 40 that changes had to be made in writing with the signature of both Parties.
20. Despite these facts Respondent, who had obviously failed to make payment to the agreed-upon account, refused to pay for the sensors delivered. A meeting on 28 November 2022 between the CEOs of both companies, Claimant's Mr. Enzo Isetta and Respondent's Ms. Mercedes Ford, remained without any result concerning the resolution of the dispute relating to the payment (Claimant Exhibit C 6).
21. Quite to the contrary, during the meeting Respondent informed Claimant that it would terminate the Framework Agreement, as it had planned to purchase sensors from 1 July 2023 onwards from one of Claimant's competitors.

LEGAL EVALUATION

22. The Arbitral Tribunal has jurisdiction to hear the case. Respondent's Purchase Order No. 9601 contains the following arbitration clause:

"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG."
23. It is noteworthy, that a comparable arbitration clause is also contained in Article 41 of the Framework Agreement, so that there can be no doubt as to the Parties' will to submit to arbitration.
24. According to Clause 6 of the Purchase Order No. 9601 Respondent was obliged to pay the price within 30 days after delivery, i.e., USD 19,200,000 on 3 May 2022 and USD 19,200,000 on 30 June 2022.
25. No such payment was received. The payment which Respondent apparently made to the wrong bank account cannot qualify as performance of Respondent's payment obligation. It does not release Respondent from its obligation to pay Claimant.
26. Respondent was obviously not entitled to pay to the new account as Claimant never authorized such payment. In light of the clear wording of Article 40, a change of the bank account would in any way have required an agreement in writing with signature from both Parties and not only a unilateral email allegedly from Claimant.
27. Furthermore, there was no obligation for Claimant to inform Respondent about an earlier phishing attack upon Claimant on 5 January 2022 which was discovered on 23 January 2022. Such an obligation arises neither from the contract nor the applicable law. Neither the law of Danubia as chosen by the Parties nor the law of Mediterraneo, where Claimant is located,

require a Party which has been subject to a phishing attack to inform its contracting partners or other parties about a possible breach of its data systems.

28. Quite to the contrary, in Mediterraneo, the concern that legislation codifying such information duties would result in an additional burden for Mediterranean companies including mass claims for alleged or actual violations of such duties was one of the central arguments against the implementation of a law on data protection which would mirror comparable legislation in Europe, Brazil or Equatoriana. The deliberate decision by the legislator to not enact a special data protection act that would impose information duties cannot be circumvented by deducing such duties from general rules of contract law, in particular the duty to cooperate in Article 5.1.3 of the Danubian Contract Act which had been relied upon by Respondent in the negotiations in the pre-arbitration phase. Furthermore, the Contract Act is not applicable, as the Purchase Order No. 9601 is governed by the CISG which does not provide for such an information duty.
29. Contrary to the view expressed by Respondent in the discussions preceding this arbitration, this is not a case where the Claimant “caused” Respondent’s failure to pay in the sense of Article 80 CISG. The sole reason for Respondent’s failure to pay is its unwillingness to do so. And since Claimant is seeking performance of the payment obligation and not bringing a claim for damages Article 77 CISG is obviously not applicable.

REQUEST

30. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:
- 1) Respondent is ordered to pay Claimant USD 38,400,000, with simple interest at the annual rate of 4 % on the amount of 19,200,000 from 4 May 2022 onwards, and on the amount of 19,200,000 from 1 July 2022 onwards;
 - 2) Respondent is ordered to pay the cost of this arbitration and to reimburse Claimant for all costs incurred in connection with it.



Joseph Langweiler

FRAMEWORK AGREEMENT

Whereas SensorX, plc is one of the leading manufacturers of all types of sensors for various applications in the automotive industry;

Whereas Visionic Ltd manufactures optical instruments for the automotive industry relying on sensors;

Whereas the Parties want to regulate the details of their future co-operation;

The following agreement (“Framework Agreement”) is concluded:

Article 1: PARTIES and SUBJECT MATTER

Seller: **SensorX**, plc, Atwood Lane 1784, Capital City, Mediterraneo, (“**SELLER**”).

and

Buyer: **Visionic Ltd**, Optronic Avenida 3, Oceanside, Equatoriana (“**BUYER**”).

Collectively referred to as “**the Parties**”.

This Framework Agreement governs the contractual terms for all S4-25899 sensors and possible other products (Contract Products) to be supplied by the SELLER to the BUYER or the group companies of BUYER which the Parties will agree upon in the respective individual contracts (referred to as "Individual Contract"). It applies to all the Individual Contracts agreed under this Framework Agreement and to the order and call-off plans drawn up in accordance therewith and to logistics concepts agreed in deviation therefrom.

Article 2: BASIS of AGREEMENT

The Terms and Conditions of Sale of SELLER (Annex 1) apply to the supply of Contract Products, except as otherwise provided under the terms of this Framework Agreement. Project-specific provisions for delivery terms shall be agreed in the respective Individual Contracts. General business terms of the BUYER shall not be accepted. Any other general terms of contract deviating from this Framework Agreement and the Terms and Conditions of Sale of the SELLER shall only become part of the contract if both parties explicitly agree in writing that they shall prevail over this Framework Agreement.

Article 3: SELLER'S OBLIGATIONS

1. The SELLER undertakes to deliver to the BUYER upon the latter's orders
 - a. up to 2,500,000 sensors of the requested types per year;
 - b. up to 800,000 sensors of the requested types per quarter as long as the yearly quota is not exceeded.
2. [...]

Article 4: BUYERS OBLIGATION

1. The BUYER undertakes
 - a. to order from the SELLER a minimum of 1,500,000 sensors per year;
 - b. to take delivery of such sensors;
 - c. to pay the price for those sensors as determined for each order in accordance with the price fixing procedure in Article 6;
 - d. [...]

Article 5: PURCHASE ORDERS

The call-off of the sensors required under the Individual Contract indicated in Article 1 shall be effected via individual purchase orders and call-off plans, except insofar as logistics concepts deviating from this have been agreed. The purchase orders and call-off plans are deemed respectively accepted by the SELLER if the SELLER does not object to them in writing within 2 (two) working days of receipt. Objection to purchase orders shall only be allowed if the legally binding order exceeds the previous non-binding previews of the BUYER by more than 15% or deviates in other material aspects from this Framework Agreement.

Individual Orders have to be made by the BUYER at least three months before the requested delivery.

They should specify

- the exact product and the amount requested;
- any special packaging required;
- the place of delivery if deviating from the present agreement.

Article 6: PRICE

The price for the sensors shall be fixed by the Parties' Heads of Sale and Purchasing on a semiannual basis in meetings in December and June. The prices are then applicable for orders submitted within the following six months.

Article 7: PAYMENTS

1. All payments have to be made within 15 days upon confirmed delivery by bank transfer to one of the following accounts:

Automotive Bank in Mediterraneo
47 Gran Manzana Road
Capital City
BIC: AUTOBANKXXX
IBAN: ME33 6598 3241 2111 33

or

First Bank of Mediterraneo
2 Vista al Océano
Capital City
BIC: FIRSTBAN33X
IBAN: ME31 1246 8795 6478 21

Article 8: INSURANCE

SELLER shall maintain the following liability insurance with at least the insured sums set forth below for the duration of the contractual relationship with BUYER:

Public liability insurance: EUR 15 million flat for personal injury and property damage
Product liability insurance: EUR 15 million flat for personal injury and property damage
Car recall cost insurance: EUR 10 million per recall – limited to 2 recalls per annum

A written confirmation of the insurer of the aforementioned insurance cover is appended in Annex 2. SELLER undertakes to inform BUYER in writing without delay prior to relevant changes in the insurance circumstances, in particular of the lapse of insurance cover.

Even if the insurance benefits should not fully cover the damage incurred by BUYER or by third parties, the liability of SELLER vis-a-vis BUYER or the third party affected shall continue to exist in full.

....

Article 15: NOTICE OF DEFECTS

The Contract Products shall be examined within one week after delivery as to their conformity. The examination has to be documented and shall be conducted as to its scope and size according to the Rules of the Automotive Industry.

Any notice of defect shall be sent within a reasonable time on the form attached as Annex 3 to this Agreement to the SELLER'S Quality Department at the address given on the form. Non-compliance with the examination and notice obligation results in the loss of any rights for the deficiency of the goods.

...

Article 40: AMENDMENTS

No amendment or waiver of any provision of this Agreement including this Article shall be valid unless the same is in writing and signed by the Parties.

Article 41: DISPUTE RESOLUTION

1. Disputes or disagreements arising under or in connection with this Framework Agreement (Disputes) shall be settled amicably either by negotiation between the Parties or mediation.
2. Arbitration. Any Dispute not finally resolved by any of the alternative dispute resolution procedures set forth in paragraph 1 shall be exclusively and definitively resolved through final and binding arbitration, it being the intention of the Parties that this is a broad form arbitration agreement designed to encompass all possible disputes arising in connection with the present agreement and the contracts concluded thereunder.
3. Rules. The arbitration shall be conducted in English in accordance with the following arbitration rules (as then in effect): Rules of Arbitration of the International Chamber of Commerce (ICC).
4. Number of Arbitrators. The arbitration shall be conducted by three arbitrators unless all parties to the Dispute agree to a sole arbitrator within thirty (30) Days after the filing of the arbitration. For greater certainty, for the purpose of this Article, the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the Dispute.

5. Consolidation. If the Parties initiate multiple arbitration proceedings in relation to several contracts concluded under this framework agreement, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, the Arbitral Tribunal of the first arbitration proceedings has the power to consolidate all such proceedings into a single arbitral proceeding.
6. The place of arbitration is Danubia and this Framework Agreement and all Individual Contracts concluded hereunder are governed by the law of Danubia.

Article 42: MISCELLANEOUS

1. This document contains the entire agreement between the Parties.
2. If any provisions of this Agreement should be or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the parties shall agree upon a valid provision approximating most closely the economic purpose of the ineffective provision. This shall apply analogously to any gaps.

Date: 7 June 2019

E. Isetta

Mr. Enzo Isetta
(Chief Executive Officer)

Mercedes Ford

Ms Mercedes Ford
(Chief Executive Officer)



VISIONIC
EXCELLENCE THE EASY WAY

In line with the Framework Agreement concluded between the Parties, the provisions of which govern this order unless agreed otherwise, Visionic makes the following

PURCHASE ORDER
NO 9601
17 January 2022

1. Product(s): S4-25899 Radar Sensor
2. Quantity: 1,200,000 units
3. Delivery Dates:
First Installment of 600,000 units: 14th Calendar Week
Second Installment of 600,000 units: 22nd Calendar Week
4. Places of Delivery:
First Installment: DDP Optronic Avenida 3, Oceanside, Equatoriana
Second Installment: DDP Rue Laser, Mountainview, Equatoriana
5. Price: USD 32.00 per unit (on the basis of the price formula agreed between the Parties on 1 December 2021 for larger orders)
6. Payment Terms: 30 days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.

Mr. William Toyoda
(Head of Purchasing)



SensorX, plc, Atwood Lane 1784, Capital City, Mediterraneo
Mr. William Toyoda
Visionic Ltd
Optronic Avenida 3
Oceanside
Equatoriana

5 September 2022

Outstanding Payment – Purchase Order 9601

Dear Mr. Toyoda,

In accordance with your Purchase Order No. 9601, SensorX delivered 1,200,000 units of the S4-25899 sensor in two installments of 600,000 on 3 April 2022 and 30 May 2022.

Payments for these deliveries in the amount of USD 19,200,000 had to be effected by 3 May and 30 June respectively. There were no complaints from your side concerning the quality of the sensors delivered.

Irrespective of that we have not yet received any payment from your side to the bank account agreed between us.

I have been informed by Mr. Gabrielsson who has been in charge of your account since 1 August 2022 that apparently payments have been made to another bank account which was allegedly indicated to you via email.

Following our internal investigations, I can confirm with certainty that no such email was ever sent by Ms. Audi, who had been the account manager responsible for you until she left SensorX on 1 July 2022, or by anyone else from within SensorX. It appears that you might have been subject to a phishing attack.

Thus, I kindly ask you to transfer USD 38,400,000 to the known bank account at the Automotive Bank in Mediterraneo.

In light of our long-lasting relationship, we will not charge any interest or claim any damages for the belated payment. We hope with this measure of goodwill to help solving the matter and continue our mutually beneficial cooperation.

Dr. Bertha Durant

Dr. Bertha Durant
(Head of Sales)

Visionic Ltd, Optronic Avenida 3, Oceanside, Equatoriana

SensorX, plc
Atwood Lane 1784
Capital City
Mediterraneo



8 September 2022

Dear Ms. Durant,

I have received your letter of 5 September 2022 with great surprise.

I thought the issue had been solved in the discussions between Mr. Royce and Mr. Gabriellsson. As you can see from the attached copies of the bank transfer documents, the payments were effected in line with the instructions in the email of 28 March 2022, which must be attributed to Ms. Audi, your account manager at the time.

The fact that her email account was apparently “taken over” by cybercriminals who – with the information received thereby – were able to defraud your customers falls squarely under your sphere of risk and thus cannot lead to an obligation for us to transfer the money a second time.

That is even more so as you did not inform us about the attack on your IT system in early 2022, as principles of good data governance would have required you to do. In light of our long-lasting relationship and our past behaviour in a comparable case in 2020, we would have considered notifications to be standard practice under the Framework Agreement if not even an ancillary duty arising from it.

Had you done so, we would have been aware of the increased threat which then materialized in the forged email. It is telling that the email was sent exactly one day after Ms. Audi’s out-of-office-reply was activated and she was thus not reachable.

In light of these facts, we consider that we have fulfilled our payment obligations with the transfer of the amount to the bank account given to us in the email of 28 March 2022.

Should you want to discuss that issue any further I assume it would be best to do that in a personal meeting of the relevant members of the board of directors. Should there be an interest on your side, our CEO, Ms. Ford, would be available for a meeting.

Kind regards,

William Toyoda
(Head of Purchasing)



From: <telsa.audi@sensorx.me>
Sent: 28 March 2022, 8:25 am
To: <henry.royce@visionic.eq>
Subject: **Change of payment process for Order 9601**

Dear Mr. Royce,

I hope you are doing well in these challenging times.

You are probably aware that some of the sensors we produce, in particular the LIDAR sensors ordered by you under Purchase Order No. 15605, are used in military products as well and thus require heightened attention under the existing sanction regimes in Mediterraneo. That led in the past to several problems with our existing banking partners which are located in Mediterraneo. Those problems have increased considerably over the last weeks.

I would like to inform you that in light of those problems we have switched to a new banking partner in Danubia where the government has refrained from imposing any sanctions and which is used by our Danubian subsidiary. From now on all payments by bank transfer should be made to the following account:

First Bank of Danubia
56 Hamilton Road
Vindobona
BIC: FIRSTBANKXXX
IBAN: DA33 6598 3241 2111 33

That already applies to the payments to be made under Purchase Order No. 9601 which is planned for delivery next week. Unfortunately, I can only authorize delivery of the 600,000 S4-25889 sensors after you confirm that the banking details for the transfer of the payment have been changed to the new account.

Could you thus please urgently change the banking details and then immediately confirm such change by replying to this email so that I can authorize shipment?

Should you have any questions, the best way to reach me during the next days is via reply email as I am working from home due to health problems and the mobile connection is bad.

Kind regards,

Telsa Audi

Capital City

Mediterraneo

T: (0)214 6698053

Email: telsa.audi@sensorx.me



**Witness Statement of
Mr. Enzo Isetta**

1. I was born on 15 June 1964. After receiving my degree in engineering, I started to work for SensorX in 1992 and have held different positions in the company over the years. Since 1 January 2014, I have been the CEO of SensorX.
2. In that function I signed the Framework Agreement with Visionic in 2019. Visionic was looking for a secure supply of sensors. For us the minimum purchase requirements guaranteed a constant demand for our product, facilitating planning.
3. The first two and a half years of our cooperation went very well. On two occasions Visionic made use of the opportunity offered in the Framework Agreement to place orders for quantities going even beyond our maximum supply obligation and to make use of the existing framework for additional products.
4. In 2022, like many other companies in the automotive industry, we were the target of serious cyberattacks. Most of those were unsuccessful and detected by our excellent cybersecurity defense system which had been considerably strengthened in 2021 through additional firewalls and regular training of our employees. However, even the best defense cannot exclude the risks of a successful attack in its entirety. The weak point is always the users who may despite all training act carelessly.
5. That is what happened apparently on 5 January 2022. As far as we have been able to reconstruct the circumstances, one of our account managers in the sales department must have opened an infected email in breach of all security guidelines, allowing trojan horse malware to enter our system. The successful attack was discovered on 23 January 2022.
6. At the beginning, it appeared to be of only minor relevance. Consequently, after a careful evaluation of the risks associated with the trojan horse found through CyberSec, the leading cybersecurity firm in Mediterraneo, we removed the malware found and did not inform any customers or the authorities. This cyberattack appeared to be at the time an incident of minor relevance. Moreover, there is no such obligation under the law of Mediterraneo, where we are located, nor under the law of Danubia, to which all our international contracts are submitted, if we fail to agree on the law of Mediterraneo.
7. To the contrary, the legislator in Mediterraneo rejected in 2020 the data privacy initiative of the Association for the rights of Citizens which had as its objective the creation of a law on data protection on the basis of the model existing in other states, such as the European Union or Equatoriana. The central argument against the initiative was the burden put upon Mediterranean businesses in particular through mass claims in case of breaches of data privacy.
8. Furthermore, in the absence of any legal or contractual obligation we saw no real benefit in informing our partners of what appeared to be at the time an incident of minor relevance. Even without such information, everyone in the automotive industry was aware that there had been a considerable increase in cyberattacks at all levels of the production chain, including Tier 2 producers. That applies, a fortiori, to Respondent which became a victim of a successful cyberattack itself in 2020.
9. In addition, all our contracts contained a clause that any changes to them had to be agreed in writing or – as in the present case – in writing with the signature of both Parties. Thus, we were confident that no situation like the present one could happen, where a customer, without approaching us, would pay to a wrong account.
10. It only became apparent later that the cyberattack had been much more severe than originally anticipated - either from the beginning or it had been followed by a second attack. On 15 May 2022 data on one of our four subsystems (customer relation management) became encrypted

and we got an offer to release them again in return for a payment of USD 5 million. As a consequence of that and with the support of the governmental cybersecurity unit we engaged in a major security check of all our systems which took us over a month. During that time our entire accounting, payment and ordering system was handled largely manually on the basis of an isolated accounting software and spreadsheets. This circumstance in combination with the high rate of absentees at the time and in particular the departure of Ms. Audi were the reasons why the non-payment was only discovered at the end of August.

11. Following the problems with the payments for the deliveries under Purchase Order No. 9601 I had a meeting with Ms. Mercedes Ford, the CEO of Respondent on 28 November 2022.
12. I had the impression that she was never really interested in an amicable solution. At the end of our meeting, she told me that they would terminate our Framework Agreement with effect on 1 July 2023. I later learned from an article in Automotive Weekly that from that time onwards they wanted to purchase their sensors from IQ-View, one of our competitors.

28 May 2023

E. Isetta

9 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Dear Sir,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce (“Secretariat”) acknowledges receipt of your Request for Arbitration (“Request”) dated 9 June 2023. Your Request was received on 9 June 2023. Pursuant to Article 4(2) of the ICC Rules of Arbitration in force as from 1 January 2021 (“Rules”), this arbitration commenced on that date.

The caption and reference of this arbitration are indicated above. Please ensure that the caption is accurate and include the reference **Moot-100/MM** in all future correspondence.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: “(Article ***)”.

Filing Fee

We acknowledge receipt of the US\$ 5 000 non-refundable filing fee.

Your Case Management Team

Margaux Mimolette, Counsel..... (direct dial number 01 23 45 67 89)
 Dominique Francon, Deputy Counsel..... (direct dial number 01 23 45 67 90)
 Howard Galt, Assistant (direct dial number 01 23 45 67 91)
 Email (ica100@iccwbo.org)

.../...

Please find enclosed a Note that highlights certain key features of ICC arbitration which also includes key features of the Expedited Procedure Provisions.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Alexander G. Fessas
Secretary General
ICC International Court of Arbitration

- encl. - ICC Rules of Arbitration ([click here to download them](#))
- Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ([click here to download it](#))
- Explanatory Note on VAT Applicable on ICC Administrative Expenses available on the ICC website ([click here to download it](#))

10 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

VISIONIC LTD
Optronic Avenida 3
Oceanside
Equatoriana

By DHL

Dear Sirs,

Further to the Secretariat's correspondence to SENSORX, PLC ("Claimant") dated 9 June 2023, we notify the Request for Arbitration ("Request") to VISIONIC LTD ("Respondent").

Notification of a Request for Arbitration

The Secretariat notifies Respondent that, on 9 June 2023, it received the Request from Claimant represented by Mr Joseph Langweiler naming it as Respondent. Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules") in force as of 1 January 2021, this arbitration commenced on 9 June 2023.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

The Rules include the Expedited Procedure Provisions ("Provisions") (Article 30 and Appendix VI) which apply if the amount in dispute does not exceed the amounts referred to under Article 1(2) of Appendix VI, subject to the conditions set forth in Article 30(3). The parties can also agree on the application of these Provisions in all other cases.

We enclose for Respondent a copy of the Request and the documents annexed thereto (Article 4(5)).

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

[iccwbo.org/arbitration](https://www.iccwbo.org/arbitration)

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org



The caption and reference of this arbitration are as follows: **Moot-100/MM SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)**. Please include the reference **Moot-100/MM** in all future correspondence.

ICC Case Connect

Your arbitration proceedings benefit from the International Court of Arbitration of the International Chamber of Commerce's Dispute Resolution Services case management digital platform. More information about ICC Case Connect is available at www.iccwbo.org/icc-case-connect.

Throughout your arbitration proceedings, you will benefit from a dedicated case space to facilitate communications and document-sharing. Parties and arbitral tribunals are encouraged to make use of this centralised case environment, although they remain free to determine the extent to which they do so. ICC Case Connect will constitute the Secretariat's principal means of communication throughout the proceedings (Article 3(2)), therefore case users should envisage that some interaction with the platform will be necessary.

Following the present notification of the Request by courier, all persons indicated by Claimant as representing Respondent will receive an ICC Case Connect platform notification inviting them to access their dedicated case space.

You are encouraged to connect to ICC Case Connect promptly. You are encouraged to submit the Answer, or any request for an extension of time to submit the Answer, directly via ICC Case Connect within the time limit provided for under the Rules.

Contact your case management team and the dedicated ICC Case Connect helpdesk (caseconnect@iccwbo.org) for assistance and technical support. Once you have received the email notification inviting you to access your case space, you will be able to explore [ICC Case Connect](#).

Answer to the Request

Respondent's Answer to the Request ("Answer") is due within **30 days** (Article 5(1)).

Pursuant to Article 5(3), where Respondent requests transmission of the Answer by delivery against receipt, registered post or courier, Respondent must submit a sufficient number of copies for each other party.

Respondent may apply for an extension of time for submitting the Answer by nominating a co-arbitrator (Article 5(2)). Such information will enable the International Court of Arbitration of the International Chamber of Commerce ("Court") to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Article 6(8)).

Joinder of Additional Parties

No additional party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the additional party otherwise agree (Article 7(1)). Therefore, if Respondent intends to join an additional party and seek an extension of time for submitting the Answer, please inform us in your application for such extension.

.../...

Funding of Claims or Defences

In order to assist prospective arbitrators in complying with their duties, parties must promptly inform the Secretariat, the arbitral tribunal and the other parties of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration (Article 11(7)).

Constitution of the Arbitral Tribunal

When selecting arbitrators, parties are encouraged to consider diversity, broadly defined, including but not limited to racial, ethnic, cultural, generational, and gender diversity.

The arbitration agreement provides for three arbitrators. Claimant nominated Dr William Chevy as co-arbitrator.

We invite Respondent to nominate a co-arbitrator in the Answer or in any request for an extension of time for submitting the Answer (Article 12(4)). Failing nomination within 30 days, the Court will appoint a co-arbitrator on its behalf (Article 12(4)).

The Court will appoint the president, unless the parties agree upon another procedure (e.g. the co-arbitrators nominating the president) (Article 12(5)).

Place of Arbitration

The arbitration agreement provides for Vindobona, Danubia as place of arbitration.

Language of Arbitration

The arbitration agreement provides for English as language of the arbitration.

Provisional Advance

The Secretary General fixed a provisional advance of US\$ 140 000 to cover the costs of arbitration until the Terms of Reference are established (Article 37(1), based on an amount in dispute partially quantified at US\$ 38 400 000 and three arbitrators.

Neither the Court nor the Secretary General will take any decisions until we receive such payment.

Publication of Information on the Website

Pursuant to section “Publication of Information Regarding Arbitral Tribunals, Industry Sector and Law Firms Involved” of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), the Court publishes on its website information regarding the names of the arbitrators, their nationality, their role within a tribunal and the method of their appointment, the parties’ representatives in the case, the industry sector involved and whether the arbitration is pending or closed. Such information is published after the Terms of Reference have been transmitted to or approved by the Court, or after the Case Management Conference in cases where the Expedited Procedure Provisions apply, and will be updated in the event of a change in the party representation (without however mentioning the reason for the change). In this respect, the Court publishes such information unless any of the parties objects.

.../...

Publication of Awards

Pursuant to section “Publication of Awards, Procedural Orders, Dissenting and/or Concurring Opinions” of the Note, any award and/or order, as well as any dissenting and/or concurring opinion (“awards and related documents”) which may be made in the case, may be published in their entirety, including the names of the parties and the arbitrators, no less than two years after the date of said notification. The parties may agree to a longer or shorter time period for publication. Considering that awards and related documents may be published, arbitral tribunals are encouraged to include in their award a list of names of relevant individuals or entities involved in the case.

Parties and/or their representatives should consider the relevant applicable laws and establish whether any legal requirements or limitations may prevent the publication of awards and related documents, and inform the arbitral tribunal and the Secretariat accordingly. Any information in this regard available to the Secretariat will be communicated to the parties and the arbitral tribunal.

At any time before publication, any party may object to publication or require that any award and related documents be in all or part anonymised (removal of names and any contextual data that may lead to identification of individuals, parties or disputes) or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms), in which case they will not be published or will be anonymised or pseudonymised. If a party requires anonymisation or pseudonymisation, it will be upon the parties to agree on the redactions or accept the redactions proposed by the Secretariat. In case of publication, we will send the draft to the parties and/or their representatives for their information, by using the contact details indicated in the award or any contact details subsequently provided.

Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 38(5)).

Parties, counsel and arbitral tribunals are encouraged to consider implementing case management techniques designed to make arbitration fair and efficient (Appendix IV to the Rules). The Note also provides guidance on the organisation of conferences or hearings, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication (see section “Conduct of the Arbitration” of the Note).

Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

.../...

Representation

All future correspondence addressed to Claimant will be sent solely to Mr Joseph Langweiler.

If Respondent is represented by counsel, we invite Respondent to provide the relevant contact details.

Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation (Article 17).

Communication with the Secretariat

We invite Respondent to ensure that its contact details, and those of its counsel, are always up to date on ICC Case Connect. The information on record can be verified in the case information section of your ICC Case Connect case space. To inform the Secretariat of any changes in your representation, please contact your case management team via the below information or directly via your ICC Case Connect case space.

Your Case Management Team

Margaux Mimolette, Counsel..... (direct dial number 01 23 45 67 89)
Dominique Francon, Deputy Counsel..... (direct dial number 01 23 45 67 90)
Howard Galt, Assistant (direct dial number 01 23 45 67 91)
Email (ica100@iccwbo.org)

While maintaining strict neutrality, we are at the parties' disposal regarding any questions they may have concerning the application of the Rules.

The Note highlights certain key features of ICC arbitration which also includes key features of the Expedited Procedure Provisions. We also enclose a Case Information.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

- encl. - Request for Arbitration with documents annexed thereto (*not reproduced*)
- Case Information (*not reproduced*)
- All correspondence exchanged to date (including a copy of the present correspondence and its annexes) (*not reproduced*)
- ICC Rules of Arbitration ([click here to download them](#))
- Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ([click here to download it](#))
- Explanatory Note on VAT Applicable on ICC Administrative Expenses available on the ICC website ([click here to download it](#))

25 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.memailto:langweiler@lawyer.me

VISIONIC LTD
Optronica Avenida 3
Oceanside
Equatoriana

By DHL

Dear Madame and Sir,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae* of Dr William Chevy, who Claimant has nominated as co-arbitrator.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl: - *Curriculum vitae* of Dr Chevy
- Statement of Acceptance, Availability, Impartiality and Independence of Dr Chevy

c.c. - Dr Chevy (*without enclosures*)

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

10 July 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: <mailto:Langweiler@lawyer.melangweiler@lawyer.me>

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

Dear Madame and Sir,

The Secretariat of the ICC International Court of Arbitration (“Secretariat”) acknowledges receipt an electronic copy of Respondent’s Answer to the Request for Arbitration (“Answer”) dated 10 July 2023, and of the documents annexed thereto.

Answer

A copy of the Answer (Article 5(1)) is enclosed for Claimant (Article 5(4)).

Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators. Respondent nominated Mr Victor Klement as co-arbitrator.

As the parties have not agreed upon another procedure, the Court will appoint the president.

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Provisional Advance

We acknowledge receipt of US\$ 135 000 from Claimant.

As the provisional advance has been fully paid, we will transmit the file to the arbitral tribunal, once constituted (Article 16).

Representation by Counsel

We understand that Respondent is represented by Julia Clara Fasttrack. Accordingly, all future correspondence addressed to Respondent will be sent solely to its counsel.

Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation (Article 17).

As provided in the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), hard copies should not be sent to the Secretariat, even when the arbitral tribunal asks to be provided with hard copies. Any hard copies sent to the Secretariat will be destroyed upon receipt.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Answer to the Request (*for Claimant*)
- Copy of Respondent’s correspondence (*for Claimant*)

c.c. - VISIONIC LTD

By DHL

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email and courier

10 July 2023

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Dear Ms Mimolette,

I hereby indicate that I represent Respondent in the above-referenced arbitral proceedings. A power of attorney is attached.

Please find enclosed Respondent's Answer to the Request for Arbitration, a copy of which has been sent directly to Claimant.

Respondent agrees to communicate by ICC Case Connect. Emails may be sent to fasttrack@host.eq.

RESPONDENT nominates as its arbitrator

Mr. Victor Klement, Rue Peugeot 3, Oceanside, Equatoriana.

Could you please take the necessary steps for his confirmation?

Kind regards,



Julia Clara Fasttrack

Attachments:

Answer to the Request for Arbitration with Exhibits

Power of Attorney (not reproduced)

CV of Mr. Klement (not reproduced)

cc. Joseph Langweiler



JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

Answer to the Request for Arbitration
(pursuant to Article 5 ICC Arbitration Rules)
in the Arbitral Proceedings

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

10 July 2023

Introduction

1. In its Request for Arbitration, Claimant summarizes the facts largely accurately with some convenient omissions. However, Claimant’s conclusions drawn from these facts and Claimant’s legal evaluation are contrary to the fundamental principles of good faith underlying the Parties’ agreements and enshrined in Articles 7, 77 and 80 CISG.

Facts

2. The trojan horse attack is not the first one affecting the Parties' relationship. In August 2020 an attacker managed to overcome Respondent’s cybersecurity protections and to infest the laptop of a person in the sales department. As required by Article 34 of the Data Protection Act of Equatoriana Respondent immediately informed Claimant about that attack and the potential data breach (**Respondent Exhibit R 1**).
3. Claimant was highly appreciative of the information, and this helped to ensure that the cybercriminals could not cause any damage to the Parties' relationship. It is telling that Claimant’s Head of Sale and Purchasing at the time, Mr. Li Worry, asked to be informed “*immediately whom [their] cybersecurity officer can contact*” and wanted to be “*kept à jour about [the] investigation*” (**Respondent Exhibit R 2**).
4. That is the behavior Respondent was expecting in the present case as well, where apparently sensitive data relating to the business relationship with Respondent and to our employees were compromised. Claimant decided, however, to keep the information to itself and did not inform any of its partners about the data breach.
5. It later turned out that the cyberattack on its IT-system was much more serious than Claimant had admitted and finally resulted in a shutdown of Claimant’s IT for more than a month (**Respondent Exhibit R 3**).

6. When Mr. Royce received the faked email on 28 March 2022, he was not aware of the attack upon Claimant. At the same time, because the email contained so many precise pieces of information that only Ms. Audi or other employees of Claimant could have accessed there was no reason whatsoever to question the authenticity and correctness of the email. Irrespective of that, Mr. Royce tried to contact Ms. Audi first via her mobile. After being told by her voicemail that she was on sick leave and in urgent matters a colleague should be contacted, he then replied to her email asking for a confirmation of the order to pay to a different bank account. He received a reply to his email that this is what was requested (**Respondent Exhibit R 4**).
7. It later turned out that it was Ms. Audi who had been the entry door for the cybercriminals. It can only be assumed that this was also the reason why she left the company. As far as Respondent was able to acquire information on these matters, it appears that Ms Audi has been the victim of a social-engineering trap. Being a big admirer of sports cars, she was fooled by an advertising email that claimed to offer discounts for an upcoming race. She followed one of the links that was meant to lead to the discount code, and thereby initiated the download and installation of malware.

Legal Considerations

Jurisdiction

8. Respondent does not contest the jurisdiction of the Arbitral Tribunal. Both Parties had the intention to submit the disputes arising from their relationship to arbitration. Thus, irrespective of whether the arbitration agreement in Purchase Order No. 9601 complies with the form requirement under Danubian Law or not, Respondent accepts the jurisdiction of the Arbitral Tribunal over the claims raised.

Substance

9. Claimant has no payment claim against Respondent. Respondent has paid the amounts due for the sensors delivered under Purchase Order No. 9601. Due to the non-compliance of Claimant's employees with internal cybersecurity guidelines Claimant's IT systems were compromised and allowed cybercriminals to read all of Claimant's emails. When this was discovered on 23 January 2022, Claimant decided not to inform Respondent about the highly increased risk of unwanted interference of third parties with the performance of the contracts. That risk finally materialized in Respondent's payment to the new bank account communicated by the cybercriminal mimicking Claimant.
10. Claimant's behavior created additional avoidable risk for Respondent. Had Claimant informed Respondent about the risk, Respondent would never have paid the amount to the new bank account without getting an additional direct oral confirmation from Claimant's Director of Sales.
11. In such a situation it would be contrary to the principle of good faith to force Respondent to bear the risk created by Claimant and pay a second time. Claimant has to be treated as if the request to pay to a new bank account has been made by it so that Respondent's payment constitutes the performance of the payment obligation.

12. If one were to consider the situation as a failure to perform, despite the payments effected by Respondent, it would fall squarely under Article 80 CISG, i.e. the failure would have been caused by Claimant. Consequently, Claimant should not be able to rely on the failure to pay.
13. At least Respondent's obligation to pay should be reduced in line with the principles underlying Article 77 due to Claimant's reckless behavior. These principles must also apply to the payment obligation.

Requests for Relief

14. In light of the above Respondent requests the Arbitral Tribunal to make the following orders:
 - a. To reject Claimant's claims as unfounded;
 - b. To order Claimant to bear the costs of this arbitration.

J.C. Fasttrack

Julia Clara Fasttrack



From: <william.toyoda@visionic.eq>
Sent: 28 August 2020, 11:38 a.m.
To: <telsa.audi@sensorx.me>
Subject: Cyberattack warning!!

Dear Colleagues,

Visionic discovered yesterday that it became a victim of a successful cyberattack. The criminals managed to infiltrate accounts in the sale and purchase department and it cannot be excluded that they managed to access data relating to you as an esteemed partner of Visionic.

We are currently still investigating which data may have been obtained by the criminals, however, in light of our internal cybersecurity measures it is likely that no data with any connection to you have been affected. Irrespective of that we wanted to inform you in advance to reduce any risk for you and allow you to take the necessary measures.

In case we discover during our ongoing examination that data relating to you or your employees may have been obtained by the attackers we will contact you to discuss further steps and provide you with the information required by Article 34 of the Equatorian Data Protection Act.

Should you have any further questions please do not hesitate to contact your account manager on our side.

Sincerely,
William Toyoda
(Head of Purchasing)

Visionic Ltd

Optronic Avenida 3

Oceanside

Equatoriana

T: (0)214 6698053

Email: william.toyoda@visionic.eq





From: <li.worry@sensorx.me>
Sent: 28 August 2020, 12:25 p.m.
To: <william.toyoda@visionic.eq>
Cc: <cybersecurity@sensorx.me>
Subject: RE: Cyberattack warning!!

Dear Mr. Toyoda,

We greatly appreciate your open and forward-looking communication concerning the cyberattack on Visionic.

Notwithstanding that, you will probably understand that we are fairly concerned about the information received given the sensitive data you have about our company.

To properly evaluate the need for action from our side could you please inform us immediately whom our cybersecurity officer (in cc) can contact at your side later today to obtain detailed information about the sort of attack?

Furthermore, I would like to know whether you have any cybersecurity insurance that would also cover the potential losses of your business partners?

Naturally, we require to be kept à jour about your investigation and to be informed immediately should data relating to us and our people have been obtained by the criminals.

In light of the potential consequences, we take cybersecurity and data protection very seriously.

Kind regards,

Li Worry

Head of Sale and Purchasing

SensorX plc

Atwood Lane 1784

Capital City

Mediterraneo

T: (0)146 9346355

Email: li.worry@sensorx.me



AUTOMOTIVE WEEKLY

| Technic | Business | Politics |

20 May 2022

Cyberattacks – the new normal ?

Equatoriana · Over the last few years Equatoriana has witnessed an increasing number of cyberattacks on its automotive industry. At least one OEM and several Tier 1 and 2 suppliers had to report data breaches to the public.

It often starts with a massive phishing attack on employees with the hope of infiltrating the systems. Emails allegedly sent by customers or suppliers that appear to require immediate or urgent action remain the most relevant gateway. Recipients are asked to authorize certain actions or reply to questions. Thereby, or even by just clicking on one of many links contained in that email, the cybercriminals get access to the internal systems of their victims. With that access, they try either to withdraw sensitive information to sell it to competitors, or they install so-called Ransomware which encrypts the victims' data and prevents any operation. Decryption is then dependent on paying high amounts of ransom.

It seems that a comparable trend can also be found in other countries, so the question arises whether there are any special reasons for the focus of the attack on the automotive industry. Reliable sources, for example, have confirmed that SensorX had been the victim of a major cyberattack requiring it to close down not only its website but its entire external and internal IT-system to clean up any infiltration. There

are rumors that this operation, for which SensorX relies again on the services of CyberSec, Mediterraneo's leading cyber security firm, may take at least a month and some data may have been leaked or irretrievably lost. That is particularly embarrassing for SensorX whose new cybersecurity officer had in an article in December 2021 praised the new cybersecurity concept implemented by SensorX.

The company refused to make any comments. Unlike Equatoriana and many other countries, Mediterraneo lacks modern data protection legislation. There is no specific legal obligation to inform the authorities about such an incident, let alone customers or suppliers the data of which may have been compromised through such an attack. Their information depends on the goodwill of the company affected by the cyberattack. The spokesman of DataProtect, a Mediterranean NGO, stated that this is unacceptable and requested urgent action from the government. Notwithstanding the fact that many companies inform their customers and suppliers, informing the affected parties and authorities should not be discretionary. In his view, the need for action is evidenced by the fact that some insurances ask for higher premiums or even do not insure at all cyber risks related to Mediterraneo.

**Witness Statement of
William Toyoda**

1. I was born on 9 June 1961 and I have been the Head of the Visionic Purchasing Department since 2019.
2. We became a target of a successful cyberattack in 2020 and immediately informed all our partners about it even before positively establishing that their data were affected and that a legal information obligation existed under Article 34 of the Equatorianian Data Protection Act. I consider that to be good business practice, in particular in relation to long-term partners, and expect the same behavior also from my business partners, in particular Claimant. At the time of the attack on us, Claimant had been our most concerned partner monitoring very closely our investigation which in the end established that Claimant's data were not affected by the breach. Claimant's employee, Mr. Li Worry, even wanted to know whether we had a cybersecurity insurance which would cover losses incurred by Claimant due to a data leak on our side.
3. Furthermore, Claimant's cybersecurity officer gave a long interview in December 2021 in which he praised the new cybersecurity system which Claimant had implemented shortly before in reaction to several successful ransom attacks on competitors.
4. Consequently, there was no known reason to be in heightened state of risk awareness when I was approached at the end of March 2022 by Mr. Royce, the person responsible for the relationship with Claimant who wanted authorization to pay to a new bank account in Danubia. He showed me the email of Ms. Audi and told me that he had first unsuccessfully tried to reach her via phone. He then replied directly to her email asking for a confirmation that the requested change would be considered to be compliant with the form requirements for amendments. He showed me her answer of 30 March to his email in which she pointed out that in the past the Parties had normally treated the form requirement pragmatically and confirmed that Claimant would consider the exchange of emails to be sufficient to fulfill the writing requirement. As an alternative she offered to wait with the authorization of the shipment until she returned to work, and a written amendment could be prepared by her. That would have involved a delay of at least two weeks. As we needed the shipment urgently for our production that was not an option for us, so that I authorized the payment.
5. Ms. "Audi's" reply mail contained so much information which only Ms. Audi could have about the transaction, so that I was not even considering that the email could have been written by anyone but her. In particular, she referred to issues with our insurance which we had mentioned in our last email to here.
6. Had I been aware that there had been a major cyberattack shortly before I would have personally called my counterpart on Claimant's side, Ms. Bertha Durant, and asked for confirmation. In the course of our relationship, we had always taken a pragmatic approach towards the form required for amendments. On the two occasions where amendment had been necessary, they were agreed between the Parties directly without requiring a formal document signed by both Parties.

4 July 2023



Mr. William Toyoda (Head of Purchasing)

25 July 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: <mailto:Langweiler@lawyer.melangweiler@lawyer.me>

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

Dear Madame and Sir,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae* of Mr Victor Klement, who Respondent has nominated as co-arbitrator.

We are now in a position to invite the Court to examine whether to confirm the co-arbitrators and appoint the president of the arbitral tribunal. We remind you that no party may be joined after the confirmation or appointment of any arbitrator, unless all parties including the additional party otherwise agree (Article 7(1)). Unless we are informed otherwise by **30 July 2023**, we will proceed with the constitution of the arbitral tribunal.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl: - *Curriculum vitae* of Mr Klement
- Statement of Acceptance, Availability, Impartiality and Independence of Mr Klement
c.c. - Mr Klement (*without enclosures*)

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

11 August 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100icwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

.../...

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Dear Mesdames and Sirs,

On 11 August 2023, the International Court of Arbitration of the International Chamber of Commerce (“Court”):

- confirmed Dr William Chevy as co-arbitrator upon Claimant’s nomination (Article 13(1)).
- confirmed Mr Victor Klement as co-arbitrator upon Respondent’s nomination (Article 13(1)).
- appointed Prof Giovanna Agnelli as president of the arbitral tribunal (Article 13(3)).
- fixed the advance on costs at US\$ 610 000, subject to later readjustments (Article 37(2)).

A copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae*, of Prof Giovanna Agnelli is enclosed for your information.

Advance on Costs

The advance on costs is intended to cover the arbitral tribunal’s fees and expenses, as well as the ICC administrative expenses (Article 37(2) and Article 1(4) of Appendix III to the Rules).

The Court fixed an advance based on an amount in dispute partially quantified at US\$ 38 400 000, and three arbitrators. Depending on the evolution of the arbitration, the Court may readjust the advance on costs.

As the provisional advance has been fully paid, we are transmitting the file to the arbitral tribunal today (Article 16). The parties should correspond directly with the arbitral tribunal and send copies of their correspondence to the other party and to the Secretariat in electronic form only.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Statement of Acceptance, Availability, Impartiality and Independence of Prof Agnelli
- *Curriculum vitae* of Prof Agnelli

11 August 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Dear Madame and Sirs,

Pursuant to Article 16 of the ICC Rules of Arbitration (“Rules”), the Secretariat transmits the file to the arbitral tribunal.

Terms of Reference

The Terms of Reference must be established within **30 days** from the transmission of the file to the arbitral tribunal (Article 23(2)).

We invite the arbitral tribunal to establish a list of issues to be determined or to expressly indicate in the Terms of Reference that such list is inappropriate (Article 23(1)(d)).

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Subject to any requirements of mandatory law that may be applicable, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 by email. The Secretariat requires no hard copy of any electronic document which constitutes the original of the Terms of Reference.

Efficient Conduct of the Arbitration

The arbitral tribunal and the parties must make every effort to conduct the arbitration in an expeditious and cost effective manner, having regard to the complexity and value of the dispute (Article 22(1)). The Note sets forth the time limits under the Rules that you must observe and relevant information concerning the conduct of the proceedings.

Appendix IV of the Rules contains suggested case management techniques. The Note also provides guidance on the organisation of conferences or hearings, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication (see section “Conduct of the Arbitration” of the Note).

Time Spent

Pursuant to Article 2 of Appendix III, when fixing the arbitrators’ fees the Court may take into consideration, among other criteria, the time spent by arbitrators and the complexity of the dispute. To this end, the Secretariat will request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, we encourage arbitrators to use the Statement of Time and Travel for Work Done.

Submission of Draft Awards and Arbitral Tribunal’s Fees

The final award must be rendered within the time limit fixed by the Court based upon the procedural timetable or, if the Court does not fix such time limit, within six months from the date on which the Terms of Reference were last signed, or from the date of notification to the arbitral tribunal of their approval by the Court (Article 31(1)).

The Court expects three-member tribunals to submit draft awards within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).

The Court may extend the time limit for rendering the final award pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so (Article 31(2)).

While having the power to extend such time limit, the Court will consider the diligence and efficiency, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, when fixing the arbitral tribunal’s fees (Article 2(2) of Appendix III).

Wherever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitral tribunal’s fees above the amount that it would otherwise consider fixing. If the arbitral tribunal is delayed in rendering the final award, the Court may fix the fees at a figure lower than that which would result from the application of the relevant scale should this be deemed necessary (Article 38(2)), as explained in the Note.

.../...

Pursuant to section “Signature of Terms of Reference and Awards – Notification of Awards” of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), and subject to any applicable mandatory law requirements, the arbitral tribunal is invited to clarify with the parties if they would agree to the notification of any award by email. If the parties agree to an electronic notification, this will be the only notification under the Rules and the electronic document will constitute the original of the award.

Publication of Information on the Website

Pursuant to section “Publication of Information Regarding Arbitral Tribunals, Industry Sector and Law Firms Involved” of the Note, the Court publishes on its website information regarding the names of the arbitrators, their nationality, their role within a tribunal and the method of their appointment, the parties’ representatives in the case, the industry sector involved and whether the arbitration is pending or closed. Such information is published after the Terms of Reference have been transmitted to or approved by the Court, or after the Case Management Conference in cases where the Expedited Procedure Provisions apply, and will be updated in the event of a change in the party representation (without however mentioning the reason for the change). In this respect, the Court publishes such information unless any of the parties objects.

Transportation, logistics and storage will be indicated as the industry sector involved in this arbitration, unless we are otherwise advised by the arbitral tribunal **by 18 August 2023**. Only one option may be displayed on the website.

Publication of Awards

For the information of the arbitral tribunal, we draw your attention to the following.

Pursuant to section “Publication of Awards, Procedural Orders, Dissenting and/or Concurring Opinions” of the Note, any award and/or order, as well as any dissenting and/or concurring opinion (“awards and related documents”) which may be made in the case, may be published in their entirety, including the names of the parties and the arbitrators, no less than two years after the date of said notification. Parties may agree to a longer or shorter time period for publication. Considering that awards and related documents may be published, arbitral tribunals are encouraged to include in their award a list of names of relevant individuals or entities involved in the case.

Parties and/or their representatives should consider the relevant applicable laws and establish whether any legal requirements or limitations may prevent the publication of awards and related documents, and inform the arbitral tribunal and the Secretariat accordingly. Any information in this regard available to the Secretariat will be communicated to the parties and the arbitral tribunal.

At any time before publication, any party may object to publication or require that any award and related documents be in all or part anonymised (removal of names and any contextual data that may lead to identification of individuals, parties or disputes) or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms), in which case they will not be published or will be anonymised or pseudonymised. If a party requires anonymisation or pseudonymisation, it will be upon the parties to agree on the redactions or accept the redactions proposed by the Secretariat. In case of publication, we will send the draft to be published to the parties and/or their representatives for their information, by using the contact details indicated in the award or any contact details subsequently provided.

.../...

Financial Information

We enclose a Financial Table.

Communications

As from now, the parties should correspond directly with you and send copies of their correspondence to the other party and to us. Please provide us with copies of all your correspondence with the parties in electronic format only.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

- encl. *(enclosures available via ICC Case Connect) (not reproduced)*
- Case Information *(not reproduced)*
 - Financial Table *(not reproduced)*
 - Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings ([click here to download it](#))
 - ICC Award Checklist *(not reproduced)*
 - Statement of Time and Travel for Work Done ([click here to download it](#))
 - Case documents under folder "All documents" *(not reproduced)*
 - Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration *(not reproduced)*
 - *Curriculum vitae* of fellow arbitrators *(not reproduced)*
- c.c. *(with Case Information and List of Documents only)*
- Mr Joseph Langweiler *By ICC Case Connect: langweiler@lawyer.me*
 - Ms Julia Clara Fasttrack *By ICC Case Connect: fasttrack@host.eq*

CASE INFORMATION

Date: 11.08.2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

The information below comes from the documents submitted by the parties. Such information is intended to give the arbitral tribunal an overview of this arbitration and is not intended to affect any assessment or decision of the arbitral tribunal.

Team in charge of this Arbitration

Margaux Mimolette, Counsel	(direct dial number 01 23 45 67 89)
Dominique Francon, Deputy Counsel	(direct dial number 01 23 45 67 90)
Howard Galt, Assistant	(direct dial number 01 23 45 67 91)
Email	ica100@iccwbo.org

Parties

Claimant	Respondent
SENSORX, PLC	VISIONIC LTD
Atwood Lane 1784	Optronic Avenida 3
Capital City	Oceanside
Mediterraneo	Equatoriana

Counsel

Claimant's counsel	Respondent's counsel
Joseph Langweiler	Julia Clara Fasttrack
Advocate at the Court	Advocate at the Court
75 Court Street	14 Capital Boulevard
Capital City	Oceanside
Mediterraneo	Equatoriana
Tel: (0) 146 9845	Tel: (0) 214 77 32
Fax: (0) 146 9850	Fax: (0) 214 77 33
Email: langweiler@lawyer.me	Email: fasttrack@host.eq

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Arbitral Tribunal

President appointed by the Court	Prof Giovanna Agnelli Margaret Wilcox Drive 31 1011 Vindobona Danubia
Co-arbitrator confirmed upon nomination by Claimant	Dr William Chevy Geely-Street 12 Capital City, Mediterraneo
Co-arbitrator confirmed upon nomination by Respondent	Mr Victor Klement 5 Rue Peugeot Oceanside Equatoria

Agreement upon which the Request is based (bold) and other relevant agreement

- Framework Agreement, dated 7 June 2019; signed by	The parties
- Purchase Order 9601, 17 January 2022, signed by	Respondent

Arbitration Agreement

- Purchase Order 9601:

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.

Applicable Law

- Purchase Order 9601	“CISG”
-----------------------	--------

Language of Arbitration

Purchase Order 9601	English
---------------------	---------

Place of Arbitration

Purchase Order 9601	Vindobona, Danubia
---------------------	--------------------

Number of Arbitrators

- Purchase Order 9601	3
-----------------------	---

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
Langweiler@lawyer.me

By ICC Case Connect and email

11 September 2023

Arbitral Tribunal

cc.
Respondent / Julia Clara Fasttrack
ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Request for authorization of new claim / subsidiarily of consolidation of conditionally initiated separate proceedings.

Dear Colleagues,

1. With the present submission Claimant raises an additional payment claim in the amount of USD 12 million arising from the delivery under Purchase Order A-15604 and requests
 - a. its inclusion into the present arbitration in line with Article 23(4) ICC Arbitration Rules;
or
 - b. – subsidiarily and only in the unlikely event that the additional claim is not included and has to be brought in a new arbitration, the consolidation of the arbitration proceedings for the additional claim with the present proceedings.

FACTUAL BACKGROUND

2. Under Respondent's Purchase Order No. A-15604 of 4 January 2022 (**Claimant Exhibit C 7**), Claimant had delivered an additional amount of 200,000 units of its LIDAR sensor L-1. The sensor L-1 had been for the last two years Claimant's premium model before it was replaced by the new model L-2. Its primary use is level 3 autonomous driving devices. At the same time, the L-1, like many other LIDAR sensors, is also used for military application. Consequently, its sale had always been organized by a special account manager given its potential for dual use.
3. Following intensive negotiations between the Parties starting at the end of 2021, it was agreed that Respondent could submit an additional order for the sensor L-1 which would be covered by the Framework Agreement in all respects not specifically regulated differently by the Parties (**Claimant Exhibit C 8**).
4. Deviating from the normal payment process, Claimant consented to a payment in two installments. Payment under the first installment was made by Respondent to the bank account

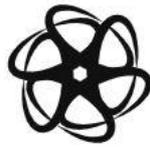
mentioned in the contract. The second payment which was due on 20 May 2022 has never been received. That was, however, discovered only three days ago when the new account manager started to investigate older transactions (**Claimant Exhibit C 8**).

LEGAL EVALUATION

5. According to Article 23(4) ICC Rules the Arbitral Tribunal may authorize new claims and thereby shall take into consideration the “*nature of such new claims, the stage of the arbitration and other relevant circumstances*”. In the present case, all claims arise from the same commercial relationship between the Parties which is regulated by the Framework Agreement. It would be artificial and contrary to the obligation to conduct proceedings in a cost and time-efficient manner to hear these claims in separate proceedings. That applies even more, as the proceedings have not yet really started so that the addition of a new claim does not result in any delay.
6. The fact that the arbitration clauses contained in the two purchase orders are not identical is not an obstacle. The jurisdiction of the Arbitral Tribunal over both claims arises from Article 41 of the Framework Agreement which had been already invoked to justify the jurisdiction of the Arbitral Tribunal. Furthermore, Claimant is always entitled to provide a new legal justification of its claims including the Arbitral Tribunal’s jurisdiction should one not consider the Arbitral Tribunal itself to be obliged by the principle of *iura novit arbiter* to apply the law independent of the Parties’ pleadings.
7. In the unlikely alternative that the Arbitral Tribunal should not allow the extension of the claim, Claimant requests the ICC Secretariat to consider this request as a Request for Arbitration for a new set of arbitral proceedings covering the claim and asks the Arbitral Tribunal to consolidate this newly commenced second arbitration with the already pending arbitration.
8. The Parties have provided the Arbitral Tribunal with the necessary powers for consolidation in the Framework Agreement. They have therefore transferred the power granted by Article 10 ICC Rules to the ICC-Court to the Arbitral Tribunal.
9. The requirements for consolidation under Article 10(a) are clearly met as the arbitration agreements, even if one considers those in the purchase orders to be the only relevant ones, are clearly compatible and there are joint legal questions.



Joseph Langweiler



VISIONIC

EXCELLENCE THE EASY WAY

Making use of the Additional Order Facility under the Framework Agreement concluded between Parties the provisions of which govern this order unless agreed otherwise Visionic makes the following

PURCHASE ORDER

NO A-15604

4 January 2022

1. Product(s): L-1 Sensor
2. Quantity: 200,000 units
3. Delivery Dates: 7th Calendar Week (14 – 18 February 2022)
4. Place of Delivery: DDP Optronic Avenida 3, Oceanside, Equatoriana
5. Price: USD 24,000,000.00
6. Payment Terms:
 - USD 12,000,000.00: 30 Days after delivery
 - USD 12,000,000.00: 90 Days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Rules on Emergency Arbitration are explicitly excluded.

The place of arbitration is Danubia and the arbitrators shall apply the CISG.

Mr. William Toyoda
(Head of Purchasing)

**Witness Statement of
Bertha Durant**

1. I was born on 1 December 1982 and have a degree in Economics. I have worked since 2018 for SensorX and have been its Head of Sales since 1 January 2021.
2. At the end of 2021, Visionic approached its account manager Ms. Audi to enquire whether, in addition to the normal radar sensors covered by the Framework Agreement, they could order a limited amount of LIDAR sensor L-1 for a particular project of a limited size. Visionic knew that the L-1 sensor was going to be replaced by its successor the L-2 sensor in early 2022 and hoped to be able to buy the remaining quantities at a preferable price.
3. Internally, SensorX has allocated the responsibility for the sale of its LIDAR sensors to a special account manager, Ms. Peugeotroen due to the existing potential for dual use of these sensors. Unfortunately, Ms. Peugeotroen was in the hospital at the time due to a problematic pregnancy. Thus, Ms. Audi approached me, and I conducted the negotiations from our side.
4. Given that there was still a considerable demand for the L-1 sensors I was not willing to give the price reductions which Visionic apparently expected. After lengthy negotiations, we finally agreed on a considerable reduction of the normal price of 25 % plus an extended payment date.
5. As I am normally not involved in the detailed negotiation of such contracts I relied heavily on the support of our legal department. They also suggested the arbitration clause. Unfortunately, I cannot remember with any certainty why the legal department wanted to exclude the rules on the Emergency Arbitrator. According to my recollection, it had to do with the lack of enforceability of such decisions, but I am not sure.
6. The 200,000 L-1 LIDAR sensor were delivered in accordance with the order on 16 February 2022 and Visionic made the first payment as requested on 18 March 2022. When the second payment was due, Ms. Peugeotroen was again in hospital due to her pregnancy, and she gave birth to twins 6 weeks early. Thus, she was not aware of the lack of payment.
7. With the issues arising from Ms. Peugeotroen's pregnancy complications, the need to replace her first on short notice and then permanently, as she extended her maternity leave, the shutdown of our IT-system and the replacement of the L-1 sensor by the L-2 sensor, SensorX only became aware of the outstanding payment on 1 September 2023. By that time the new account manager for the LIDAR sensors, finally got around to look at the unfinished old projects and realized that the second payment had not been effected.
8. When I called Mr. Toyoda to discuss the issue with him, he informed me that this payment had never been made by Respondent. Allegedly Respondent had informed Ms. Peugeotroen via phone and email that a considerable amount of the L-1 LIDAR sensors was defective and thus no further payment would be made.
9. We have not been able to find that email in our system, which makes it highly likely that it was never received. I can, however, not exclude with certainty that such an email was sent, as some emails were obviously lost in connection with the cyberattack. Irrespective of that, neither the oral notice nor the email, should it have been sent to Ms. Peugeotroen, would have been sufficient to constitute a proper notice of defect under the Framework Agreement. According to Article 15 of the Framework Agreement, Respondent would have been required to send a Notice of Defect form to our complaints department. Contrary to what Mr. Toyoda implied

during our discussion, the Parties never dropped the requirement from the Framework Agreement as there has not been a written amendment of the Framework Agreement as required under Article 40. Consequently, the requirement was obviously not complied with and prevents any reliance on the alleged deficiency of the L-1 LIDAR sensors.

10. Furthermore, the alleged deficiency of the sensors seems implausible and not in line with our previous experiences with it.

11 September 2023

Dr. Bertha Durant

Dr. Bertha Durant (Head of Sales)

Prof. Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By email

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

cc. ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

12 September 2023

Dear Colleagues,

Respondent is given until 2 October 2023 to comment on Claimant's submission of yesterday concerning its request to authorize a new claim or in the alternative to consolidate the conditionally initiated arbitral proceedings for the new claim with the present proceedings.

The Arbitral Tribunal would then like to discuss with you in the virtual case management conference planned for 5 October 2023 the further conduct of the proceedings in light of these submissions.

Kind regards,

For the Arbitral Tribunal



Presiding Arbitrator



12 September 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100icwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Dear Mesdames and Sirs,

We acknowledge receipt of Claimant's correspondence to the arbitral tribunal dated 11 September 2023.

We note Claimant's request that the arbitral tribunal authorizes new claims pursuant to Article 23 of the Rules.

As such, we understand that no action is required of the Secretariat at this time.

Should a party wish to commence a new arbitration, said party should submit a Request for Arbitration with the Secretariat pursuant to Article 4 of Rules.

As of October 2022, parties are encouraged to file their requests for arbitration electronically, using ICC's digital case management platform ICC Case Connect via the ICC website [here](#).

If for any reasons you could not file via ICC Case Connect, you can send your Request for Arbitration and the relevant exhibits by e-mail to rfa@iccwbo.org, the email address for the Headquarters in Paris. If you wish to send hard copies together with the electronic version, you can send them to any one of the Secretariat's offices (Article 4(4)(b)) as many copies as there are respondents.

The date of the commencement of the arbitration is the date on which the Request is received by the Secretariat.

The request to commence an arbitration must be accompanied by a filing fee of US\$5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs. If the Request for Arbitration is sent without payment of the filing fee, the acknowledged receipt of the Request for Arbitration will include a payment request.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

JULIA CLARA FASTTRACK
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
fasttrack@host.eq

Via Email

Arbitral Tribunal

cc.
Claimant
ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Request for authorization of new claim / consolidation of proceedings

2 October 2023

Dear Members of the Arbitral Tribunal,

1. Claimant's requests to either authorize its new claim into this arbitration proceedings or to consolidate a new arbitration with this arbitration are both legally and factually unjustified and should be rejected.
2. The non-payment of the second tranche of USD 12,000,000 is due to the non-compliance of the L-1 sensor with the contractual requirements. After the first tranche of USD 12,000,000 had been paid, Respondent discovered that a considerable number of the L-1 LIDAR sensors was defective. It informed Claimant about these defects by email of 4 April 2022 and announced that no further payment would be made (**Respondent Exhibit 5**). The notification is valid even if Respondent did not use the particular Notice of Defect form. In the discussion with Ms. Peugeotroen we agreed that an email would be sufficient for the notice in the case at hand. That agreement also removes the written form requirement for any amendments.
3. Until Claimant raised this claim for the first time on 11 September 2023 Respondent had been convinced that Claimant had accepted Respondent's position that no further payment would be due. That raises the question of whether the belated raising of the claim which is entirely due to internal problems of Claimant does not already preclude Claimant from raising it, as Respondent has by now resold most of the affected sensors.
4. At least the claim cannot be raised in the present arbitration. In their Terms of Reference, the Parties have exhaustively defined the issues to be determined which all relate to the Purchase Order 9601. The Terms of Reference state at the relevant part as follows:

V. Issues to be determined

[85] *The issues to be determined are not limited by the above summaries of the Parties' respective positions. Subject to any new claims (Article 23(4) of the ICC Rules), which will only be authorized if they result in noticeable savings in cost and time, and any further allegations, arguments, contentions and denials contained in submissions as will be made in the course of this arbitration, the Arbitral Tribunal may have to consider, in particular, the issues listed in this paragraph (but not necessarily all of these or only these, and not necessarily in the following order):*

- i. *Is Claimant entitled to payment under Purchase Order No. 9601 or was Respondent released by its payment to the new bank account in light of email received?*
- ii. *Which Party bears the costs of the arbitration?*

[86] *The questions of fact and of law to be decided by the Arbitral Tribunal in reaching a decision will be those appearing from the Parties' statements, submissions and pleadings, as well as any other questions of fact or law which the Arbitral Tribunal, in its own discretion, may deem necessary to decide upon for the purpose of rendering any arbitral award in this arbitration.*

5. By this provision, the Parties have raised the standard for the admission of new claims under Article 23(4) as well as under Article 6. As the new claims relate to an entirely different purchase order any possible saving which could result from the admission of the new claim is definitively not "noticeable". Furthermore, the new claim is based on a different arbitration agreement which deviates in several aspects from that on which the claims in the present arbitration are based.
6. As far as the requested consolidation is concerned, the Arbitral Tribunal lacks the power to do so. Article 10 ICC Arbitration Rules vests the power to consolidate two ICC arbitrations to the Court and does not authorize the Parties to deviate from those rules. Thus, the authorization in the Parties' arbitration agreement is invalid.
7. Furthermore, the above-mentioned practical considerations also apply to any consolidation. None of the requirements for a consolidation are met whether one considers the requirements contractually agreed on to be relevant or those in the ICC Arbitration Rules.

Kind regards,



Julia Clara Fasttrack



From: <william.toyoda@visionic.eq>
Sent: 4 April 2022, 10:45 a.m.
To: <armanda.peugeotroen@sensorx.me>
Subject: Notice of defect

Dear Ms. Peugeotroen,

We would like to inform you that a considerable number of the delivered L-1 sensors proved to be defective not reaching the full potential promised and thus are not suitable for our purposes.

We hope that we can find an amicable solution to that matter, and we await your proposal for a proper way to address the issue. Until that time we will withhold payment of the second installment of the payment.

Sincerely,

William Toyoda
(Head of Purchasing)

Visionic Ltd

Optronic Avenida 3

Oceanside

Equatoriana

T: (0)214 6698053

Email: william.toyoda@visionic.eq



Prof. Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By email

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

cc.

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

6 October 2023

Dear Colleagues,

The Arbitral Tribunal appreciates your cooperation during yesterday's TelCo.

Please find attached Procedural Order No. 1 which is based on the discussion during the TelCo.

Kind regards,

For the Arbitral Tribunal



Presiding Arbitrator

PROCEDURAL ORDER NO 1

of 6 October 2023

in the Arbitral Proceedings

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

1. After its constitution and receipt of the file from the Secretariat of the ICC Court, the Arbitral Tribunal had agreed with the Parties on 30 August 2023 on its Terms of Reference which were signed by all. On 11 September 2023, Claimant requested authorization of a new claim or subsidiarily the consolidation of the two arbitrations. Respondent rejected both requests in its submission of 2 October 2023.
2. At the Case Management Conference of 5 October 2023 the Arbitral Tribunal discussed with the Parties the consequences of Claimant's additional requests and Respondent's objections thereto, as well as the various options for structuring the arbitral proceedings in a cost and time-efficient manner, taking into account their conflicting interests. In light of this discussion, the Arbitral Tribunal has decided to limit the first part of the arbitration to the following issues:
 - Is Claimant entitled to payments for the delivery of sensors under Purchase Order No. 9601 and if so in what amount?
 - Can and should the additional payment claim raised under Purchase Order No. A-15604 be decided in this arbitration either as an extension or by way of consolidation?
3. In contrast, the merits of Claimant's additional payment claim, namely the claim of defective sensors, should not be dealt with in the Parties' submissions in the first part of the arbitration.
4. In light of these considerations the Arbitral Tribunal makes the following orders:
 - (1) In their next submissions and at the Oral Hearing in Vindobona (Hong Kong) the Parties are required to address the following issues:
 - a. Can and should the addition of the new claim to the pending arbitration be authorized?
 - b. Can and should the Arbitral Tribunal consolidate the arbitral proceedings, in case the new claim has to be raised in a separate arbitration?
 - c. Is Claimant entitled to payment of either the full amount or parts of the amount due as payment under Purchase Order No. 9601 or can Respondent invoke a violation of a contractual (information) duty or obligation or rely on a provision of the CISG to
 - i. entirely or at least
 - ii. partially defend itself against the claim for payment.

(2) For their submissions the following Procedural Timetable applies:



- a. Claimant's Submission: no later than 7 December 2023;
 - b. Respondent's Submission: no later than 18 January 2024.
- (3) The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference.
 - (4) It is undisputed between the Parties that Equatoriana, Mediterraneo and Danubia are Contracting States of the Convention on the Contracts for the International Sale of Goods (CISG) and Member States of the New York Convention. The general contract law of all three countries is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments (Article 7 – Option 1).
 - (5) Equatoriana is the only country which has adopted a data protection law imposing particular information or notification duties upon Parties which have been subject to a cyberattack involving a breach of data privacy. It is nearly a verbatim adoption of the European Union's General Data Protection Regulation (GDPR). By contrast in Mediterraneo and Danubia no explicit law exists.
 - (6) In the event, that the Parties need further information, Requests for Clarification must be made in accordance with para. 27 of the Rules of Moot no later than 27 October 2023 via their online party (team) account. No team is allowed to submit more than ten questions and all questions must contain an explanation why they are relevant.
 - (7) Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Parties involved and their business.
- (2) Questions relating to the negotiation, drafting and conclusion of the Framework Agreement.
- (3) Questions relating to cyberattacks on Respondent (2020) and Claimant (2022).
- (4) Questions relating to Purchase Order 9601 and the goods delivered thereunder.
- (5) Questions relating to Purchase Order 15604 and the goods delivered thereunder.
- (6) Questions relating to the negotiation, drafting and conclusion of the arbitration clause in the Framework Agreement.
- (7) Questions concerning the request to pay to a new bank account, the resulting communication and the payment.
- (8) Questions concerning the applicable laws and rules including the rejection of the initiative to create a data protection law in Mediterraneo.
- (9) Other questions.

5. The Parties have voiced concerns about data privacy and data security in this arbitration. To ensure the integrity and confidentiality of this arbitration, the Parties and Arbitrators agreed not to analyze any documents from this file or any elements thereof with Artificial Intelligence (AI) applications, or to train an AI application with any documents from this file or any elements thereof for any purpose. That includes not copying or pasting any passages of the file into a prompt.
6. Both Parties are invited to attend the Oral Hearing in Vindobona, Danubia (in Hong Kong). The details concerning the timing and the venue will be provided in due course.

Vindobona, 6 October 2023

For the Arbitral Tribunal



Prof. Giovanna Agnelli
Presiding Arbitrator

PROCEDURAL ORDER NO. 2

of 6 November 2023

in the Arbitral Proceedings:

- 1. What is the size of business of Claimant and of Respondent?** Claimant is part of family owned group of companies which has an overall annual turnover of 8 billion USD. Claimant itself had an annual turnover of 4 billion USD in 2022. It has grown considerably over the last three years through acquisitions which resulted in some integration problems but raised the annual turnover by 1 billion USD since 2019, primarily in the area of dual-use-sensors. Respondent is part of one of the largest Tier 1 producers in the automotive industry with an overall turnover of 48 billion USD in 2022, out of which Respondent generates 20 billion USD. Claimant considered Respondent to be an important customer with some potential for future expanded business.
- 2. Does SensorX have a subsidiary in Danubia?** Yes. That subsidiary SensorDanube has been acquired in 2019 to produce and distribute most of the dual use LIDAR sensors given that Danubia has a fairly liberal export restriction regime. SensorDanube has its bank account with the First Bank of Danubia. The L-1 sensors delivered under Purchase Order No. 15604 were, however, directly produced and delivered by SensorX.
- 3. Are the S4-25899 sensors specifically produced by the SensorX for Visionic?** No, they are sold to other Tier 1 producers as well.
- 4. How did Mr. Royce try to contact Ms. Audi after the email of 28 March 2022?** He tried to call her on her work mobile and was told by her voicemail that she would be out of office due to illness until 11 April 2022 and in urgent matters Ms. Peugeotroen could be contacted. As Mr. Royce considered that message to confirm the information in the email of 28 March 2022 he replied to that mail by using the reply function of the email application on his phone. That was in line with their normal communication practice which relied on email chains which were started for each new order or specific issue. In this regard receiving a separate email for the “new issue” of change of banking details was in line with such practice.
- 5. What were the exact circumstances of Ms. Audi’s departure from SensorX?** When the infiltration of Claimant’s IT system was discovered on 23 January 2022, Ms. Audi was quickly identified as the person responsible for the infiltration. Her clicking on and download of the “discount code” for the car race was a clear violation not only of Claimant’s cybersecurity guidelines, but also of the prohibition to use the computer for private matters. As a consequence of the stress associated with the incident, Ms Audi had a nervous breakdown on the first day of her holiday which was originally planned to last from 25 March until 11 April. The first notice of sick leave noted her absence until 11 April. It was then prolonged twice, first until 2 May and then until 23 May. Upon her return on 23 May, Claimant terminated her employment for cause because it was discovered that she had committed further serious breaches of the internal cybersecurity guidelines. In particular, she had regularly used the computer for private matter and had not updated her password for 3 years despite the clear instructions to do so. In the end, to find a face-saving solution for everyone it was agreed that the termination would only be effective from 1 July onwards but that Ms. Audi was immediately released from her duties and cut off from Claimant’s systems.
- 6. When was Respondent informed about the departure of Ms. Audi and its background?** In the Claimant’s settlement with Ms. Audi, it was agreed that in mid of June a prepared email

would be sent from Ms. Audi's account to inform her counterparts in other companies that Ms. Audi would leave Claimant with effect from 1 July 2022 and that the new person responsible for them would contact them within due time. Due to problems with the IT system which persisted until 30 June, the message only went out on 1 July 2022. Some of the background of the termination was disclosed by Mr. Gabrielson to Mr. Royce in their discussions concerning the lack of payment. In particular, he also showed Mr. Royce an out-of-office-reply he had received to an email from 25 March to Ms. Audi to support his submission that the email was a spoofmail.

7. **Was somebody responsible for Respondent's account at Sensor X during Ms. Audi's absence until her replacement with Mr. Gabrielson on 1 August?** During the planned holiday the primary point of contact internally would have been Ms. Peugeotroen. After Ms. Audi's suspension from mid- May due to her obvious non-compliance with the internal cybersecurity rules most of her customers were provisionally assigned to either Ms. Peugeotroen or Mr. Gabrielson. Due to the problems with the software, the difficult pregnancy of Ms. Peugeotroen, and the termination of Ms. Audi's contract on short notice, Claimant's sales department was extremely short on personal. It just concentrated on ensuring delivery of the goods sold and dealing with new orders coming in. The situation only improved by the end of the summer. Mr. Gabrielson, also handled the additional order for another 1,100,000 sensors which Respondent submitted on 20 July 2022, before he then officially took over Respondent as a key account from 1 August onwards.
8. **Are there written and signed documents regarding the agreements reached during the annual price fixing meetings in December?** The price fixing meeting were fairly informal and the prices as well as all other changes were agreed orally during the meetings. Respondent then circulated minutes of the meeting via email summarizing the results of the meeting in particular the oral agreements reached. These minutes bore no signature though it was clear from the email who prepared them. It was the common understanding of the Parties that Claimant would object to the minutes if it considered them to be incorrect but that otherwise no action was necessary.
9. **Was there any template agreed between the Parties for the purchase order?** No. Originally Respondent adapted its standard template which it also used for other suppliers to the Framework Agreement. Since the beginning of 2021 the standard template included a reference to ICC arbitration which Mr. Royce also included into the templates used in connection with the Framework Agreement. The same occurred at the beginning of 2022 when the payment terms in the standard template were changed to 30 days after delivery. All orders were normally prepared by the respective account managers, i.e. Mr. Royce for Claimant's sensors who also had the power to agree and make minor amendments to the template for individual orders. Irrespective of that the orders always bore the signature of Mr. Toyoda to avoid discussions of whether they had been placed by someone with authority to bind Visionic.
10. **Was the Purchase Order No. 9601 sent via electronic means of communication or in paper?** Via email as was most of the communications between Ms. Audi and Mr. Royce. Due to the trojan horse malware the entire email communication was accessible to the attacker.
11. **Did CLAIMANT send a letter of confirmation in reaction to purchase orders deviating from the Framework Agreement?** For Purchase Order No. 15604 and the other two orders concerning other sensors than the S4-25899, confirmation letters were sent. These orders had been subject to separate negotiations at the account manager level, with Ms. Durant leading the negotiations on Claimant's side for Order No. 15604. Order No. 9601 and the other seven orders of 2021, which contained the identical arbitration agreement as in Order No. 9601, were

just performed. The remaining orders relating to the S4-25899 sensor contained no further deviations from the Framework Agreement outside those foreseen in Art. 5.

12. **Had there been previous changes to the bank account specified by the Claimant for payment of the price before the phishing attack of 2022?** Yes. In Sept. 2020, in one of the orders relating to a different sensor and made in excess of the agreed maximum delivery obligation in Art. 3, the L-X Lidar sensors were delivered directly by Claimant's subsidiary SensorDanube which produced them. The parties had agreed in a signed side letter *inter alia* that 80 % of the amount due for that order would be paid directly to the bank account of SensorDanube and only 20 % to the bank accounts of SensorX. Furthermore, they agreed that the 90,000 units would not count towards Claimant's maximum delivery obligation.
13. **Who authorized and arranged for the shipment of the sensors under Purchase Order No. 9601?** Ms. Audi had made all necessary arrangements for the shipment of both installments already in late February. She was also responsible for verifying that payments were made.
14. **Were the payments under Purchase Order No. 9601 made 30 days after delivery?** Yes.
15. **Do the sensors under Purchase Order No. 9601 also have a dual-use in the sense of having potential military use like the LIDAR sensors?** No.
16. **Was RESPONDENT aware that the Law of Mediterraneo does not include a duty to inform equivalent to the one in the Equatorian Data Protection Act?** No.
17. **Did the Respondent have access to the article on cyberattacks in Automotive Weekly of 20 May 2022 (Respondent Exhibit R 3)?** Yes. Both parties have a subscription to the journal, which is the leading industry journal. It is not clear when Mr. Toyoda read the article. Mr. Royce only read it after his holiday at the beginning of July. When he tried to call Ms. Audi on 7 July to enquire whether the reported attack had any effect on their relationship, he was told that she had left the company. As there had not yet been any complaints by Claimant indicating that payments had not been effected, he did not pursue the matter any further.
18. **How are the tasks distributed between the heads of the Sales/Purchase Departments and their respective account managers?** The annual price negotiation in December are always conducted by the heads of department. They also get involved if the relevant account manager is not available or if a decision escalates up to them due to its importance, in particular if it has the potential to result in arbitral proceedings. By contrast the discussion of the individual orders, their placement, performance and payment are decided by the relevant account managers.
19. **What is the background of the consolidation provision in the arbitration clause of the Framework Agreement?** The consolidation option was included upon the insistence of Respondent. The proposal was a reaction to three ad-hoc proceedings which Respondent had to initiate against another supplier on the basis of arbitration clauses included in three orders of the same switch placed with that supplier. In Respondent's view the goods delivered under the three contracts suffered from the same defect, but as the tribunals considered themselves without power under Danubian law to consolidate the proceedings, Respondent had to initiate three separate proceedings which led to different results.
20. **What exactly were the Parties referring to when they use the terms "call-off plans," "purchase orders," and "Individual Contracts" in the Framework Agreement? Were these taken to mean the same?** The Framework Agreement is – with very few amendments – identical to the template Claimant uses in relation to other customers. The underlying idea is that at the December Price Fixing meeting the parties should also agree on non-binding "call-off plans" reflecting the projected need of the buyer over the year within the limits of the quantities covered by the Framework Agreement to facilitate production planning for the seller.

The exact number and dates of the goods to be delivered were then determined by the purchase orders to be placed by the buyer with the seller, which could deviate up to 15 % from the original projected plan without affecting the seller's delivery obligation. In case the parties wanted to deviate to a larger extent from the provisions of the Framework Agreement or wanted to apply it for other products individual contract should be drawn up by them.

21. **Are there any further clauses in the Framework Agreement dealing with general information duties, force majeure or cybersecurity issue?** No.
22. **Did the Framework Agreement contain a termination clause?** Yes. It gave each party the right to terminate the otherwise unlimited Framework Agreement with six months-written notice to a termination date of either 1 January or 1 July of the next year.
23. **Does any of the parties have a cybersecurity insurance which would cover the present case?** No. While both parties had such insurances neither of them covered the risk as they had both merely purchased the most basic protection against ransom ware attacks.
24. **What was Claimant's "new cybersecurity concept" mentioned by its new cybersecurity officer in its article in December 2021.** In light of the increasing number of cyberattacks on the automotive industry, Claimant had heavily invested into its information technology infrastructure and cybersecurity training. In March 2021 it appointed its newly established Chief Cybersecurity Officer (CCO). She ensured that all employees had to participate in a two-day intensive training, and were automatically enrolled in three monthly revision sessions. Randomly selected employees receive bi-weekly test emails which they need to classify and report to the CCO as a potential threat. An implementation of a two-factor authentication had been planned for June 2022.
25. **Why was the cyberattack of 5 January 2022 initially categorized as being of minor relevance?** There were three reasons for that obviously wrong categorization. First, it appeared that neither direct competitors nor foreign state entities were behind the attack. Second, the malware was – at least it seemed so – quickly detected and neutralized. Third, the malware did not appear to have had infiltrated parts of the systems that store sensitive personal data or any trade secrets. However, CyberSec failed to acknowledge that the customer relations management system had taken a hit, and the criminals managed to place sophisticated malware including a trojan horse there. That malware allowed the criminals to access all information available on Ms. Audi's email account, including the information used for the phishing email of 28 March 2022 and the ensuing correspondence. It was then also responsible for the later encryption in May. Only then was it discovered by the joint efforts of CyberSec and the governmental security unit.
26. **Did Claimant make any public announcements about its 2022 data breach?** No. After Claimant's internal planning and accounting system went down on 15 March 2022 there was an internal order that all account managers should contact their counterparts, inform them about the attack and find ways how to proceed as long as the system was down. As Ms. Audi was on sick leave and never actually returned to work Respondent was not contacted due to the general shortage of personnel and the disruption created by the cyberattack. Furthermore, Claimant informed the authorities, asked for help and discussed with them whether to pay the ransom. That is the information which had been leaked to Automotive Weekly.
27. **When was the agreement regarding the notice of defect and the removal of the written form requirement for any amendment made and in what form?** Following the discovery of the defects on 20 March 2022, the relevant person at Respondent's side first informed Mr Toyoda to decide what should happen to the first payment which had just been made. Mr. Toyoda then contacted Ms. Peugeotroen via phone to discuss the possible options. It was agreed

during their conversation that Mr. Toyoda would send an informal email following up on the discussion and Ms. Peugeotroen would then discuss that with her superiors. Since Respondent had the internal status of a potential A customer all potentially critical issues in the relationship had to be escalated to Ms. Durant.

28. **Did the email of 4 April 2022 (Exhibit R 5) reach Ms. Peugeotroen despite the wrong spelling of her name?** Yes, after being informed that the email could not be delivered, Mr. Toyoda resent it to the correct address on the same day.
29. **Is there any explanation why the missing payment was not discovered during the annual audit of the Claimant?** As a consequence of the cyberattack and the encryption, Claimant suffered of a loss of data in parts of its accounting system. The relevant information had to be provided by the account manager or to be deduced from available email communication. As Ms. Peugeotroen was not available, it was only discovered in 2023 that also one of her transactions had been affected by a loss of data.
30. **Did Ms. Peugeotroen inform the new account manager about the previous orders?** No. Due to the particular circumstance of her pregnancy and the IT-problems, the planned proper hand-over never took place. Ms. Peugeotroen had to be taken to the hospital on 15 April 2022 in an emergency with a serious threat to her life and that of the twins. She then had to stay there until she gave early birth to twins on 22 May 2022.
31. **Would the Claimant have been able to resell the sensors alleged to be defective by the Respondent to another party?** Yes. Claimant was primarily interested in their ability to operate in conditions with little or no light. The deficiency of the sensor was limited to that aspect so that they could be used other for other purposes.
32. **Has the number of arbitrators in the arbitration agreement of Purchase Order A-15604 been a particular topic during negotiations between the parties?** No. The Parties merely copied the ICC-Model Clause in this respect.
33. **Why did CLAIMANT's legal department choose to exclude the Emergency Arbitrator rules from the dispute resolution clause in Purchase Order A-15604?** The background to that decision was information which the inhouse counsel in charge had received from a good friend in the legal department of another supplier. That friend had reported about bad experience with an “expensive and entirely useless emergency arbitration” and his decision to exclude an emergency arbitrator in any of his future arbitration clauses. As the inhouse counsel lacked any own experience in arbitration and on the basis of the information about the problems in enforcing measures ordered by an emergency arbitrator, he had advised Ms. Durant to exclude the emergency arbitration option. Respondent had no problems with that proposal.
34. **Did the parties agree on a procedural timetable in connection with their Terms of Reference?** Yes. For the original claims under Purchase Order No. 9601 the procedural timetable has not been altered. Only for an eventual second phase of the arbitration a new procedural timetable would have to be agreed. The timetable did not exclude any explicit cut-off date for the submission of new claims or evidence.
35. **Which arbitration agreement was mentioned in the Terms of Reference?** The Terms of Reference reproduced the arbitration clause in Purchase Order No. 9601 and then stated that “[f]urthermore, Claimant referred to the Article 41 of the Framework Agreement”. The place of arbitration mentioned in the ToR was “Vindobona, Danubia”.
36. **Are there any specific qualification of the arbitrators which influenced their appointment?** All three arbitrators have extensive experience in the automotive industry. Dr.

Chevy has particular expertise in the area of autonomous driving, including the sensor technology. Mr. Klement has a background in data privacy and cybersecurity.

37. **Do Articles 3, 4, 33, 34, 82 and 83 of the EU GDPR exactly match the data privacy law in Equatoriana?** Yes (with the required amendments concerning the territorial scope).
38. **Is the CISG directly applicable in Danubia and is Danubia an unitary state?** Yes.
39. **Has either of the States involved declared a reservation under Arts 92 et seq.?** No.
40. **Does the full amount in issue 3 include only the USD 38,400,000 under Purchase Order NO. 9601?** Yes.
41. **Can it be assumed that Claimant will take the required steps to initiate a separate arbitration to raise the additional claim, should the conditional request of 2 October 2023 be considered insufficient for the initiation of that arbitration?** Yes.
42. **Are the Parties expected to address the exact proportion of shares in terms of their liability for the purposes of Respondent’s partial defence from Claimant’s claim of non-performance?** No.
43. **Claimant would like to make the following corrections and clarifications to its submissions:**

In the Request for Arbitration the following corrections are necessary

- a. In para. 7 it should read “2,500,000” and “800,000” (instead of 250,000 and 80,000)
 - b. In para. 8 it should read “Article 7” (instead of Article 5)
 - c. In para. 12 it should read “1 December 2021” (instead of 2 December 2021)
 - d. In para. 9 of the “Request for authorization of new claim ...” the reference should be to “Article 10 (a) - (c)”
 - e. Exhibit C 8 para. 7 the missing payment was only discovered on 8 September 2023 (instead of 1 September).
44. **Respondent would like to make the following corrections and clarifications to its submissions:**

In the Response to the Arbitration the following corrections are necessary:

- a. In Exhibit R 4 para. 5 the last word should be “**her**” (instead of here).

Vindobona, 6 November 2023

For the Arbitral Tribunal



Presiding Arbitrator

2

ICC Rules



International
Court of Arbitration® | International
Centre for ADR
Leading Dispute Resolution Worldwide

Arbitration Rules

In force as from 1 January 2021

Mediation Rules

In force as from 1 January 2014

A decorative graphic at the bottom of the page. It features a solid black vertical bar on the left side. The rest of the bottom half is a large blue area with several white, curved, overlapping shapes that resemble stylized waves or abstract architectural forms.

TABLE OF CONTENTS

ARBITRATION RULES	09
Introductory Provisions	10
Article 1 International Court of Arbitration	10
Article 2 Definitions	11
Article 3 Written Notifications or Communications; Time Limits	11
Commencing the Arbitration	13
Article 4 Request for Arbitration	13
Article 5 Answer to the Request; Counterclaims	14
Article 6 Effect of the Arbitration Agreement	16
Multiple Parties, Multiple Contracts and Consolidation	19
Article 7 Joinder of Additional Parties	19
Article 8 Claims Between Multiple Parties	20
Article 9 Multiple Contracts	21
Article 10 Consolidation of Arbitrations	21
The Arbitral Tribunal	22
Article 11 General Provisions	22
Article 12 Constitution of the Arbitral Tribunal	23
Article 13 Appointment and Confirmation of the Arbitrators	24
Article 14 Challenge of Arbitrators	26
Article 15 Replacement of Arbitrators	27
The Arbitral Proceedings	28
Article 16 Transmission of the File to the Arbitral Tribunal	28
Article 17 Party Representation	28
Article 18 Place of the Arbitration	28
Article 19 Rules Governing the Proceedings	29
Article 20 Language of the Arbitration	29
Article 21 Applicable Rules of Law	29
Article 22 Conduct of the Arbitration	30
Article 23 Terms of Reference	30
Article 24 Case Management Conference and Procedural Timetable	32
Article 25 Establishing the Facts of the Case	32
Article 26 Hearings	33
Article 27 Closing of the Proceedings and Date for Submission of Draft Awards	34
Article 28 Conservatory and Interim Measures	34
Article 29 Emergency Arbitrator	35
Article 30 Expedited Procedure	36

Awards	38
Article 31	Time Limit for the Final Award 38
Article 32	Making of the Award 38
Article 33	Award by Consent 38
Article 34	Scrutiny of the Award by the Court 39
Article 35	Notification, Deposit and Enforceability of the Award 39
Article 36	Correction and Interpretation of the Award; Additional Award; Remission of Awards 40
Costs	42
Article 37	Advance to Cover the Costs of the Arbitration 42
Article 38	Decision as to the Costs of the Arbitration 43
Miscellaneous	45
Article 39	Modified Time Limits 45
Article 40	Waiver 45
Article 41	Limitation of Liability 45
Article 42	General Rule 46
Article 43	Governing Law and Settlement of Disputes 46
Appendix I - Statutes of the International Court of Arbitration	47
Article 1	Function 47
Article 2	Composition of the Court 47
Article 3	Appointment 47
Article 4	Committees 48
Article 5	Special Committees 49
Article 6	Single-member Committees 49
Article 7	Plenary of the Court 49
Article 8	Confidentiality 50
Article 9	Modification of the Rules of Arbitration 50
Article 10	50
Appendix II - Internal Rules of the International Court of Arbitration	51
Article 1	Confidential Character of the Work of the International Court of Arbitration 51
Article 2	Participation of Members of the International Court of Arbitration in ICC Arbitration 52

TABLE OF CONTENTS

Article 3	Relations Between the Members of the Court and the ICC National Committees and Groups	53
Article 4	Constitution, Quorum and Decision-Making	53
Article 5	Communication of Reasons of Decisions	54
Article 6	Court Secretariat	55
Article 7	Scrutiny of Arbitral Awards	55
Appendix III - Arbitration Costs and Fees		56
Article 1	Advance on Costs	56
Article 2	Costs and Fees	58
Article 3	Scales of Administrative Expenses and Arbitrator's Fees	60
Appendix IV - Case Management Techniques		67
Appendix V - Emergency Arbitrator Rules		69
Article 1	Application for Emergency Measures	69
Article 2	Appointment of the Emergency Arbitrator; Transmission of the File	71
Article 3	Challenge of an Emergency Arbitrator	72
Article 4	Place of the Emergency Arbitrator Proceedings	72
Article 5	Proceedings	72
Article 6	Order	73
Article 7	Costs of the Emergency Arbitrator Proceedings	74
Article 8	General Rule	75
Appendix VI - Expedited Procedure Rules		76
Article 1	Application of the Expedited Procedure Rules	76
Article 2	Constitution of the Arbitral Tribunal	77
Article 3	Proceedings	77
Article 4	Award	78
Article 5	General Rule	78
ARBITRATION CLAUSES		79

ARTICLE 1

International Court of Arbitration

- 1 The International Court of Arbitration (the “Court”) of the International Chamber of Commerce (“ICC”) is the independent arbitration body of ICC. The statutes of the Court are set forth in Appendix I.
- 2 The Court does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC (the “Rules”). The Court is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. It draws up its own internal rules, which are set forth in Appendix II (the “Internal Rules”).
- 3 The President of the Court (the “President”) shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court at one of its next sessions. At the President’s request, in the President’s absence or otherwise where the President is unable to act, one of the Vice-Presidents shall have the same power.
- 4 As provided for in the Internal Rules, the Court may delegate to one or more committees composed of its members the power to take certain decisions, provided that any such decision is reported to the Court at one of its next sessions.
- 5 The Court is assisted in its work by the Secretariat of the Court (the “Secretariat”) under the direction of its Secretary General (the “Secretary General”).

ARTICLE 2

Definitions

In the Rules:

- (i) “arbitral tribunal” includes one or more arbitrators;
- (ii) “claimant” includes one or more claimants, “respondent” includes one or more respondents, and “additional party” includes one or more additional parties;
- (iii) “party” or “parties” include claimants, respondents or additional parties;
- (iv) “claim” or “claims” include any claim by any party against any other party;
- (v) “award” includes, *inter alia*, an interim, partial, final, or additional award.

ARTICLE 3

Written Notifications or Communications; Time Limits

- 1 Save as otherwise provided in Articles 4(4)(b) and 5(3), all pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party, each arbitrator, and the Secretariat. Any notification or communication from the arbitral tribunal to the parties shall also be sent in copy to the Secretariat.
- 2 All notifications or communications from the Secretariat and the arbitral tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by any other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof.
- 3 A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with Article 3(2).

- 4 Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 3(3). When the day next following such date is an official holiday, or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

ARTICLE 4

Request for Arbitration

- 1 A party wishing to have recourse to arbitration under the Rules shall submit its Request for Arbitration (the “Request”) to the Secretariat at any of the offices specified in the Internal Rules. The Secretariat shall notify the claimant and respondent of the receipt of the Request and the date of such receipt.
- 2 The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.
- 3 The Request shall contain the following information:
 - a) the name in full, description, address and other contact details of each of the parties;
 - b) the name in full, address and other contact details of any person(s) representing the claimant in the arbitration;
 - c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
 - d) a 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;
 - e) any relevant agreements and, in particular, the arbitration agreement(s);
 - f) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;
 - g) all relevant particulars and any observations or proposals concerning the number of arbitrators and their choice in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and

ICC ARBITRATION RULES

COMMENCING THE ARBITRATION

- h) all relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.

The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.

- 4 Together with the Request, the claimant shall:
 - a) make payment of the filing fee required by Appendix III (“Arbitration Costs and Fees”) in force on the date the Request is submitted; and
 - b) submit a sufficient number of copies of the Request for each other party, each arbitrator and the Secretariat where the claimant requests transmission of the Request by delivery against receipt, registered post or courier.

In the event that the claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the claimant’s right to submit the same claims at a later date in another Request.

- 5 The Secretariat shall transmit a copy of the Request and the documents annexed thereto to the respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee.

ARTICLE 5

Answer to the Request; Counterclaims

- 1 Within 30 days from receipt of the Request from the Secretariat, the respondent shall submit an Answer (the “Answer”) which shall contain the following information:
 - a) its name in full, description, address and other contact details;
 - b) the name in full, address and other contact details of any person(s) representing the respondent in the arbitration;

- c) its comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;
- d) its response to the relief sought;
- e) any observations or proposals concerning the number of arbitrators and their choice in light of the claimant's proposals and in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and
- f) any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.

The respondent may submit such other documents or information with the Answer as it considers appropriate or as may contribute to the efficient resolution of the dispute.

- 2 The Secretariat may grant the respondent an extension of the time for submitting the Answer, provided the application for such an extension contains the respondent's observations or proposals concerning the number of arbitrators and their choice and, where required by Articles 12 and 13, the nomination of an arbitrator. If the respondent fails to do so, the Court shall proceed in accordance with the Rules.
- 3 The Answer shall be submitted in a sufficient number of copies for each other party, each arbitrator and the Secretariat where the respondent requests transmission thereof by delivery against receipt, registered post or courier.
- 4 The Secretariat shall communicate the Answer and the documents annexed thereto to all other parties.
- 5 Any counterclaims made by the respondent shall be submitted with the Answer and shall provide:
 - a) a description of the nature and circumstances of the dispute giving rise to the counterclaims and of the basis upon which the counterclaims are made;
 - b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims;

- c) any relevant agreements and, in particular, the arbitration agreement(s); and
- d) where counterclaims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim is made.

The respondent may submit such other documents or information with the counterclaims as it considers appropriate or as may contribute to the efficient resolution of the dispute.

- 6 The claimant shall submit a reply to any counterclaim within 30 days from receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the file to the arbitral tribunal, the Secretariat may grant the claimant an extension of time for submitting the reply.

ARTICLE 6

Effect of the Arbitration Agreement

- 1 Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted *ipso facto* to the Rules in effect on the date of commencement of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
- 2 By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Court.
- 3 If any party against which a claim has been made does not submit an Answer, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement or concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the arbitral tribunal, unless the Secretary General refers the matter to the Court for its decision pursuant to Article 6(4).

- 4 In all cases referred to the Court under Article 6(3), the Court shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that the Court is *prima facie* satisfied that an arbitration agreement under the Rules may exist. In particular:
 - (i) where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Article 7(1), with respect to which the Court is *prima facie* satisfied that an arbitration agreement under the Rules that binds them all may exist; and
 - (ii) where claims pursuant to Article 9 are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the Court is *prima facie* satisfied
 - (a) that the arbitration agreements under which those claims are made may be compatible, and
 - (b) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration.

The Court's decision pursuant to Article 6(4) is without prejudice to the admissibility or merits of any party's plea or pleas.

- 5 In all matters decided by the Court under Article 6(4), any decision as to the jurisdiction of the arbitral tribunal, except as to parties or claims with respect to which the Court decides that the arbitration cannot proceed, shall then be taken by the arbitral tribunal itself.
- 6 Where the parties are notified of the Court's decision pursuant to Article 6(4) that the arbitration cannot proceed in respect of some or all of them, any party retains the right to ask any court having jurisdiction whether or not, and in respect of which of them, there is a binding arbitration agreement.
- 7 Where the Court has decided pursuant to Article 6(4) that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.

ICC ARBITRATION RULES

COMMENCING THE ARBITRATION

- 8 If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.
- 9 Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

ARTICLE 7

Joinder of Additional Parties

- 1 A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the “Request for Joinder”) to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of Articles 6(3)–6(7) and 9. Unless all parties, including the additional party, otherwise agree, or as provided for in Article 7(5), no additional party may be joined after the confirmation or appointment of any arbitrator. The Secretariat may fix a time limit for the submission of a Request for Joinder.
- 2 The Request for Joinder shall contain the following information:
 - a) the case reference of the existing arbitration;
 - b) the name in full, description, address and other contact details of each of the parties, including the additional party; and
 - c) the information specified in Article 4(3), subparagraphs c), d), e) and f).

The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.
- 3 The provisions of Articles 4(4) and 4(5) shall apply, *mutatis mutandis*, to the Request for Joinder.
- 4 The additional party shall submit an Answer in accordance, *mutatis mutandis*, with the provisions of Articles 5(1)–5(4). The additional party may make claims against any other party in accordance with the provisions of Article 8.

- 5 Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has *prima facie* jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.

ARTICLE 8

Claims Between Multiple Parties

- 1 In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 6(3)–6(7) and 9 and provided that no new claims may be made after the Terms of Reference are signed or approved by the Court without the authorization of the arbitral tribunal pursuant to Article 23(4).
- 2 Any party making a claim pursuant to Article 8(1) shall provide the information specified in Article 4(3), subparagraphs c), d), e) and f).
- 3 Before the Secretariat transmits the file to the arbitral tribunal in accordance with Article 16, the following provisions shall apply, *mutatis mutandis*, to any claim made: Article 4(4) subparagraph b); Article 4(5); Article 5(1) except for subparagraphs a), b), e) and f); Article 5(2); Article 5(3) and Article 5(4). Thereafter, the arbitral tribunal shall determine the procedure for making a claim.

ARTICLE 9

Multiple Contracts

Subject to the provisions of Articles 6(3)–6(7) and 23(4), claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.

ARTICLE 10

Consolidation of Arbitrations

The Court may, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:

- a) the parties have agreed to consolidation; or
- b) all of the claims in the arbitrations are made under the same arbitration agreement or agreements; or
- c) the claims in the arbitrations are not made under the same arbitration agreement or agreements, but the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.

In deciding whether to consolidate, the Court may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.

When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

ARTICLE 11

General Provisions

- 1 Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
- 2 Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
- 3 An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.
- 4 The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.
- 5 By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.
- 6 Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13.
- 7 In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration.

ARTICLE 12

Constitution of the Arbitral Tribunal

Number of Arbitrators

- 1 The disputes shall be decided by a sole arbitrator or by three arbitrators.
- 2 Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such case, the claimant shall nominate an arbitrator within 15 days from receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within 15 days from receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.

Sole Arbitrator

- 3 Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been received by the other party or parties, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Court.

Three Arbitrators

- 4 Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.
- 5 Where the dispute is to be referred to three arbitrators, the third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 13. Should such procedure not result in a nomination within 30 days from the

confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court.

- 6 Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.
- 7 Where an additional party has been joined (Article 7(1)), and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation pursuant to Article 13 and subject to Article 7(5).
- 8 In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.
- 9 Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the Court may appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.

ARTICLE 13

Appointment and Confirmation of the Arbitrators

- 1 In confirming or appointing arbitrators, the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules. The same shall apply where the Secretary General confirms arbitrators pursuant to Article 13(2).

- 2 The Secretary General may confirm as co-arbitrators, sole arbitrators and presidents of arbitral tribunals persons nominated by the parties or pursuant to their particular agreements, provided that the statement they have submitted contains no qualification regarding impartiality or independence or that a qualified statement regarding impartiality or independence has not given rise to objections. Such confirmation shall be reported to the Court at one of its next sessions. If the Secretary General considers that a co-arbitrator, sole arbitrator or president of an arbitral tribunal should not be confirmed, the matter shall be submitted to the Court.
- 3 Where the Court is to appoint an arbitrator, it shall make the appointment upon proposal of an ICC National Committee or Group that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee or Group fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request, request a proposal from another National Committee or Group that it considers to be appropriate, or appoint directly any person whom it regards as suitable.
- 4 The Court may also appoint directly to act as arbitrator any person whom it regards as suitable where:
 - a) one or more of the parties is a state or may be considered to be a state entity;
 - b) the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no National Committee or Group; or
 - c) the President certifies to the Court that circumstances exist which, in the President's opinion, make a direct appointment necessary and appropriate.

- 5 Where the Court is to appoint the sole arbitrator or the president of the arbitral tribunal, such sole arbitrator or president of the arbitral tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the Secretariat, the sole arbitrator or the president of the arbitral tribunal may be chosen from a country of which any of the parties is a national.
- 6 Whenever the arbitration agreement upon which the arbitration is based arises from a treaty, and unless the parties agree otherwise, no arbitrator shall have the same nationality of any party to the arbitration.

ARTICLE 14

Challenge of Arbitrators

- 1 A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.
- 2 For a challenge to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.
- 3 The Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

ARTICLE 15

Replacement of Arbitrators

- 1 An arbitrator shall be replaced upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon acceptance by the Court of a request of all the parties.
- 2 An arbitrator shall also be replaced on the Court's own initiative when it decides that the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
- 3 When, on the basis of information that has come to its attention, the Court considers applying Article 15(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.
- 4 When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.
- 5 Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 15(1) or 15(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

ARTICLE 16

Transmission of the File to the Arbitral Tribunal

The Secretariat shall transmit the file to the arbitral tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.

ARTICLE 17

Party Representation

- 1 Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation.
- 2 The arbitral tribunal may, once constituted and after it has afforded an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.
- 3 At any time after the commencement of the arbitration, the arbitral tribunal or the Secretariat may require proof of the authority of any party representatives.

ARTICLE 18

Place of the Arbitration

- 1 The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.
- 2 The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.
- 3 The arbitral tribunal may deliberate at any location it considers appropriate.

ARTICLE 19

Rules Governing the Proceedings

The proceedings before the arbitral tribunal shall be governed by the Rules and, where the Rules are silent, by any rules which the parties or, failing them, the arbitral tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

ARTICLE 20

Language of the Arbitration

In the absence of an agreement by the parties, the arbitral tribunal shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract.

ARTICLE 21

Applicable Rules of Law

- 1 The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.
- 2 The arbitral tribunal shall take account of the provisions of the contract, if any, between the parties and of any relevant trade usages.
- 3 The arbitral tribunal shall assume the powers of an *amiable compositeur* or decide *ex aequo et bono* only if the parties have agreed to give it such powers.

ARTICLE 22

Conduct of the Arbitration

- 1 The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.
- 2 In order to ensure effective case management, after consulting the parties, the arbitral tribunal shall adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties. Such measures may include one or more of the case management techniques described in Appendix IV.
- 3 Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
- 4 In all cases, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
- 5 The parties undertake to comply with any order made by the arbitral tribunal.

ARTICLE 23

Terms of Reference

- 1 As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:
 - a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;
 - b) the addresses to which notifications and communications arising in the course of the arbitration may be made;

- c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
 - d) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;
 - e) the names in full, address and other contact details of each of the arbitrators;
 - f) the place of the arbitration; and
 - g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as *amiable compositeur* or to decide *ex aequo et bono*.
- 2 The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days from the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
 - 3 If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference have been signed in accordance with Article 23(2) or approved by the Court, the arbitration shall proceed.
 - 4 After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

ARTICLE 24

Case Management Conference and Procedural Timetable

- 1 When drawing up the Terms of Reference or as soon as possible thereafter, the arbitral tribunal shall hold a case management conference to consult the parties on procedural measures that may be adopted pursuant to Article 22(2).
- 2 During such conference, or as soon as possible thereafter, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the efficient conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.
- 3 To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.
- 4 Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

ARTICLE 25

Establishing the Facts of the Case

- 1 The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
- 2 The arbitral tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.

- 3 The arbitral tribunal, after consulting the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity to question at a hearing any such expert.
- 4 At any time during the proceedings, the arbitral tribunal may summon any party to provide additional evidence.
- 5 The arbitral tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

ARTICLE 26

Hearings

- 1 A hearing shall be held if any of the parties so requests or, failing such a request, if the arbitral tribunal on its own motion decides to hear the parties. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it. The arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication.
- 2 If any of the parties, although duly summoned, fails to appear without valid excuse, the arbitral tribunal shall have the power to proceed with the hearing.
- 3 The arbitral tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitral tribunal and the parties, persons not involved in the proceedings shall not be admitted.
- 4 The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.

ARTICLE 27

Closing of the Proceedings and Date for Submission of Draft Awards

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:

- a) declare the proceedings closed with respect to the matters to be decided in the award; and
- b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34.

After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.

ARTICLE 28

Conservatory and Interim Measures

- 1 Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the arbitral tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The arbitral tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an award, as the arbitral tribunal considers appropriate.
- 2 Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.

ARTICLE 29

Emergency Arbitrator

- 1 A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal (“Emergency Measures”) may make an application for such measures pursuant to the Emergency Arbitrator Rules in Appendix V. Any such application shall be accepted only if it is received by the Secretariat prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 and irrespective of whether the party making the application has already submitted its Request for Arbitration.
- 2 The emergency arbitrator’s decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.
- 3 The emergency arbitrator’s order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.
- 4 The arbitral tribunal shall decide upon any party’s requests or 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 order.
- 5 Articles 29(1)-29(4) and the Emergency Arbitrator Rules set forth in Appendix V (collectively the “Emergency Arbitrator Provisions”) shall apply only to parties that are either signatories of the arbitration agreement under the Rules that is relied upon for the application or successors to such signatories.

- 6 The Emergency Arbitrator Provisions shall not apply if:
 - a) the arbitration agreement under the Rules was concluded before 1 January 2012;
 - b) the parties have agreed to opt out of the Emergency Arbitrator Provisions; or
 - c) the arbitration agreement upon which the application is based arises from a treaty.
- 7 The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat.

ARTICLE 30

Expedited Procedure

- 1 By agreeing to arbitration under the Rules, the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the “Expedited Procedure Provisions”) shall take precedence over any contrary terms of the arbitration agreement.
- 2 The Expedited Procedure Rules set forth in Appendix VI shall apply if:
 - a) the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of that Appendix; or
 - b) the parties so agree.

- 3 The Expedited Procedure Provisions shall not apply if:
 - a) the arbitration agreement under the Rules was concluded before the date on which the Expedited Procedure Provisions came into force;
 - b) the parties have agreed to opt out of the Expedited Procedure Provisions; or
 - c) the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.

ARTICLE 31

Time Limit for the Final Award

- 1 The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2).
- 2 The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

ARTICLE 32

Making of the Award

- 1 When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone.
- 2 The award shall state the reasons upon which it is based.
- 3 The award shall be deemed to be made at the place of the arbitration and on the date stated therein.

ARTICLE 33

Award by Consent

If the parties reach a settlement after the file has been transmitted to the arbitral tribunal in accordance with Article 16, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the arbitral tribunal agrees to do so.

ARTICLE 34

Scrutiny of the Award by the Court

Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.

ARTICLE 35

Notification, Deposit and Enforceability of the Award

- 1 Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal, provided always that the costs of the arbitration have been fully paid to ICC by the parties or by one of them.
- 2 Additional copies certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else.
- 3 By virtue of the notification made in accordance with Article 35(1), the parties waive any other form of notification or deposit on the part of the arbitral tribunal.
- 4 An original of each award made in accordance with the Rules shall be deposited with the Secretariat.
- 5 The arbitral tribunal and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.
- 6 Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

ARTICLE 36

Correction and Interpretation of the Award; Additional Award; Remission of Awards

- 1 On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days from notification of the award by the Secretariat pursuant to Article 35(1).
- 2 Any application of a party for the correction of an error of the kind referred to in Article 36(1), or for the interpretation of an award, must be made to the Secretariat within 30 days from receipt of the award by such party.
- 3 Any application of a party for an additional award as to claims made in the arbitral proceedings which the arbitral tribunal has omitted to decide must be made to the Secretariat within 30 days from receipt of the award by such party.
- 4 After transmission of an application pursuant to Articles 36(2) or 36(3) to the arbitral tribunal, the latter shall grant the other party or parties a short time limit, normally not exceeding 30 days, from receipt of the application by that party or parties, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days from expiry of the time limit for the receipt of any comments from the other party or parties or within such other period as the Court may decide. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the award. A decision to grant the application under paragraph 3 shall take the form of an additional award. The provisions of Articles 32, 34 and 35 shall apply *mutatis mutandis*.

- 5 Where a court remits an award to the arbitral tribunal, the provisions of Articles 32, 34, 35 and this Article 36 shall apply *mutatis mutandis* to any addendum or award made pursuant to the terms of such remission. The Court may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional ICC administrative expenses.

ARTICLE 37

Advance to Cover the Costs of the Arbitration

- 1 After receipt of the Request, the Secretary General may request the claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration
 - a) until the Terms of Reference have been drawn up; or
 - b) when the Expedited Procedure Provisions apply, until the case management conference.

Any provisional advance paid will be considered as a partial payment by the claimant of any advance on costs fixed by the Court pursuant to this Article 37.

- 2 As soon as practicable, the Court shall fix the advance on costs in an amount likely to cover the fees and expenses of the arbitrators, the ICC administrative expenses and any other expenses incurred by ICC related to the arbitration for the claims which have been referred to it by the parties, unless any claims are made under Article 7 or 8 in which case Article 37(4) shall apply. The advance on costs fixed by the Court pursuant to this Article 37(2) shall be payable in equal shares by the claimant and the respondent.
- 3 Where counterclaims are submitted by the respondent under Article 5 or otherwise, the Court may fix separate advances on costs for the claims and the counterclaims. When the Court has fixed separate advances on costs, each of the parties shall pay the advance on costs corresponding to its claims.
- 4 Where claims are made under Article 7 or 8, the Court shall fix one or more advances on costs that shall be payable by the parties as decided by the Court. Where the Court has previously fixed any advance on costs pursuant to this Article 37, any such advance shall be replaced by the advance(s) fixed pursuant to this Article 37(4), 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 Court pursuant to this Article 37(4).

- 5 The amount of any advance on costs fixed by the Court pursuant to this Article 37 may be subject to readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.
- 6 When a request for an advance on costs has not been complied with, and after consultation with the arbitral tribunal, the Secretary General may direct the arbitral tribunal to suspend its work and set a time limit, which must be not less than 15 days, on the expiry of which the relevant claims shall be considered as withdrawn. Should the party in question wish to object to this measure, it must make a request within the aforementioned period for the matter to be decided by the Court. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.
- 7 If one of the parties claims a right to a set-off with regard to any claim, such set-off shall be taken into account in determining the advance to cover the costs of the arbitration in the same way as a separate claim insofar as it may require the arbitral tribunal to consider additional matters.

ARTICLE 38

Decision as to the Costs of the Arbitration

- 1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scales in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.
- 2 The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case.
- 3 At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.

- 4 The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.
- 5 In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
- 6 In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal. If the arbitral tribunal has not been constituted at the time of such withdrawal or termination, any party may request the Court to proceed with the constitution of the arbitral tribunal in accordance with the Rules so that the arbitral tribunal may make decisions as to costs.

ARTICLE 39

Modified Time Limits

- 1 The parties may agree to shorten the various time limits set out in the Rules. Any such agreement entered into subsequent to the constitution of an arbitral tribunal shall become effective only upon the approval of the arbitral tribunal.
- 2 The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 39(1) if it decides that it is necessary to do so in order that the arbitral tribunal and the Court may fulfil their responsibilities in accordance with the Rules.

ARTICLE 40

Waiver

A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of the Rules, or of any other rules applicable to the proceedings, any direction given by the arbitral tribunal, or any requirement under the arbitration agreement relating to the constitution of the arbitral tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

ARTICLE 41

Limitation of Liability

The arbitrators, any person appointed by the arbitral tribunal, the emergency arbitrator, the Court and its members, ICC and its employees, and the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

ARTICLE 42

General Rule

In all matters not expressly provided for in the Rules, the Court and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to make sure that the award is enforceable at law.

ARTICLE 43

Governing Law and Settlement of Disputes

Any claims arising out of or in connection with the administration of the arbitration proceedings by the Court under the Rules shall be governed by French law and settled by the Paris Judicial Tribunal (*Tribunal Judiciaire de Paris*) in France, which shall have exclusive jurisdiction.

ARTICLE 1

Function

- 1 The function of the International Court of Arbitration of the International Chamber of Commerce (the “Court”) is to ensure the application of the Rules of Arbitration of ICC, and it has all the necessary powers for that purpose.
- 2 As an autonomous body, it carries out these functions in complete independence from ICC and its organs.
- 3 Its members are independent from the ICC National Committees and Groups.

ARTICLE 2

Composition of the Court

The Court shall consist of a President, Vice-Presidents, and members and alternate members (collectively designated as members). In its work it is assisted by its Secretariat (Secretariat of the Court).

ARTICLE 3

Appointment

- 1 The President is elected by the ICC World Council upon the recommendation of the Executive Board of ICC based on the proposal of an independent selection committee which includes highly distinguished arbitration practitioners.
- 2 On the proposal of the President, the ICC World Council appoints the Vice-Presidents of the Court from among the members of the Court or otherwise. The President and the Vice-Presidents of the Court form the Bureau of the Court.

ICC ARBITRATION RULES
APPENDIX I - STATUTES OF THE INTERNATIONAL
COURT OF ARBITRATION

- 3 The members of the Court are appointed by the ICC World Council on the proposal of ICC National Committees or Groups, one member for each National Committee or Group. On the proposal of the President, the World Council may appoint alternate members.
- 4 On the proposal of the President, the ICC World Council may appoint members and alternate members in countries and territories:
 - a) where there is no National Committee or Group; or
 - b) where the National Committee or Group is suspended.
- 5 The term of office of all members, including, for the purposes of this paragraph, the President and Vice-Presidents, is three years and may be renewed once. If a member is no longer in a position to exercise the member's functions, a successor is appointed by the World Council for the remainder of the term.
- 6 No Court member shall serve for more than two full consecutive terms, unless the World Council decides otherwise upon the recommendation of the Executive Board further to the proposal of the President, in particular where a Court member is proposed for election as Vice-President.

ARTICLE 4

Committees

- 1 Save as provided in Articles 5(1), 6 and 7 of this Appendix, the Court conducts its work in Committees of three members.
- 2 Members of the Committees consist of a president and two other members.

ARTICLE 5

Special Committees

- 1 The Court may conduct its work in Special Committees:
 - a) to decide on matters under Articles 14 and 15(2) of the Rules;
 - b) to scrutinise draft awards in the presence of dissenting opinions;
 - c) to scrutinise draft awards in cases where one or more of the parties is a state or may be considered to be a state entity;
 - d) to decide on matters transferred to a Special Committee by a Committee which did not reach a decision or deemed it preferable to abstain, having made any suggestions it deemed appropriate; or
 - e) upon request of the President.
- 2 Members of the Special Committee consist of a president and at least six other members.

ARTICLE 6

Single-member Committees

The Court may scrutinize draft awards under the Expedited Procedure Provisions in Single-member Committees.

ARTICLE 7

Plenary of the Court

- 1 The Court meets in plenary during its annual working session. It also meets in plenary whenever so convened by the President.
- 2 The plenary of the Court may take any decision under Articles 4(1), 5(1) and 6 of this Appendix.
- 3 Members of the plenary consist of the President, the Vice-Presidents and all Court members who have accepted to attend and are in attendance.

ARTICLE 8

Confidentiality

The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons who can attend the meetings of the Court and its Committees and who are entitled to have access to materials related to the work of the Court and its Secretariat.

ARTICLE 9

Modification of the Rules of Arbitration

Any proposal of the Court for a modification of the Rules is laid before the Commission on Arbitration and ADR before submission to the Executive Board of ICC for approval, provided, however, that the Court, in order to take account of developments in information technology, may propose to modify or supplement the provisions of Article 3 of the Rules or any related provisions in the Rules without laying any such proposal before the Commission.

ARTICLE 10

The decisions of the Court shall be deemed to be made in Paris, France.

ARTICLE 1

Confidential Character of the Work of the International Court of Arbitration

- 1 For the purposes of this Appendix, members of the Court include the President and Vice-Presidents of the Court.
- 2 The sessions of the Court are open only to its members and to the Secretariat.
- 3 However, in exceptional circumstances, the President of the Court may invite other persons to attend. Such persons must respect the confidential nature of the work of the Court.
- 4 The documents submitted to the Court, or drawn up by it or the Secretariat in the course of the Court's proceedings, are communicated only to the members of the Court, to the Secretariat and to persons authorized by the President to attend Court sessions.
- 5 The President or the Secretary General of the Court may authorize researchers undertaking work of an academic nature to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.
- 6 Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from publishing anything based upon information contained therein without having previously submitted the text for approval to the Secretary General of the Court.
- 7 The Secretariat will in each case submitted to arbitration under the Rules retain in the archives of the Court all awards, Terms of Reference and decisions of the Court, as well as copies of the pertinent correspondence of the Secretariat.

- 8 Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence. All related costs and expenses for the return of those documents shall be paid by such party or arbitrator.

ARTICLE 2

Participation of Members of the International Court of Arbitration in ICC Arbitration

- 1 The President and the members of the Secretariat of the Court may not act as arbitrators or as counsel in cases submitted to ICC Arbitration.
- 2 The Court shall not appoint Vice-Presidents or members of the Court as arbitrators. They may, however, be proposed for such duties by one or more of the parties, or pursuant to any other procedure agreed upon by the parties, subject to confirmation.
- 3 When the President, a Vice-President or a member of the Court or of the Secretariat is involved in any capacity whatsoever in proceedings pending before the Court, such person must inform the Secretary General of the Court upon becoming aware of such involvement.
- 4 Such person must be absent from the Court session whenever the matter is considered by the Court and shall not participate in the discussions or in the decisions of the Court.
- 5 Such person will not receive any material documentation or information pertaining to such proceedings.

ARTICLE 3

Relations Between the Members of the Court and the ICC National Committees and Groups

- 1 By virtue of their capacity, the members of the Court are independent of the ICC National Committees and Groups which proposed them for appointment by the ICC World Council.
- 2 Furthermore, they must regard as confidential, vis-à-vis the said National Committees and Groups, any information concerning individual cases with which they have become acquainted in their capacity as members of the Court, except when they have been requested by the President of the Court, by a Vice-President of the Court authorized by the President of the Court, or by the Court's Secretary General to communicate specific information to their respective National Committees or Groups.

ARTICLE 4

Constitution, Quorum and Decision-Making

- 1 The members of Committees, Special Committees and Single-member Committees are appointed by the President from among the Vice-Presidents or the other members of the Court. In the President's absence or otherwise where the President is unable to act, they are appointed by a Vice-President at the request of the Secretary General or the Deputy Secretary General of the Court.
- 2 Committees and Special Committees meet whenever convened by their president.
- 3 The President of the Court acts as the president of the Committee, the Special Committee and the plenary. A Vice-President of the Court may act as president of a Committee, Special Committee or the plenary (i) at the request of the President or (ii) in the President's absence or otherwise where the President is unable to act, at the request of the Secretary General or the Deputy Secretary General of the Court. In exceptional circumstances, another member of the Court may act as president of a Committee or Special Committee following the same procedure.

ICC ARBITRATION RULES
APPENDIX II - INTERNAL RULES OF
THE INTERNATIONAL COURT OF ARBITRATION

- 4 The President of the Court, a Vice-President and any Court member may act in, and convene, the Single-member Committee.
- 5 Decisions on the constitution of Committees, Special Committees and Single-member Committees are reported to the Court at one of its next sessions.
- 6 Deliberations shall be valid:
 - a) At the Committee, when at least two members are present.
 - b) At the Special Committee and plenary, when at least six members, and the President or designated Vice-President, are present.
- 7 Decisions at Committees are taken unanimously. When a Committee cannot reach a unanimous decision or deems it preferable to abstain, it transfers the case to a Special Committee, making any suggestions it deems appropriate.
- 8 Decisions at Special Committees and the plenary are taken by majority, the President or Vice-President, as the case may be, having a casting vote in the event of a tie.

ARTICLE 5

Communication of Reasons of Decisions

- 1 Upon request of any party, the Court will communicate the reasons for Articles 6(4), 10, 12(8), 12(9), 14 and 15(2).
- 2 Any request for the communications of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), a party shall address its request to the Court when invited to comment pursuant to Article 15(3).
- 3 In exceptional circumstances, the Court may decide not to communicate the reasons for any of the above decisions.

ARTICLE 6

Court Secretariat

- 1 In the Secretary General's absence or otherwise at the Secretary General's request, the Deputy Secretary General and/or the General Counsel shall have the authority to refer matters to the Court, confirm arbitrators, certify true copies of awards, request the payment of a provisional advance and authorize the payment of advances in instalments, respectively provided for in Articles 6(3), 13(2), 35(2) and 37(1) of the Rules and Article 1(6) of Appendix III, as well as to take the measure provided for in Article 37(6).
- 2 The Secretariat may, with the approval of the Court, issue notes and other documents for the information of the parties and the arbitrators, or as necessary for the proper conduct of the arbitral proceedings.
- 3 Offices of the Secretariat may be established outside the headquarters of ICC. The Secretariat shall keep a list of offices designated by the Secretary General. Requests for Arbitration may be submitted to the Secretariat at any of its offices, and the Secretariat's functions under the Rules may be carried out from any of its offices, as instructed by the Secretary General, Deputy Secretary General or General Counsel.

ARTICLE 7

Scrutiny of Arbitral Awards

When the Court scrutinizes draft awards in accordance with Article 34 of the Rules, it considers, to the extent practicable, the requirements of mandatory law at the place of the arbitration.

ARTICLE 1

Advance on Costs

- 1 Each request to commence an arbitration pursuant to the Rules must be accompanied by a filing fee of US\$ 5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs.
- 2 The provisional advance fixed by the Secretary General according to Article 37(1) of the Rules shall normally not exceed the amount obtained by adding together the ICC administrative expenses, the minimum of the fees (as set out in the scales hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the arbitral tribunal incurred with respect to the drafting of the Terms of Reference or the holding of the case management conference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the Secretary General. Payment by the claimant shall be credited to its share of the advance on costs fixed by the Court.
- 3 In general, the arbitral tribunal shall, in accordance with Article 37(6) of the Rules, proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on costs has been paid.
- 4 The advance on costs fixed by the Court according to Articles 37(2) or 37(4) of the Rules comprises the fees of the arbitrator or arbitrators (hereinafter referred to as "arbitrator"), any arbitration-related expenses of the arbitrator and the ICC administrative expenses.
- 5 Each party shall pay its share of the total advance on costs in cash. However, if a party's share of the advance on costs is greater than US\$ 500,000 (the "Threshold Amount"), such party may post a bank guarantee for any amount above the Threshold Amount. The Court may modify the Threshold Amount at any time at its discretion.
- 6 The Secretary General may authorize the payment of advances on costs, or any party's share thereof, in instalments, subject to such conditions as the Court thinks fit.

- 7 A party that has already paid in full its share of the advance on costs fixed by the Court may, in accordance with Article 37(5) of the Rules, pay the unpaid portion of the advance owed by the defaulting party by posting a bank guarantee.
- 8 When the Court has fixed separate advances on costs pursuant to Article 37(3) of the Rules, the Secretariat shall invite each party to pay the amount of the advance corresponding to its respective claim(s).
- 9 When, as a result of the fixing of separate advances on costs, the separate advance fixed for the claim of either party exceeds one half of such global advance as was previously fixed (in respect of the same claims and counterclaims that are the subject of separate advances), a bank guarantee may be posted to cover any such excess amount. In the event that the amount of the separate advance is subsequently increased, at least one half of the increase shall be paid in cash.
- 10 The Secretariat shall establish the terms governing all bank guarantees which the parties may post pursuant to the above provisions.
- 11 As provided in Article 37(5) of the Rules, the advance on costs may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.
- 12 Before any expertise ordered by the arbitral tribunal can be commenced, the parties, or one of them, shall pay an advance on costs fixed by the arbitral tribunal sufficient to cover the expected fees and expenses of the expert as determined by the arbitral tribunal. The arbitral tribunal shall be responsible for ensuring the payment by the parties of such fees and expenses.
- 13 The amounts paid as advances on costs do not yield interest for the parties or the arbitrator.

ARTICLE 2

Costs and Fees

- 1 Subject to Article 38(2) of the Rules, the Court shall fix the fees of the arbitrator in accordance with the scales hereinafter set out or, where the amount in dispute is not stated, at its discretion.
- 2 In setting the arbitrator's fees, the Court shall take into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Article 38(2) of the Rules), at a figure higher or lower than those limits.
- 3 When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of one arbitrator.
- 4 The arbitrator's fees and expenses shall be fixed exclusively by the Court as required by the Rules. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.
- 5 The Court shall fix the ICC administrative expenses of each arbitration in accordance with the scales hereinafter set out or, where the amount in dispute is not stated, at its discretion. Where the parties have agreed upon additional services, or in exceptional circumstances, the Court may fix the ICC administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale.
- 6 At any time during the arbitration, the Court may fix as payable a portion of the ICC administrative expenses corresponding to services that have already been performed by the Court and the Secretariat.

- 7 The Court may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses as a condition for holding an arbitration in abeyance at the request of the parties or of one of them with the acquiescence of the other.
- 8 If an arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.
- 9 Any amount paid by the parties as an advance on costs exceeding the costs of the arbitration fixed by the Court shall be reimbursed to the parties having regard to the amounts paid.
- 10 In the case of an application under Articles 36(2) or 36(3) of the Rules, or of a remission pursuant to Article 36(5) of the Rules, the Court may fix an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses and may make the transmission of such application to the arbitral tribunal subject to the prior cash payment in full to ICC of such advance. The Court shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrator and ICC administrative expenses, when approving the decision of the arbitral tribunal.
- 11 The Secretariat may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses for any expenses arising in relation to a request pursuant to Article 35(5) of the Rules.
- 12 When an arbitration is preceded by proceedings under the ICC Mediation Rules, one half of the ICC administrative expenses paid for such proceedings shall be credited to the ICC administrative expenses of the arbitration.

- 13 Amounts paid to the arbitrator do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.
- 14 ICC administrative expenses do not include VAT, taxes, imposts or any other charges of a similar nature. They may be increased by the amount of VAT, taxes, imposts or any charges of a similar nature at the prevailing rate. Parties have a duty to pay any such charges pursuant to invoices issued by ICC.

ARTICLE 3

Scales of Administrative Expenses and Arbitrator's Fees

- 1 The scales of administrative expenses and arbitrator's fees set forth below shall be effective as of 1 January 2017 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations.
- 2 To calculate the ICC administrative expenses and the arbitrator's fees, the amounts calculated for each successive tranche of the amount in dispute must be added together, except that where the amount in dispute is over US\$ 500 million, a flat amount of US\$ 150,000 shall constitute the entirety of the ICC administrative expenses.
- 3 The scales of administrative expenses and arbitrator's fees for the expedited procedure set forth below shall be effective as of 1 March 2017 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations. When parties have agreed to the expedited procedure pursuant to Article 30(2), subparagraph b), the scales for the expedited procedure will apply.
- 4 All amounts fixed by the Court or pursuant to any of the appendices to the Rules are payable in US\$ except where prohibited by law or decided otherwise by the Court, in which case ICC may apply a different scale and fee arrangement in another currency.

SCALES OF ADMINISTRATIVE EXPENSES AND ARBITRATOR'S FEES

B Arbitrator's Fees

Amount in dispute (in US Dollars)	Fees**	
	minimum	maximum
up to 50,000	\$3,000	18.0200%
from 50,001 to 100,000	2.6500%	13.5680%
from 100,001 to 200,000	1.4310%	7.6850%
from 200,001 to 500,000	1.3670%	6.8370%
from 500,001 to 1,000,000	0.9540%	4.0280%
from 1,000,001 to 2,000,000	0.6890%	3.6040%
from 2,000,001 to 5,000,000	0.3750%	1.3910%
from 5,000,001 to 10,000,000	0.1280%	0.9100%
from 10,000,001 to 30,000,000	0.0640%	0.2410%
from 30,000,001 to 50,000,000	0.0590%	0.2280%
from 50,000,001 to 80,000,000	0.0330%	0.1570%
from 80,000,001 to 100,000,000	0.0210%	0.1150%
from 100,000,001 to 500,000,000	0.0110%	0.0580%
over 500,000,000	0.0100%	0.0400%

** For illustrative purposes only, the table on page 63 indicates the resulting range of fees in US\$ when the proper calculations have been made.

A Administrative Expenses

Amount in dispute (in US Dollars)	Administrative expenses*
up to 50,000	\$5,000
from 50,001 to 100,000	1.53%
from 100,001 to 200,000	2.72%
from 200,001 to 500,000	2.25%
from 500,001 to 1,000,000	1.62%
from 1,000,001 to 2,000,000	0.788%
from 2,000,001 to 5,000,000	0.46%
from 5,000,001 to 10,000,000	0.25%
from 10,000,001 to 30,000,000	0.10%
from 30,000,001 to 50,000,000	0.09%
from 50,000,001 to 80,000,000	0.01%
from 80,000,001 to 500,000,000	0.0123%
over 500,000,000	\$150,000

* Amounts excluding VAT. For illustrative purposes only, the table on page 62 indicates the resulting administrative expenses in US\$ when the proper calculations have been made.

SCALES OF ADMINISTRATIVE EXPENSES AND
 ARBITRATOR'S FEES

A Administrative Expenses*	
Amount in Dispute (in US Dollars)	(in US Dollars)
up to 50,000	5,000
from 50,001 to 100,000	5,000 + 1.53% of amt. over 50,000
from 100,001 to 200,000	5,765 + 2.72% of amt. over 100,000
from 200,001 to 500,000	8,485 + 2.25% of amt. over 200,000
from 500,001 to 1,000,000	15,235 + 1.62% of amt. over 500,000
from 1,000,001 to 2,000,000	23,335 + 0.788% of amt. over 1,000,000
from 2,000,001 to 5,000,000	31,215 + 0.46% of amt. over 2,000,000
from 5,000,001 to 10,000,000	45,015 + 0.25% of amt. over 5,000,000
from 10,000,001 to 30,000,000	57,515 + 0.10% of amt. over 10,000,000
from 30,000,001 to 50,000,000	77,515 + 0.09% of amt. over 30,000,000
from 50,000,001 to 80,000,000	95,515 + 0.01% of amt. over 50,000,000
from 80,000,001 to 500,000,000	98,515 + 0.0123% of amt. over 80,000,000
over 500,000,000	150,000

* Amounts excluding VAT. See page 61.

SCALES OF ADMINISTRATIVE EXPENSES AND ARBITRATOR'S FEES

B Arbitrator's Fees**	
Amount in Dispute (in US Dollars)	(in US Dollars)
Minimum	Maximum
up to 50,000	18.0200% of amount in dispute
from 50,001 to 100,000	3,000 + 2.6500% of amt. over 50,000
from 100,001 to 200,000	4,325 + 1.4310% of amt. over 100,000
from 200,001 to 500,000	5,756 + 1.3670% of amt. over 200,000
from 500,001 to 1,000,000	9,857 + 0.9540% of amt. over 500,000
from 1,000,001 to 2,000,000	14,627 + 0.6890% of amt. over 1,000,000
from 2,000,001 to 5,000,000	21,517 + 0.3750% of amt. over 2,000,000
from 5,000,001 to 10,000,000	32,767 + 0.1280% of amt. over 5,000,000
from 10,000,001 to 30,000,000	39,167 + 0.0640% of amt. over 10,000,000
from 30,000,001 to 50,000,000	51,967 + 0.0590% of amt. over 30,000,000
from 50,000,001 to 80,000,000	63,767 + 0.0330% of amt. over 50,000,000
from 80,000,001 to 100,000,000	73,667 + 0.0210% of amt. over 80,000,000
from 100,000,001 to 500,000,000	77,867 + 0.0110% of amt. over 100,000,000
over 500,000,000	121,867 + 0.0100% of amt. over 500,000,000

** See page 61.

SCALES OF ADMINISTRATIVE EXPENSES AND
ARBITRATOR'S FEES FOR THE EXPEDITED PROCEDURE

B Arbitrator's Fees

Amount in dispute (in US Dollars)	minimum	maximum
up to 50,000	\$2,400	14.4160%
from 50,001 to 100,000	2.1200%	10.8544%
from 100,001 to 200,000	1.1448%	6.1480%
from 200,001 to 500,000	1.0936%	5.4696%
from 500,001 to 1,000,000	0.7632%	3.2224%
from 1,000,001 to 2,000,000	0.5512%	2.8832%
from 2,000,001 to 5,000,000	0.3000%	1.1128%
from 5,000,001 to 10,000,000	0.1024%	0.7280%
from 10,000,001 to 30,000,000	0.0512%	0.1928%
from 30,000,001 to 50,000,000	0.0472%	0.1824%
from 50,000,001 to 80,000,000	0.0264%	0.1256%
from 80,000,001 to 100,000,000	0.0168%	0.0920%
from 100,000,001 to 500,000,000	0.0088%	0.0464%
over 500,000,000	0.0080%	0.0320%

** For illustrative purposes only, the table on page 66 indicates the resulting range of fees in US\$, when the proper calculations have been made.

A Administrative Expenses

Amount in dispute (in US Dollars)	Administrative expenses*
up to 50,000	\$5,000
from 50,001 to 100,000	1.53%
from 100,001 to 200,000	2.72%
from 200,001 to 500,000	2.25%
from 500,001 to 1,000,000	1.62%
from 1,000,001 to 2,000,000	0.788%
from 2,000,001 to 5,000,000	0.46%
from 5,000,001 to 10,000,000	0.25%
from 10,000,001 to 30,000,000	0.10%
from 30,000,001 to 50,000,000	0.09%
from 50,000,001 to 80,000,000	0.01%
from 80,000,001 to 500,000,000	0.0123%
over 500,000,000	\$150,000

* Amounts excluding VAT. For illustrative purposes only, the table on page 65 indicates the resulting administrative expenses in US\$ when the proper calculations have been made.

SCALES OF ADMINISTRATIVE EXPENSES AND ARBITRATOR'S FEES FOR THE EXPEDITED PROCEDURE

Amount in Dispute (in US Dollars)	A Administrative Expenses* (in US Dollars)
up to 50,000	5,000
from 50,001 to 100,000	5,000 + 1.53% of amt. over 50,000
from 100,001 to 200,000	5,765 + 2.72% of amt. over 100,000
from 200,001 to 500,000	8,485 + 2.25% of amt. over 200,000
from 500,001 to 1,000,000	15,235 + 1.62% of amt. over 500,000
from 1,000,001 to 2,000,000	23,335 + 0.788% of amt. over 1,000,000
from 2,000,001 to 5,000,000	31,215 + 0.46% of amt. over 2,000,000
from 5,000,001 to 10,000,000	45,015 + 0.25% of amt. over 5,000,000
from 10,000,001 to 30,000,000	57,515 + 0.10% of amt. over 10,000,000
from 30,000,001 to 50,000,000	77,515 + 0.09% of amt. over 30,000,000
from 50,000,001 to 80,000,000	95,515 + 0.01% of amt. over 50,000,000
from 80,000,001 to 500,000,000	98,515 + 0.0123% of amt. over 80,000,000
over 500,000,000	150,000

* Amounts excluding VAT. See page 64.

SCALES OF ADMINISTRATIVE EXPENSES AND
ARBITRATOR'S FEES FOR THE EXPEDITED PROCEDURE

B Arbitrator's Fees**	
Amount in Dispute (in US Dollars)	(in US Dollars)
Minimum	Maximum
up to 50,000	14,4160% of amount in dispute
from 50,001 to 100,000	7,208 + 10.8544% of amt. over 50,000
from 100,001 to 200,000	12,635 + 6.1480% of amt. over 100,000
from 200,001 to 500,000	18,783 + 5.4696% of amt. over 200,000
from 500,001 to 1,000,000	35,192 + 3.2224% of amt. over 500,000
from 1,000,001 to 2,000,000	51,304 + 2.8832% of amt. over 1,000,000
from 2,000,001 to 5,000,000	80,136 + 1.1128% of amt. over 2,000,000
from 5,000,001 to 10,000,000	113,520 + 0.7280% of amt. over 5,000,000
from 10,000,001 to 30,000,000	149,920 + 0.1928% of amt. over 10,000,000
from 30,000,001 to 50,000,000	188,480 + 0.1824% of amt. over 30,000,000
from 50,000,001 to 80,000,000	224,960 + 0.1256% of amt. over 50,000,000
from 80,000,001 to 100,000,000	262,640 + 0.0920% of amt. over 80,000,000
from 100,000,001 to 500,000,000	281,040 + 0.0464% of amt. over 100,000,000
over 500,000,000	466,640 + 0.0320% of amt. over 500,000,000

** See page 64.

The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

- a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.
- b) Identifying issues that can be resolved by agreement between the parties or their experts.
- c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.
- d) Production of documentary evidence:
 - (i) requiring the parties to produce with their submissions the documents on which they rely;
 - (ii) avoiding requests for document production when appropriate in order to control time and cost;
 - (iii) in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
 - (iv) establishing reasonable time limits for the production of documents;
 - (v) using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.
- e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.
- f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.

g) Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.

h) Settlement of disputes:

(i) encouraging the parties to consider settlement of all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, for example, mediation under the ICC Mediation Rules;

(ii) where agreed between the parties and the arbitral tribunal, the arbitral tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.

Additional techniques are described in the ICC publication entitled “Controlling Time and Costs in Arbitration”.

ARTICLE 1

Application for Emergency Measures

- 1 A party wishing to have recourse to an emergency arbitrator pursuant to Article 29 of the Rules of Arbitration of ICC (the “Rules”) shall submit its Application for Emergency Measures (the “Application”) to the Secretariat at any of the offices specified in the Internal Rules of the Court in Appendix II to the Rules.
- 2 The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the Secretariat where the party submitting the Application requests transmission thereof by delivery against receipt, registered post or courier.
- 3 The Application shall contain the following information:
 - a) the name in full, description, address and other contact details of each of the parties;
 - b) the name in full, address and other contact details of any person(s) representing the applicant;
 - c) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
 - d) a statement of the Emergency Measures sought;
 - e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
 - f) any relevant agreements and, in particular, the arbitration agreement;
 - g) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
 - h) proof of payment of the amount referred to in Article 7(1) of this Appendix; and
 - i) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the Secretariat by any of the parties to the emergency arbitrator proceedings prior to the making of the Application.

The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

- 4 The Application shall be drawn up in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.
- 5 If and to the extent that the President of the Court (the “President”) considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Article 29(5) and Article 29(6) of the Rules, the Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party. If and to the extent that the President considers otherwise, the Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information.
- 6 The President shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the Secretariat from the applicant within 10 days from the Secretariat’s receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.

ARTICLE 2

Appointment of the Emergency Arbitrator; Transmission of the File

- 1 The President shall appoint an emergency arbitrator within as short a time as possible, normally within two days from the Secretariat's receipt of the Application.
- 2 No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Article 16 of the Rules. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Appendix.
- 3 Once the emergency arbitrator has been appointed, the Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to each other party and the Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the Secretariat.
- 4 Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.
- 5 Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The Secretariat shall provide a copy of such statement to the parties.
- 6 An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

ARTICLE 3

Challenge of an Emergency Arbitrator

- 1 A challenge against the emergency arbitrator must be made within three days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.
- 2 The challenge shall be decided by the Court after the Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.

ARTICLE 4

Place of the Emergency Arbitrator Proceedings

- 1 If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the President shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Article 18(1) of the Rules.
- 2 Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

ARTICLE 5

Proceedings

- 1 The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Appendix.

- 2 The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

ARTICLE 6

Order

- 1 Pursuant to Article 29(2) of the Rules, the emergency arbitrator's decision shall take the form of an order (the "Order").
- 2 In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Article 29(1) of the Rules and whether the emergency arbitrator has jurisdiction to order Emergency Measures.
- 3 The Order 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.
- 4 The Order shall be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Appendix. The President may extend the time limit pursuant to a reasoned request from the emergency arbitrator or on the President's own initiative if the President decides it is necessary to do so.
- 5 Within the time limit established pursuant to Article 6(4) of this Appendix, the emergency arbitrator shall send the Order to the parties, with a copy to the Secretariat, by any of the means of communication permitted by Article 3(2) of the Rules that the emergency arbitrator considers will ensure prompt receipt.
- 6 The Order shall cease to be binding on the parties upon:
 - a) the President's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Appendix;

- b) the acceptance by the Court of a challenge against the emergency arbitrator pursuant to Article 3 of this Appendix;
 - c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
 - d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.
- 7 The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.
- 8 Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 of the Rules, the emergency arbitrator may modify, terminate or annul the Order.

ARTICLE 7

Costs of the Emergency Arbitrator Proceedings

- 1 The applicant must pay an amount of US\$ 40,000, consisting of US\$ 10,000 for ICC administrative expenses and US\$ 30,000 for the emergency arbitrator's fees and expenses. Notwithstanding Article 1(5) of this Appendix, the Application shall not be notified until the payment of US\$ 40,000 is received by the Secretariat.
- 2 The President may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees or the ICC administrative expenses taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the emergency arbitrator, the Court, the President and the Secretariat. If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the Secretariat, the Application shall be considered as withdrawn.
- 3 The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

- 4 The costs of the emergency arbitrator proceedings include the ICC administrative expenses, the emergency arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.
- 5 In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Appendix or are otherwise terminated prior to the making of an Order, the President shall determine the amount to be reimbursed to the applicant, if any. An amount of US\$ 5,000 for ICC administrative expenses is non-refundable in all cases.

ARTICLE 8

General Rule

- 1 The President shall have the power to decide, at the President's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Appendix.
- 2 In the President's absence or otherwise at the President's request, any of the Vice-Presidents of the Court shall have the power to take decisions on behalf of the President.
- 3 In all matters concerning emergency arbitrator proceedings not expressly provided for in this Appendix, the Court, the President and the emergency arbitrator shall act in the spirit of the Rules and this Appendix.

ARTICLE 1

Application of the Expedited Procedure Rules

- 1 Insofar as Article 30 of the Rules of Arbitration of ICC (the “Rules”) and this Appendix VI do not provide otherwise, the Rules shall apply to an arbitration under the Expedited Procedure Rules.
- 2 The amount referred to in Article 30(2), subparagraph a) of the Rules is:
 - a) US\$ 2,000,000 if the arbitration agreement under the Rules was concluded on or after 1 March 2017 and before 1 January 2021; or
 - b) US\$ 3,000,000 if the arbitration agreement under the Rules was concluded on or after 1 January 2021.
- 3 Upon receipt of the Answer to the Request pursuant to Article 5 of the Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter and subject to Article 30(3) of the Rules, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply in the case.
- 4 The Court may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the Court considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.

ARTICLE 2

Constitution of the Arbitral Tribunal

- 1 The Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.
- 2 The parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such nomination, the sole arbitrator shall be appointed by the Court within as short a time as possible.

ARTICLE 3

Proceedings

- 1 Article 23 of the Rules shall not apply to an arbitration under the Expedited Procedure Rules.
- 2 After the arbitral tribunal has been constituted, no party shall make new claims, unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.
- 3 The case management conference convened pursuant to Article 24 of the Rules shall take place no later than 15 days from the date on which the file was transmitted to the arbitral tribunal. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
- 4 The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts).
- 5 The arbitral tribunal may, after consulting the parties, decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts.

ARTICLE 4

Award

- 1 The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference. The Court may extend the time limit pursuant to Article 31(2) of the Rules.
- 2 The fees of the arbitral tribunal shall be fixed according to the scales of administrative expenses and arbitrator's fees for the expedited procedure set out in Appendix III.

ARTICLE 5

General Rule

In all matters concerning the expedited procedure not expressly provided for in this Appendix, the Court and the arbitral tribunal shall act in the spirit of the Rules and this Appendix.

ARBITRATION CLAUSES

It is recommended that parties wishing to make reference to ICC Arbitration in their contracts use the standard clause below.

Standard ICC Arbitration Clause

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Parties are free to adapt the clause to their particular circumstances. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract.

When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process.

Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

ICC Arbitration Without Emergency Arbitrator

If the parties wish to exclude any recourse to the Emergency Arbitrator Provisions, they must expressly opt out by adding the following wording to the clause above:

The Emergency Arbitrator Provisions shall not apply.

ICC ARBITRATION CLAUSES

Expedited Arbitration

The ICC Arbitration Rules provide for use of an expedited procedure in lower-value cases. If parties wish to exclude the application of the Expedited Procedure Provisions, they must expressly opt out by adding the following wording to the clause above:

The Expedited Procedure Provisions shall not apply.

Parties wishing to avail themselves of the expedited procedure in higher-value cases should expressly opt in by adding the following wording to the clause above:

The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.

If parties wish the ceiling for the application of the Expedited Procedure Rules to be higher than that specified in those Rules, the following wording should be added to the clause above:

The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US\$ [specify amount] at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules.

Standard ICC Arbitration Clause Without Publication of Awards

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. No award or procedural order made in the arbitration shall be published.

Multi-Tiered Clauses

ICC Arbitration may be used as the forum for final determination of a dispute following an attempt at settlement by other means such as mediation. Parties wishing to include in their contracts a tiered dispute resolution clause combining ICC Arbitration with ICC Mediation should refer to the standard clauses relating to the ICC Mediation Rules (see pages 98-101).

Other combinations of services are also possible. For instance, arbitration may be used as a fallback to expertise or dispute boards. Also, parties who resort to ICC Arbitration may wish to provide for recourse to the ICC International Centre for ADR for the proposal of an expert if an expert opinion is required in the course of the arbitration.

Standard clauses for these and other combinations of services are available in several languages at <https://iccwbo.org/dispute-resolution-services/>.

3

UNCITRAL Model Law on International Commercial Arbitration



UNCITRAL
MODEL LAW ON
INTERNATIONAL
COMMERCIAL
ARBITRATION

CONTENTS

	<i>Page</i>
UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION	1
<i>Chapter I. General provisions</i>	
Article 1. Scope of application	1
Article 2. Definitions and rules of interpretation	2
Article 3. Receipt of written communications	2
Article 4. Waiver of right to object.....	3
Article 5. Extent of court intervention	3
Article 6. Court or other authority for certain functions of arbitration assistance and supervision.....	3
<i>Chapter II. Arbitration agreement</i>	
Article 7. Definition and form of arbitration agreement	3
Article 8. Arbitration and substantive claim before court	4
Article 9. Arbitration agreement and interim measures by court.....	4
<i>Chapter III. Composition of arbitral tribunal</i>	
Article 10. Number of arbitrators	4
Article 11. Appointment of arbitrators	4
Article 12. Grounds for challenge	5
Article 13. Challenge procedure	5
Article 14. Failure or impossibility to act.....	6
Article 15. Appointment of substitute arbitrator	6
<i>Chapter IV. Jurisdiction of arbitral tribunal</i>	
Article 16. Competence of arbitral tribunal to rule on its jurisdiction ..	6
Article 17. Power of arbitral tribunal to order interim measures	7
<i>Chapter V. Conduct of arbitral proceedings</i>	
Article 18. Equal treatment of parties	7
Article 19. Determination of rules of procedure.....	7
Article 20. Place of arbitration.....	7
Article 21. Commencement of arbitral proceedings	8
Article 22. Language	8
Article 23. Statements of claim and defence	8
Article 24. Hearings and written proceedings.....	8
Article 25. Default of a party	9

	<i>Page</i>
Article 26. Expert appointed by arbitral tribunal	9
Article 27. Court assistance in taking evidence	10
 <i>Chapter VI. Making of award and termination of proceedings</i>	
Article 28. Rules applicable to substance of dispute	10
Article 29. Decision making by panel of arbitrators	10
Article 30. Settlement	10
Article 31. Form and contents of award	11
Article 32. Termination of proceedings	11
Article 33. Correction and interpretation of award; additional award...	11
 <i>Chapter VII. Recourse against award</i>	
Article 34. Application for setting aside as exclusive recourse against arbitral award	12
 <i>Chapter VIII. Recognition and enforcement of awards</i>	
Article 35. Recognition and enforcement	13
Article 36. Grounds for refusing recognition or enforcement	14
 EXPLANATORY NOTE BY THE UNCITRAL SECRETARIAT ON THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION	
A. Background to the Model Law	15
1. Inadequacy of domestic laws	15
2. Disparity between national laws	16
B. Salient features of the Model Law	16
1. Special procedural regime for international commercial arbitration	16
2. Arbitration agreement	18
3. Composition of arbitral tribunal	19
4. Jurisdiction of arbitral tribunal	20
5. Conduct of arbitral proceedings	20
6. Making of award and termination of proceedings	22
7. Recourse against award	23
8. Recognition and enforcement of awards	24

UNCITRAL Model Law on International Commercial Arbitration

(United Nations document A/40/17, annex I)

**(As adopted by the United Nations Commission
on International Trade Law on 21 June 1985)**

CHAPTER I. GENERAL PROVISIONS

*Article 1. Scope of application**

- (1) This Law applies to international commercial** 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, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (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
 - (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

*Article headings are for reference purposes only and are not to be used for purposes of interpretation.

**The 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.

(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 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

Article 7. Definition and form of arbitration agreement

(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. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or 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 another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

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.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

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 duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.***

***The 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.

*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
- (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.

4

**New York
Convention**

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)



UNITED NATIONS

Contents

	<i>Page</i>
Introduction	1
Part one. United Nations Conference on International Commercial Arbitration, New York, 20 May–10 June 1958	5
Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration	5
Convention on the Recognition and Enforcement of Foreign Arbitral Awards	8
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	15
General Assembly resolution 61/33 of 4 December 2006	15
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	17

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.

5

CISG

United Nations Convention on Contracts for the International Sale of Goods



UNITED NATIONS

Contents

	<i>Page</i>
I. United Nations Convention on Contracts for the International Sale of Goods	1
PREAMBLE	1
Part I. Sphere of application and general provisions	1
CHAPTER I. Sphere of application.....	1
Article 1	1
Article 2	2
Article 3	2
Article 4	2
Article 5	3
Article 6	3
CHAPTER II. General provisions	3
Article 7	3
Article 8	3
Article 9	4
Article 10	4
Article 11	4
Article 12	4
Article 13	5
Part II. Formation of the contract	5
Article 14	5
Article 15	5
Article 16	5
Article 17	6
Article 18	6
Article 19	6
Article 20	7
Article 21	7
Article 22	7
Article 23	7
Article 24	7

	<i>Page</i>
Part III. Sale of goods	8
CHAPTER I. General provisions	8
Article 25	8
Article 26	8
Article 27	8
Article 28	8
Article 29	8
CHAPTER II. Obligations of the seller.....	9
Article 30	9
Section I. Delivery of the goods and handing over of documents	9
Article 31	9
Article 32	9
Article 33	10
Article 34	10
Section II. Conformity of the goods and third-party claims	10
Article 35	10
Article 36	11
Article 37	11
Article 38	11
Article 39	12
Article 40	12
Article 41	12
Article 42	12
Article 43	13
Article 44	13
Section III. Remedies for breach of contract by the seller	13
Article 45	13
Article 46	14
Article 47	14
Article 48	14
Article 49	15
Article 50	16
Article 51	16
Article 52	16
CHAPTER III. Obligations of the buyer.....	16
Article 53	16

	<i>Page</i>
Section V. Effects of avoidance.....	25
Article 81.....	25
Article 82.....	25
Article 83.....	26
Article 84.....	26
Section VI. Preservation of the goods	26
Article 85.....	26
Article 86.....	26
Article 87.....	27
Article 88.....	27
Part IV. Final provisions.....	27
Article 89.....	27
Article 90.....	27
Article 91.....	28
Article 92.....	28
Article 93.....	28
Article 94.....	29
Article 95.....	29
Article 96.....	30
Article 97.....	30
Article 98.....	30
Article 99.....	31
Article 100.....	32
Article 101.....	32
II. Explanatory note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods.....	33
Introduction	33
Part One. Scope of application and general provisions.....	34
A. Scope of application.....	34
B. Party autonomy.....	35
C. Interpretation of the Convention.....	36
D. Interpretation of the contract; usages.....	36
E. Form of the contract.....	36
Part Two. Formation of the contract.....	37

	<i>Page</i>
Part Three. Sale of goods	38
A. Obligations of the seller.....	38
B. Obligations of the buyer	38
C. Remedies for breach of contract.....	39
D. Passing of risk	39
E. Suspension of performance and anticipatory breach	40
F. Exemption from liability to pay damages.....	40
G. Preservation of the goods	40
 Part Four. Final clauses	 41
Complementary texts.....	41

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 creditworthiness; 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.

6

UNIDROIT

Principles

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>).

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

(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

UNIDROIT Principles 2016

(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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

(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:

UNIDROIT Principles 2016

- (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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

(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.

UNIDROIT Principles 2016

(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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

- (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.

UNIDROIT Principles 2016

(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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

(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.

UNIDROIT Principles 2016

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.

UNIDROIT Principles 2016

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.

7

GDPR

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 of 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
