A. Information concerning the practice of States in relation to the provisional application of treaties

1. Australia

Statement made in the Sixth Committee, Sixty-seventh session (2012), 23rd meeting, 6 November 2012:

> In Australia, treaties are subject to a two-step domestic process before Australia formally consents to be bound at international law. The first step is to obtain Executive approval prior to signature of the treaty, and the second step involves submitting the treaty for parliamentary scrutiny prior to ratification and its entry into force for Australia. As provisional application of a treaty means that all or part of an agreement would become legally-binding prior to ratification, it does not sit comfortably with the second step of Australia's treaty-making process, whereby a treaty must undergo parliamentary review before its provisions can enter into force. Generally, Australia does not take action to become legally bound to a treaty until any domestic laws necessary to implement the treaty obligations have been passed. Any new Australian legislation to implement a treaty must be in force on or before the date that a treaty enters into force for Australia.
>
> There may be circumstances where there is a strong policy reason to implement a particular agreement as early as possible. In such situations, the Australian Government may—instead of provisional application—exchange a political, non-legally binding undertaking with its treaty partner to apply provisions in the treaty to cover the period until the ratification process has been completed.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 24th meeting, 4 November 2013:[1]

> In Australia, for example, there is a two-step domestic process before Australia formally consents to be bound at international law. Accordingly, Australia's practice is not to provisionally apply treaties.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:[2]

> Individual States decide whether to provisionally apply treaties in light of the purpose, scope and content of the specific treaty, as well as domestic legal and political considerations. For example, Australia has adopted a dualist approach to the implementation of treaties under which treaties have no effect in Australian domestic law until incorporated formally by legislation. Accordingly, Australia's general practice is not to provisionally apply treaties—but there are exceptions, for example bilateral air services agreements.

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[1] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/australia_3.pdf.

[2] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/australia_3.pdf.

2. Austria

Statement made in the Sixth Committee, Sixty-seventh session (2012), 20th meeting, 2 November 2012:[3]

> The Austrian constitution does not contain any rules on the provisional application of treaties. However, since Austria has become a member of the European Union in 1995 and in view of the EU practice of provisional application, the need arose to apply provisionally certain treaties with third countries. Austria accepted this practice, but in order to respect democratic legitimacy it applied such treaties provisionally only after their approval by the Austrian parliament. If the treaty does not specify that the provisional application becomes effective only upon notification, allowing Austria to conclude its parliamentary procedure, Austria has adopted the practice of declaring that it would apply the treaty provisionally only after its parliamentary approval in Austria.

[3] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/austria_3.pdf.

3. Belarus

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:[4]

> The Republic of Belarus actively uses provisional application in its international treaty practice. Provisional application of international agreements allows the Belarusian side to start cooperation within these agreements with the parallel execution of domestic procedures, required for its entry into force.
>
> The Law of the Republic of Belarus on "International Treaties" stipulates that an international treaty provisionally applied by the Republic of Belarus prior to its entry into force is subject to execution in the same manner as an international treaty that has entered into force (Art. 32). Thus, within the framework of national legislation, the principle is established of full implementation by Belarus of a provisionally applied international treaty from the date of its signing.
>
> In the Republic of Belarus, the decision on the provisional application of the international agreement or part thereof is taken, as a rule, simultaneously with the decision on its signing or conclusion by exchange of notes, letters or other documents forming an international treaty. In case of agreement between the parties, the commencement of the provisional application of an international treaty, or part thereof, is possible on the basis of acceptance by the relevant government authority of the Republic of Belarus with a separate decision without reference to signing.

Communication transmitted to the Secretariat, 1 August 2022:[5]

> **Provisional application of international treaties by the Republic of Belarus**
>
> *1. General information*
>
> The mechanism for provisional application of international treaties by the Republic of Belarus is governed by article 35 of Act No. 421-Z of the Republic of Belarus of 23 July 2008 on international treaties to which the Republic of Belarus is a party (hereinafter "International Treaties Act").
>
> An international treaty or a part of an international treaty may be provisionally applied by the Republic of Belarus prior to its entry into force if the treaty itself so provides or if the parties have so agreed in writing in another form (a separate treaty or protocol, a resolution adopted by an international organization or at an intergovernmental conference, or a unilateral statement).
>
> A decision to provisionally apply an international treaty is usually made at the same time as the decision to sign or conclude it through an exchange of notes, letters or other documents constituting an international treaty, but the International Treaties Act provides for the possibility of a separate decision on provisional application. The rule on the provisional application of an international treaty shall be included both in the international treaty itself and in the normative legal act of the Republic of Belarus on the signing or conclusion of the treaty by an exchange of documents, and the date of commencement of provisional application in the treaty and in the legal act must be identical.

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[4] Unofficial translation (from Russian) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/belarus_3.pdf.

[5] Unofficial translation (from Russian) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/belarus_r.pdf.

The legislative acts of the Republic of Belarus do not prohibit the provisional application of any international treaties.

Provisional application is provided for in the case of both bilateral and multilateral international treaties to which the Republic of Belarus is a party.

A rule on the provisional application of a bilateral international treaty shall be included in the international treaty if the law of the other contracting party does not prohibit or restrict the provisional application of international treaties.

In accordance with the current practice of the Republic of Belarus in concluding multilateral international treaties, including within regional international organizations such as the Commonwealth of Independent States, if, at the stage of drafting an international treaty, its text includes a provision on provisional application of the treaty or on provisional application of certain provisions of the treaty, it is also recommended to include in the draft text a provision allowing any party to the treaty to declare that it will not apply that treaty provisionally or will apply it provisionally from a date other than the date set out in the treaty.

On the basis of recognized international treaty practice, Belarus does not consider the mechanism of provisional application to be a substitute for the entry into force of an international treaty. Provisional application is used only in special cases requiring the application of international treaty rules before the signatories have expressed their consent to be bound.

So far, the Republic of Belarus has had recourse to the practice of provisional application of international treaties in more than 200 cases.

2. Decision-making procedure for inter-State and intergovernmental international treaties

In accordance with the sixth paragraph of article 35 of the *International Treaties Act*, a proposal agreed upon with the Ministry of Foreign Affairs, the Ministry of Justice and other interested State bodies of the Republic of Belarus to provisionally apply an inter-State or intergovernmental international treaty or to terminate the provisional application of such an international treaty shall be submitted to the Council of Ministers of the Republic of Belarus by the State body competent for the subject matter of the international treaty not later than one month prior to the planned date of negotiation or signing, and, in exceptional cases, not later than 10 working days prior to that date, if no other date has been specified by agreement with the Prime Minister of the Republic of Belarus.

A decision to provisionally apply an inter-State or intergovernmental international treaty or to terminate the provisional application of such an international treaty shall be made:

> — In the form of an edict of the President of Belarus, in the case of inter-State treaties and intergovernmental treaties that establish rules different from those contained in the laws of the Republic of Belarus or the decrees and edicts of the President of the Republic of Belarus and/or that concern only matters of legislative regulation but are not regulated by the laws of the Republic of Belarus or by decrees and edicts of the President of the Republic of Belarus; or intergovernmental treaties aimed at attracting resources of international organizations to the Republic of Belarus;
>
> — In the form of a decision of the Council of Ministers of the Republic of Belarus, in the case of other intergovernmental treaties.

3. Decision-making procedure for international inter-agency treaties

In accordance with the eighth paragraph of article 35 of the *International Treaties Act*, a proposal to provisionally apply an international inter-agency treaty or to terminate the provisional application of such an international treaty shall be prepared by the State body competent for the subject matter of the international treaty and shall be agreed upon with the Ministry of Foreign Affairs, the Ministry of Justice and other interested State bodies, or, where necessary, with the President of the Republic of Belarus, the State Secretariat of the Security Council of the Republic of Belarus and the Ministry of Finance.

A decision to provisionally apply an international inter-agency treaty or to terminate the provisional application of such an international treaty shall be made:

— In the form of a decision of the Council of Ministers of the Republic of Belarus, in the case of international inter-agency treaties concerning matters that fall within the competence of two or more national public authorities subordinate to the Government of the Republic of Belarus, or the conclusion of which is provided for by inter-State or intergovernmental treaties;

— In the form of an edict of the heads of a State body of the Republic of Belarus or of a department of a State body, in the case of international inter-agency treaties concerning matters that fall within the competence of a State body of the Republic of Belarus or a department of a State body subordinate (accountable) to the President of the Republic of Belarus;

— In the form of an order of the heads of the relevant State body of the Republic of Belarus or department of a State body, in the case of other international inter-agency treaties.

4. Commencement of provisional application

An international treaty shall be applied provisionally by the Republic of Belarus from the date of its signature or from another date specified by the parties until its entry into force or until the date specified by the parties.

In accordance with the practice of the Republic of Belarus with regard to international treaty law, the date of signature of a treaty and the date of commencement of its provisional application may differ, if it is necessary to take preparatory measures for the effective implementation of its provisions and to communicate the content of those provisions in advance to the persons affected.

5. Termination of provisional application

The provisional application of an international treaty by the Republic of Belarus shall, unless otherwise provided in the treaty, be terminated:

— After the entry into force of the international treaty; or

— After other States or international organizations that are provisionally applying the international treaty have received notification from the Republic of Belarus of its intention not to become a party to the international treaty being provisionally applied by the Republic of Belarus; or

— After the Republic of Belarus has received notification from other States or international organizations that are provisionally applying an international treaty in their relations with the Republic of Belarus of their intention not to become a party to the international treaty being provisionally applied.

6. Performance of a provisionally applied international treaty

In accordance with article 31 of the *International Treaties Act*, international treaties to which the Republic of Belarus is a party, including those being provisionally applied, must be officially published through the posting, on the National Legal Internet Portal of the Republic of Belarus, of the texts of such treaties in the Belarusian and/or Russian languages or of the official translations of such treaties into the Belarusian and/or Russian languages.

The principle that treaties must be performed (*pacta sunt servanda*) applies equally to treaties that have entered into force and to treaties that are provisionally applied. State bodies of the Republic of Belarus are endowed with all the necessary competence to make decisions regarding the provisional application of a treaty within the national legal system.

An international treaty, or a part of an international treaty, that is applied provisionally by the Republic of Belarus pending its entry into force must be performed under the same procedure as international treaties to which the Republic of Belarus is a party that have entered into force.

The Republic of Belarus considers that a violation of the provisions of provisionally applied international treaties entails responsibility in accordance with international law.

4. Belgium

Statement made in the Sixth Committee, Sixty-sixth session (2013), 26th meeting, 5 November 2013:[6]

> Article 167 of the Belgian Constitution revised in 1994, contains an essential principle in the matter according to which all treaties must be submitted to the parliamentary consent of the Competent assembly(s). The assent conditions the effect of treaties in Belgian law.
>
> Neither Article 167 of the Constitution, nor the *Cooperation Agreement* of March 8, 1994 between the Federal State, the Communities and the Regions of the Kingdom of Belgium, relating to modalities for concluding mixed treaties (in the Belgian constitutional sense), envisage the question of the provisional application of treaties.
>
> While provisional application of treaties can certainly be agreed between the parties and produce its effects in international law, it has a limit in domestic law because of the constitutional requirement of consent.
>
> When the effect of the provisionally applied treaty is sought in domestic law, the agreement concerning the provisional application, as well as the provisions of the agreements being provisionally applied, must be subject to the assent procedure.
>
> Before the revision of the Constitution, Belgium had a practice of provisional application of certain agreements, without the prior consent of the competent Assemblies, such as air transport agreements and agreements relating to raw materials.

[6] Unofficial translation (from French) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/belgium.pdf.

5. Botswana

Comments transmitted to the Secretariat in writing, 24 January 2014:

> Botswana has not provisionally applied any treaty, but the Constitution of Botswana does not prohibit the provisional application of treaties. The process to be followed for provisional application of a treaty would be the same as the process followed when Botswana seeks to become a party to a treaty.

6. Brazil

Statement made in the Sixth Committee, Seventy-first session (2016), 26th meeting, 28 October 2016:[7]

> Finally, in relation to the topic "provisional application of treaties", Brazil considers it crucial that the Commission continues giving adequate consideration to the fact that some States are not in a legal position to apply provisionally any sort of treaty, in light of constitutional regulations related to the separation of powers. This is the case of Brazil that has therefore made a reservation to Article 25 of the 1969 *Vienna Convention in the Law of Treaties*.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021:[8]

> The Brazilian constitutional system, as a general rule, requires parliamentary approval of treaties that create binding obligations to Brazil. For this reason, when the National Congress approved the *Vienna Convention on the Law of Treaties*, it objected to article 25, related to provisional application. Therefore, Brazil ratified the Vienna Convention with reservation to this article.
>
> As Brazil disassociates itself from the practice of provisional application of treaties, the guide adopted by the ILC, including its guideline 10, related to the internal law of states, is not applicable to Brazil.
>
> This objection does not affect the obligation not to defeat the object and purpose of a treaty before its entry into force, as prescribed in article 18 of the *Vienna Convention on the Law of Treaties*. It is also without prejudice to Article 24 (4) of the Vienna Convention, according to which certain provisions regarding matters arising necessarily before the entry into force of a treaty apply from the time of the adoption of the text, as stated in the commentary to draft guideline 5. Articles 18 and 24 of the Vienna Convention were not subject to any kind of reservation by Brazil, and they are not directly included in the guide recently adopted.
>
> Although the Brazilian practice does not include provisional application of international agreements, we do not object to other states following this practice, and provisionally applying bilateral or multilateral treaties *vis-à-vis* Brazil. Brazil may only apply the treaty after the parliamentary approval and subsequent ratification, but we do not object to European Union members applying it before its entry into force, based on their own constitutional systems.

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[7] Full text available at: https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/brazil_23.pdf.

[8] Edited by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg_brazil_1.pdf.

7. Bulgaria

Comments transmitted to the Secretariat in writing, 10 April 2020:

[*Reference to the practice of the Council of Europe*]

In the process of negotiating the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe* (CETS No 223) article 37(3) was adopted at the suggestion of the Republic of Bulgaria. This article provides for declarations by States through which they may provisionally apply the provisions of the Protocol. At the time of ratification of the protocol, three states have made declarations to this effect.

8. Canada

Communication transmitted to the Secretariat, 19 July 2022:[9]

The following submission delineates the scope of Canada's evolving practice on the provisional application of treaties.

Provisional application and Canada's treaty adoption process

Canada recently put forward its position on the role of provisional application in its treaty adoption process at the General Assembly debate on the 2021 Report of the International Law Commission:

> Provisional application is an integral part of Canada's treaty adoption process, though we generally prefer to rely on entry-into-force provisions as a straightforward mechanism. Canada's current practice is that provisional application may only take effect following the signing of a treaty, and if no domestic implementing legislation is required. If implementing legislation is required, provisional application is delayed until the required legislation enters into force [emphasis added].[10]

A similar position was articulated by Canada in a study published in 2001 by the Council of Europe (CoE) and the British Institute of International and Comparative Law (BIICL):

> Provisional application is possible, for example, when such a provision is included in the legislation (*e.g.* the Department of Transport Act). If, however, changes in Canadian laws or regulations are necessary in order to enable the government of Canada to commit itself to provisional application of a treaty, appropriate legislative or regulatory action must be taken.[11]

The approach taken in relation to the *Canada-European Union Comprehensive Economic and Trade Agreement* (CETA) illustrates this practice. Article 30.7.3 of CETA allows Canada or the European Union (EU) to provisionally apply the treaty granted "that their respective internal requirements and procedures necessary for the provisional application of this Agreement have been completed."[12] Canada therefore enacted the *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act* and completed other necessary procedures to domestically implement CETA (*e.g.*, administrative and regulatory changes) prior to the initiation of CETA's provisional application pursuant to Article 30.7.3.[13]

In addition to enacting any necessary legislative, regulatory or other changes, Canada also typically provides confirmation to the other State of the completion of Canada's relevant domestic procedures to provisionally apply a given treaty and, if applicable, identifies the

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[9] Also provided in French, see: https://legal.un.org/legislativeseries/pdfs/chapters/book26/canada_f.pdf.

[10] United Nations General Assembly, Sixth Committee, *International Law Commission Report*, Canada Statement—Cluster 1, 28 October 2021, p. 3, available online at https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/19mtg_canada_1e.pdf.

[11] Council of Europe (CoE) and the British Institute of International and Comparative Law (BIICL), "Treaty Making—Expression of consent by States to be Bound by a Treaty", The Hague, Kluwer Law, 2001, p. 301.

[12] "Text of the Comprehensive Economic and Trade Agreement—Chapter thirty: Final provisions" Government of Canada, available online at https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/30.aspx?lang=eng.

[13] *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act* S.C. 2017, c. 6; see also "Order Fixing September 21, 2017 as the Day on which the Act Comes into Force, other than Certain Provisions" Canada Gazette, available online at https://gazette.gc.ca/rp-pr/p2/2017/2017-09-07-x1/html/si-tr47-eng.html.

relevant provisions subject to provisional application (if the intent is to limit provisional application to certain provisions of the treaty).[14]

Canada maintains that the ultimate objective is for States to take the necessary domestic steps to ensure that a treaty formally enters into force. Thus, provisional application should be seen as a "transitional stage" or measure that can facilitate the coming into force of a treaty.[15]

Canada's practice regarding the forms for prescribing or exercising provisional application

Article 25 of the *Vienna Convention on the Law of Treaties* (VCLT) specifies that provisional application may result from the provisions of the treaty in question (Article 25(*a*)). Provisional application may also occur "in some other manner" (Article 25(*b*)) as agreed by the negotiating States, including in the form of a separate treaty or, exceptionally, a decision or resolution adopted at an international organization or conference, or by a declaration of a State accepted by another State or international organization.[16]

Canada's practice is generally to prescribe provisional application in the treaty in question or alternatively as a separate treaty (typically through an exchange of notes or a protocol).

In the treaty in question (examples)

A series of bilateral treaties between Canada and Latin American States concluded between the mid-1940s to the mid-1950s include express provisions on their provisional application in the final clauses. These provisions stipulate that the treaty in question would apply provisionally upon signature or on a certain date, pending the treaty's definitive entry into force.[17]

The plurilateral *Free Trade Agreement between Canada and the States of the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)* allows for the provisional application of the treaty and associated bilateral agreements, on condition that the domestic requirements of each State permit this provisional application.[18]

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[14] See, for example, Note no. JLI—0133 regarding *General Coordination Agreement between the United States of America and Canada on the Use of the Radio Frequency Spectrum by Terrestrial Radiocommunication Stations and Earth Stations* (2021).

[15] See para. 84 of Second Report of the Special Rapporteur on the provisional application of treaties, UN Doc. A/CN.4/675.

[16] Sean D Murphy explains that "[w]hile the draft guideline [on provisional application] identifies these other forms, virtually all agreements on provisional application may be found in the treaty itself that is being provisionally applied or in a separate treaty; very few (if any) examples may be found of provisional application in the form of a resolution adopted at an international organization or by a declaration of a state accepted by others." See Sean D. Murphy, "Provisional Application of Treaties and Other Topics: The Seventy Second Session of the International Law Commission" (2021) 115:4 AJIL, p. 673; see also International Law Commission, *Guide to the Provisional Application of Treaties, with commentaries thereto*, Guidelines 3 and 4 (reproduced at p. 218, below).

[17] See Article X(*c*) of the *Trade Agreement between Canada and Spain*, (E100588–CTS 1955/12); see also Article XIV of the *Agreement between the Government of Canada and the Government of Peru for Air Services between and beyond their respective territories* (E103280–CTS 1955/1); see Article VIII(2) of the *Trade Agreement between Canada and Mexico* (E100538–CTS 1946/4); see also Article X(2) of the *Trade Agreement between Canada and Brazil* (E102985–CTS 1941/18); finally, see Article IX(2) of the *Trade Agreement between Canada and Chile* (E102997–CTS 1941/16).

[18] See Article 41 of the *Free Trade Agreement between Canada and the States of the European Free Trade Association* (Iceland, Liechtenstein, Norway and Switzerland) (CTS 2009/3).

In some other manner (examples)

An exchange of notes has been used to prescribe provisional application[19] or to extend provisional application that was prescribed by the initial treaty.[20] Canada has also prescribed provisional application in the form of a protocol with an international organization.[21]

Canada has not prescribed or exercised provisional application through forms other than the treaty itself or by a separate agreement. Canada has expressed the need for greater clarity regarding the exercise of provisional application "in some other manner" as foreseen at Article 25(*b*) of the VCLT, particularly to clarify whether and, if so under what circumstances, consent for provisional application could be tacit or implied and produce legal effects.[22]

Conclusion

Overall, provisional application is a voluntary and flexible mechanism that allows States to accommodate differences in their respective domestic treaty adoption requirements while not unduly delaying treaty implementation.[23] Canada's views and practice on provisional application will continue to evolve based on our experience and that of other States.

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[19] See, for example, *Exchange of Notes between Canada and Sweden providing for the Provisional Application between the two countries of the Provisions of the International Air Services Transit Agreement done at Chicago, December 7, 1944* (now terminated).

[20] See, as an example, *Exchange of Notes (September 23 and October 9 and 12, 1942) Between Canada and Chile Extending the Provisional Application of the Trade Agreement of September 10, 1941* (E104697–CTS 1942/15); cf. Article IX (2) of the *Trade Agreement between Canada and Chile* (E102997–CTS 1941/16).

[21] See Article 17(*b*) of the *Protocol Additional to the Agreement between Canada and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*.

[22] See Statement by Canada, General Assembly of the United Nations, 70th session, Sixth Committee, 25th meeting, UN Doc. A/C.6/70/SR.25, para. 60.

[23] See Memorandum by the ILC Secretariat on provisional application of treaties, United Nations General Assembly, International Law Commission, 69th session, UN Doc. A/CN.4/707[, reproduced at p. 311, below], para. 103.

9. Colombia

Communication transmitted to the Secretariat, 1 August 2022:[24]

1. Provisional application of treaties: jurisprudence of the Constitutional Court of Colombia

The provisional application of treaties, as a concept of public international law, embedded in the Vienna Convention on the Law of Treaties, has historically been applied in the Republic of Colombia particularly in the case of international economic and trade agreements generated within an international organization, thus expediting their processing, incorporating them into the country's laws and giving effect to the international obligations enshrined in the instrument, while it goes through the internal ratification process provided for in the Constitution.

Since the enactment of the 1991 Constitution, Colombia has provisionally applied a very limited number of treaties, including the following:

— *Exchange of notes constituting an agreement between Colombia and Brazil for reciprocal exemption from double taxation in favour of the maritime or airline companies of both countries*;

— *Economic Complementarity Agreement—Free Trade Agreement—between the Republic of Colombia, the United Mexican States and the Bolivarian Republic of Venezuela—Seventh Additional Protocol*;

— *Partial scope trade agreement between the Republic of Colombia and the Bolivarian Republic of Venezuela*;

— *Trade Agreement between the European Union, Colombia and Peru*, signed in Brussels, Belgium, on 26 June 2012;

— *Economic Complementarity Agreement No. 72*, entered into between the Governments of the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, States parties of the Southern Common Market (MERCOSUR), and the Government of the Republic of Colombia, signed on 21 July 2017.

It should, however, be noted that Colombia formulated a reservation to article 25 of the Vienna Convention, given that, while the 1886 Constitution was in force, the provisional application of treaties was prohibited.

The reservation was reflected in Decree No. 3703 of 1985, in the following terms:

> (…) Reservation by Colombia.
>
> With regard to article 25, Colombia formulates the reservation that the Political Constitution of Colombia does not recognize the provisional application of treaties; it is the responsibility of the National Congress to legislate, and thereby to exercise its right to approve or disapprove any treaties and conventions which the Government concludes with other States or with international legal entities, in general entities subject to international law (…).

[24] Unofficial translation (from Spanish) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/colombia_s.pdf.

However, in the preparatory work for the 1991 Constitution, currently in force in Colombia, the National Constituent Assembly considered it necessary to give the President of the Republic the power to provisionally apply treaties, provided that they were of a commercial or economic nature and had been adopted within an international organization.

The subsequent pronouncements of the Constitutional Court, the highest national court, therefore refer to the possibility that treaties may be provisionally applied, under the aforementioned terms, as described below:

Judgment No. C-249 of 1994:

The Court ruled that:

> Although the general principle regarding the application, force and validity of treaties is determined by their approval in accordance with the national laws of each State, it has been established that a treaty or part thereof may be applied without completing the aforementioned procedures. The rationale for the provisional application of a treaty lies in the importance of the issue being regulated or in the urgency for States of its implementation (…).

In that regard, it added the following:

> Provisional application does not imply that the constitutional procedures to be completed by each State in order to approve treaties should be disregarded, since States do not waive the right or the duty to submit the respective agreement to the competent entity for approval; those procedures, despite the provisional application, must be completed. In addition, when the provisional application clause is agreed upon, it is subject to the condition of subsequent ratification.
>
> The 1991 Constitution enshrined the concept of the provisional application of treaties, restricting its use to treaties of an economic and commercial nature. Thus, when a treaty covers these specific issues, a provisional application clause may be agreed upon, in which case the Government must immediately submit the respective treaty to Congress for approval. If a treaty deals with matters other than those covered in the aforementioned article, and this special clause is included, the negotiator will have to formulate a reservation (…).

The Court thereby noted that the provisional application of treaties was expressly enshrined in article 224 of the 1991 Constitution, which restricted its use to treaties of an economic and commercial nature. When a treaty covers these specific issues, a provisional application clause may thus be agreed upon, in which case the Government must immediately submit the respective treaty to Congress for approval. If a treaty deals with matters other than those covered in the aforementioned article, and this special clause is included, the negotiator will have to formulate a reservation.

Judgment No. C-321 of 2006:

The Constitutional Court ruled on the constitutionality of article 25 of the Vienna Convention. On the matter, the Court ruled as follows:

> (…) given that the Colombian reservation to article 25 of the 1969 Vienna Convention modifies the scope of the obligation set forth therein in relation to Colombia, and said reservation is currently in force, the Chamber concludes that it is necessary to interpret said article in conjunction with the reservation—given that the article and reservation determine the scope of the international obligations of Colombia—from which it follows that article 25 is not currently binding on Colombia, pursuant to the reservation (…).

The Court therefore held that as long as the Government of Colombia does not withdraw the reservation, article 25 of the 1969 Vienna Convention will not be internationally binding on Colombia. Thus, *stricto sensu*, the aforementioned article does not apply in a general manner to the Republic of Colombia and therefore the provisional application of treaties has been used only in those cases where such use has been permitted under the domestic legal system.

Judgment No. C-280 of 2014:

The Court examined the constitutionality of the provisional application of the trade agreement between the Republic of Colombia and the European Union. To that end, it recalled the circumstances under which the measure may be applied in Colombia, noting that, pursuant to the provisions of article 224 of the Constitution, a treaty may be applied provisionally only in cases in which reference is made to a treaty of a commercial nature and when said treaty has been concluded within an international organization.[25]

In the words of the Court:

> (…) Although as a general rule the ratification, entry into force and application of international treaties through which Colombia enters into new obligations are preceded by this procedure, article 224 of the Constitution provides for a special scenario through the provisional application of such instruments. The aforementioned provision provides that the President of the Republic may provisionally apply treaties of an economic or commercial nature agreed upon within the scope of an international organization, if the treaty so provides. In this case, as soon as a treaty provisionally enters into force, it must be sent to Congress for approval. If Congress does not approve it, the application of the treaty shall be suspended.
>
> Thus, in these cases the President may implement the instrument without the constitutional procedures detailed in the previous section having been completed, when three conditions are met:
>
> (i) The content of the agreement is economic or commercial in nature;
>
> (ii) The instrument was negotiated and concluded within the scope of an international organization;
>
> (iii) The treaty expressly provides for its advance application (…).

Consequently, it reiterated what it had expressed in previous pronouncements, stating that the legal effect of the provisional application of an international instrument does not waive the requirement to complete the internal procedures provided for at the constitutional level for the incorporation of treaties into domestic law, but to defer the completion of said procedures, enabling these international provisions undertaken by Colombia to be applied and implemented before the act approving them has been issued, this Court has conducted a constitutional review and the treaty has been ratified.

Thus, with regard to the instrument analysed on that occasion, it determined the following:

— It is a free trade agreement, which implies that it is commercial and economic in nature.

[25] Article 224 of the Constitution of Colombia ("Treaties, in order to be valid, must be approved by Congress. However, the President of the Republic may provisionally apply treaties of an economic and commercial nature agreed upon within the scope of an international organization, if the treaty so provides. In this case, as soon as a treaty provisionally enters into force, it must be sent to Congress for approval. If Congress does not approve it, the application of the treaty shall be suspended").

> — The treaty clearly contains a provisional application clause.
>
> — However, it was not concluded within an international organization in the usual manner, as in the case of the agreements concluded within the Latin American Integration Association (LAIA); nonetheless, the national Government argued that the requirement was understood to have been fulfilled, since the provisions of the free trade agreement build upon the provisions of the World Trade Organization, which has the legal status of an international organization.
>
> — It was not provisionally applied before being submitted to Congress for approval; instead, the free trade agreement was subject to the debates provided for under the Constitution for this type of instrument and was provisionally applied before it went through the automatic constitutional review conducted by the Constitutional Court.

Taking into account that one of the requirements is that the instrument must have been concluded within an international organization, the Court established that:

> (…) Given that the legal effect of the provisional application of international treaties is the deferral of the parliamentary approval and constitutional review procedures, which are aimed at ensuring good faith and the respect and strengthening of international relations, the democratic basis of international commitments, their suitability for Colombia and their compliance with the Constitution, and in particular with human rights standards, the requirement set out in article 224 of the Constitution, whereby the international agreement for which provisional application is sought must have been concluded within the scope of an international organization, implies that the treaty must build on and be a direct and specific expression of the purpose of the international organization.
>
> The rationale behind this is that, given that the constituent instrument of the entity, which determines its purpose, has been subject to parliamentary approval and constitutional review procedures, the advance application of an instrument that builds on and expresses said purpose does not entail or carry with it the risks inherent in the deferral of the standard procedures for entry into force of international treaties (…).

Judgment No. C-254 of 2019:

Finally, when the Constitutional Court ruled on the constitutionality of the free trade agreement concluded with Israel, it established the following with respect to the provisional application of treaties:

> (…) Regarding the possibility of Colombia provisionally applying the free trade agreement, notwithstanding the constitutional validity of such treaty clauses, it can be inferred from the statement submitted by the Ministry of Trade that it did not take place. The Court also noted that, although the President of the Republic may provisionally apply trade treaties concluded within international organizations (art. 224), the treaty may only enter into force if all internal procedures have been completed, including the endorsement provided by the act approving the treaty and the declaration of constitutionality. For the foregoing reasons, the motion of unenforceability filed by one of the intervening parties in the case is not admissible (…).

Given the jurisprudence of the Constitutional Court and the number of cases in which international treaties concluded by Colombia have been provisionally applied, it is evident that this concept is applied on an exceptional basis and should therefore be interpreted as restrictively as possible, without admitting analogies.

2. Most recent cases of provisional application of treaties in Colombia

(a) Trade agreement between the European Union, Colombia, Peru and Ecuador

Of the five treaties mentioned, which Colombia has provisionally applied since it was established in the 1991 Constitution that a provisional application clause could be included in treaties concluded by the Republic of Colombia, provided that the concurrent assumptions set out in article 224 are met,[26] one of the most significant cases is the *Trade Agreement between Colombia and Peru, of the one part, and the European Union and its Member States, of the other part*, signed in Brussels, Belgium, on 26 June 2012.

For Colombia, the internal procedures for its approval by Congress began in November 2012 and concluded with its endorsement by President Juan Manuel Santos, by Act No. 1669 of 16 July 2013. In judgment No. C-335/14 of 2014, the Constitutional Court declared that the agreement complied with the Constitution, with regard to both its procedural aspects and its material content.

Through Decree No. 1513 of 18 July 2013, the President of the Republic provisionally applied the Trade Agreement and the European Union was notified of the completion of the internal procedures required for that purpose. By means of the same Decree, it was also decided that the agreement would be provisionally applied as of 1 August 2013.

The market access commitments entered into by the President of the Republic were implemented through Decree No. 1636 of 31 July 2013. The President applied the aforementioned agreement with the following considerations:

> […] the National Government concluded the "Trade Agreement between Colombia and Peru, of the one part, and the European Union and its Member States, of the other part", signed in Brussels, Belgium, on 26 June 2012;
>
> Whereas article 330, paragraph 3, of the aforementioned Agreement provides for it to be provisionally applied, fully or partially; […]
>
> Whereas article 224 of the Constitution of Colombia provides that the President of the Republic may provisionally apply treaties of an economic or commercial nature agreed upon within the scope of international organizations, if the treaty so provides;
>
> Whereas in the preamble […] the Parties affirm and agree to build on the rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization; […]
>
> Whereas in the light of the above, the commitments entered into under the aforementioned Agreement shall be provisionally applied.

From the above, it can be concluded that the agreement is a free trade agreement, of a commercial and economic nature, in which the provisional application clause is established, under article 330, paragraph 3.

Furthermore, among the agreements that Colombia has provisionally applied, this particular one was not applied before it was submitted to Congress for approval. The free trade agreement was, instead, subject to the debates required for this type of instrument and was provisionally applied prior to the automatic constitutional review conducted by the Constitutional Court. Although the constitutional rule that empowers the President to provisionally apply treaties does not, strictly speaking, authorize the President at any

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[26] (i) They must be treaties of an economic or commercial nature; (ii) they must be agreed within international organizations; and (iii) once the treaty enters into force provisionally it must immediately be submitted to Congress for approval.

time to provisionally apply the treaty after it has been submitted to Congress or before the required constitutional review, it is also evident that such a situation is not expressly prohibited. Similarly, the fact that approval by Congress is required does not mean that certain fundamental requirements must be met for a treaty to be provisionally applied.

It was also argued that the requirement whereby the treaty should be generated within an international organization was understood to have been fulfilled, since the provisions of the Free Trade Agreement build upon the provisions of the World Trade Organization, which has the status of an international organization.

On 5 November 2014, the National Government issued Decree No. 2247, by which Colombia will continue to apply without interruption, under the terms set forth in Decree No. 1513 of 2013, the Trade Agreement signed with the European Union and its member States, after having complied with all the internal requirements as provided for in Colombian law for its approval.

(b) Economic Complementarity Agreement No. 72 Colombia—MERCOSUR

The agreement was signed on 21 July 2017. Regarding its provisional application, on 20 December 2017, the Government of the Republic of Colombia notified the General Secretariat of the Latin American Integration Association (LAIA) of the issuance of Decree No. 2111 of 2017, which provides for the provisional application of Economic Complementarity Agreement No. 72 between Colombia and those signatory parties that have notified the General Secretariat of LAIA that the Agreement has been incorporated into their domestic law.

On the same date, the General Secretariat of LAIA, through notes ALADI/SUBSE-LC 302/17 and ALADI/SUBSE-LC 303/17, informed the parties that *Economic Complementarity Agreement No. 72* would apply between Colombia and Argentina, and between Colombia and Brazil, as of 20 December 2017. However, its entry into force is pending with regard to Paraguay and Uruguay.

3. Conclusions

— The provisional application of treaties is restricted for Colombia. Colombia formulated a reservation to article 25 of the *Vienna Convention on the Law of Treaties*, given that the provisional application of treaties was prohibited while the 1886 Constitution was in force.

— The 1991 Constitution, currently in force, allows the provisional application only of those treaties that are (i) of an economic or commercial nature and (ii) agreed upon within the scope of an international organization. It further provides that once the treaty provisionally enters into force it must be submitted to Congress for approval immediately.

— The concept is therefore of an exceptional and restrictive nature for Colombia.

— Since the entry into force of the new Constitution, Colombia has provisionally applied a very limited number of treaties.

— The Constitutional Court, which is the highest constitutional court of Colombia, has clarified through its jurisprudence the scope of this concept in domestic law, as described in these comments.

10. Croatia

Communication transmitted to the Secretariat, 27 June 2022:

The national practice of the Republic of Croatia on the provisional application of treaties

Croatian legislation generally allows the provisional application of treaties. The relevant domestic law regulating the provisional application of treaties is the *Law on Conclusion and Execution of Treaties* of 1996. In this regard, Article 10 of the Law stipulates that the consent for provisional application of treaties on behalf of the Republic of Croatia may be granted only upon approval of the President (this provision is no longer applicable after constitutional changes discontinuing the semi-presidential system) or the Government. Such approval is in principle given through a decision of the Government on initiating the process of concluding (*i.e.*, signing) a treaty. At the same time, paragraph 2 of the same Article, paraphrasing almost verbatim paragraph 2 of Article 25 of the *Vienna Convention on the Law of Treaties*, regulates that if not otherwise provided by the treaty or if negotiating parties did not agree otherwise, the provisional application would be terminated if the Republic of Croatia decides not to become a party to the treaty concerned and notifies such intention to other international subjects amongst which the concerned treaty provisionally applies.

From 1991 until June 2022, the Republic of Croatia agreed to the provisional application of 223 bilateral treaties.

Excerpt from the Law on Conclusion and Execution of Treaties (1996):[27]

> […] *Article 10*
>
> Consent of the Republic of Croatia for a treaty or a part thereof to be applied provisionally pending its entering into force may be granted only if so approved by the President of the Republic or the Government of the Republic of Croatia.
>
> Unless otherwise provided by a treaty or unless otherwise agreed between the negotiating parties, such provisional application shall be terminated if the Republic of Croatia has decided not to become a party to the concerned treaty and notifies such intention to other international subjects amongst which the concerned treaty provisionally applies.
>
> […]

[27] Unofficial translation (from Croatian), provided by the delegation of Croatia.

11. Cuba

Statement made in the Sixth Committee, Seventieth session (2015), 24th meeting, 10 November 2015:[28]

> In Cuban practice, the use of the provisional application clause is not extensive and only applies to cases in which immediate execution is agreed to in the interest of the Parties.
>
> For Cuba, provisional application does not replace the entry into force of treaties, however, provisional application constitutes an important element that the Vienna Convention contributed to international law and that today, given the circumstances in which some treaties are signed, require an immediate application.
>
> In Cuba, it is ensured that most of the treaties that have the clause of provisional application lead to the entry into force and definitive application of the treaty. Examples of this practice are to be found in the signing by the Government of Cuba of bilateral agreements that include provisional application clauses and that are in force or are in the process of complying with the formalities of internal legal regulations for its entry into force.

Communication transmitted to the Secretariat, 27 June 2022:[29]

> Cuba is grateful to the International Law Commission for its work in preparing the *Guide to Provisional Application of Treaties*, including the guidelines concerning the provisional application of treaties by States and international organizations annexed to resolution 76/113, and takes note of the same, bearing in mind the importance of the subject for international law and international relations.
>
> Cuba considers that the provisional application of treaties has its legal basis in strict observance of articles 24 and 25 of the *Vienna Convention on the Law of Treaties*, which gives priority to the principle of party autonomy, in that it is the parties that establish by agreement the scope of the obligations they are to assume, their duration and the termination thereof.
>
> Article 26 of the Convention also applies to the legal institution of provisional application, bearing in mind that the obligations deriving from that regime should be governed by the *pacta sunt servanda* principle, since they constitute a commitment by the parties to perform the obligations in good faith.
>
> At the same time, caution is needed in interpreting the sovereign acts of States in respect of the signature and entry into force of international agreements, it being the parties that assume certain rights and obligations.
>
> The provisional application of a treaty does not replace its entry into force, but should be used as an optional mechanism in exceptional circumstances where there is an urgent need to apply a treaty. Provisionally applied treaties should enter into force definitively once the constitutional approval processes established under the domestic law of the signatory parties have been completed. In other words, provisional application should not serve as a substitute for efforts to seek definitive entry into force.
>
> In the Cuban legal system, the provisional application of treaties is regulated by article 52.2 of resolution 206/215 entitled "Bilateral and Multilateral Treaty Procedures", according to

[28] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/cuba_3.pdf.

[29] Unofficial translation (from Spanish) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/cuba_s.pdf.

which a treaty may be provisionally applied prior to its entry into force provided that the foreign party accepts the provisional application and the circumstances make it advisable.

In Cuban practice, provisional application is not overused; treaties are provisionally applied only in cases where, in the interests of the parties, it is decided that the obligations should be implemented immediately.

For Cuba, provisional application is not a substitute for the entry into force of treaties. Cuba ensures the entry into force and definitive application of all treaties with a provisional application clause, as evidenced in the signature by the Government of Cuba of bilateral agreements that have included the provisional application clause and have entered into force following completion of the domestic legal procedures. Examples are the *Agreement between the Government of the Republic of Cuba and the Government of the Republic of Cape Verde on the abolition of visas*, signed on 3 June 1982, and the *Technical and Economic Cooperation Agreement between the Government of the Republic of Cuba and the Government of the People's Republic of China*, signed on 22 July 2014.

12. Czechia

Communication transmitted to the Secretariat in writing, 31 January 2014:

> The Czech Republic applies provisionally the international agreements, but this practice is limited by the Constitution of the Czech Republic. While executive treaties (international agreements concluded within the competence of the Government and respective Ministries, *i.e.*, within the framework of Czech laws) can be provisionally applied fully, the treaties that are subject to the approval of the Parliament before their ratification can be provisionally applied only to the extent that they are compatible with the Czech laws.
>
> [*Reference to the practice of the European Union:*]
>
> [P]rovisional application is quite common for the treaties negotiated in the framework of the European Union (EU). The legal basis for the provisional application of international agreements concluded between the EU and third countries (or international organisations) is enshrined in Article 218(5) of the Treaty on the Functioning of the European Union.
>
> In practice, the EU regularly makes use of the provisional application especially in the case of the so-called mixed agreements which require ratification by all Member States and thus can be very time-consuming. As the provisional application of provisions falling within Member States' legal systems, only those matters covered by the agreements coming within the EU's competence are provisionally applied by the Union or the scope of the provisional application by the member States is limited by the requirement of conformity with internal procedures (or domestic legislation).
>
> Thus, the *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part*, is being applied on a provisional basis by the Union, pending the competition of the procedures for its conclusion, and the same time provisions falling within the member States' competences are excluded from the provisional application [see Art. 3 of the Council Decision of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* (2011/265/EU)].
>
> As another example, Art. 3 of the Decision of the Council and of the Representatives of the Governments of the Member States, meeting within Council of 15 October 2010 on the signature and provisional application if the *Common Aviation Area Agreement* ("CAAA") between European Union and its Member States, of the one part, and Georgia, of the other part (2012/708/EU) and Art. 29 of the CAAA itself establish that pending its entry into force, the CAAA shall be applied on a provisional basis by the Union and by the Member States, in accordance with their internal procedures and/or domestic legislation as applicable.

13. El Salvador

Communication transmitted to the Secretariat, 14 December 2017:[30]

Legal status of international treaties in the Salvadoran legal system

The domestic legislation of the Republic of El Salvador assigns a particular legal status to international treaties on the basis of a constitutional provision. Article 144 of the Constitution states:

> The international treaties concluded by El Salvador with other States or with international organizations constitute laws of the Republic on entry into force, in accordance with the provisions of the treaty in question and with this Constitution. The law may not modify or derogate from what has been agreed in a treaty in force for El Salvador. In the event of a conflict between a treaty and a law, the treaty shall prevail.

In addition, treaties that restrict or in any way affect constitutional provisions shall not be ratified unless ratification is carried out with the corresponding reservations. The provisions of the treaty in respect of which reservations have been made shall not be the law of the Republic (article 145 of the Constitution).

Given that, in the domestic legal system, no specific law has been adopted on the implementation of international treaties, the only provisions that regulate this area are the ones mentioned above. Accordingly, the Constitution attaches the same force of law to treaties as to laws, and even gives precedence to treaties in the event of a conflict between the implementation of a treaty and a law. Therefore, decisions on the provisional application of such instruments, their termination and the legal effects of their provisional application shall comply with the relevant provisions of those treaties while respecting the constitutional parameters defined in the aforementioned articles.

The Constitutional Chamber of the Supreme Court of Justice of El Salvador has established in its jurisprudence that treaties are an expression of the conscience of the international community and that, when they are ratified by El Salvador, those universal values, precepts and principles (habeas corpus proceedings, 19-R-96, judgment of 7 August 1996) become the country's own.

In that vein, the Constitutional Chamber has held that the Constitution of each State provides rules for the process of entry into force of international treaties in domestic law, their implementation in domestic law, and the regulation of legal relationships between treaties and rules of domestic law (unconstitutionality proceedings, 10–2000, judgment of 11 November 2003).

The practice of the Salvadoran State in the conclusion of international treaties having clauses that require their provisional application

Given the nature of the Salvadoran legal system, the present report will now explain State practice with regard to the ratification of treaties containing provisional application clauses.

The Republic of El Salvador has concluded and ratified three treaties on trade and cooperation that contain clauses referring explicitly to provisional application, namely:

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[30] Unofficial translation (from Spanish) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/el_salvador_s.pdf.

Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

Rounds of negotiations between the European Union and Central America for the conclusion of an association agreement began in 2007. The Salvadoran State, as a member of the Central American Integration System, was a party to the negotiations leading to the conclusion of the agreement, and ratified it through Legislative Decree No. 410 of 4 July 2013, published in Official Gazette No. 127, vol. 400, on 11 July 2013.

Article 353 of the agreement stipulates that, for its entry into force, the parties shall approve the agreement in accordance with their internal legal procedures, and it shall enter into force the first day of the month following that in which the parties have notified each other of the completion of those procedures.

However, the fourth paragraph of article 353 reflects the provisional application of part of the agreement, namely the trade pillar, according to which:

> 4. Notwithstanding paragraph 2, Part IV of this Agreement may be applied by the European Union and each of the Republics of the CA Party from the first day of the month following the date on which they have notified each other of the completion of the internal legal procedures necessary for this purpose. In this case, the institutional bodies necessary for the functioning of the Agreement shall exercise their functions.

Therefore, by virtue of that paragraph, the parties may provisionally apply the provisions relating to the establishment of a free trade area and the objectives for promoting trade in goods between the States parties to the agreement.

Free Trade Agreement between the Republic of Colombia and the Republics of El Salvador, Guatemala and Honduras

Ratified by the Republic of El Salvador through Legislative Decree No. 699 of 21 August 2008, published in Official Gazette No. 171, vol. No. 380, on 12 September 2008.

In the particular case of this agreement, the clause concerning the provisional application of its content is not binding on the Salvadoran State. However, it is considered worth mentioning in order to demonstrate that El Salvador, as a party to the agreement, recognizes the possibility of regulating provisional application:

> *Article 21.6*
> *Provisional application*
>
> Without prejudice to article 21.3, this Agreement may be applied provisionally by the Republic of Colombia, in accordance with its constitutional requirements, from the date of its signature and until its definitive entry into force. Provisional application shall also cease at the moment when the Republic of Colombia notifies the other Parties of its intention not to become a Party to the Agreement or its intention to suspend provisional application.

Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of El Salvador, acting through the Ministry of Foreign Affairs

This Compact on cooperation was ratified by the Salvadoran State through Legislative Decree No. 836 of 31 October 2014, published in Official Gazette No. 206, vol. No. 405, on 5 November 2014.

For the provisional application of this instrument, two clauses were established: one relating to the administrative and funding activities required for the provisional application of the Compact and another regulating the procedure by which the parties would begin its provisional application, namely:

> Section 7.5. Provisional application: Until this Compact has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact from the date of a letter from the Government informing MCC that the Government is prepared to provisionally apply the Compact; provided that no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force.

In short, despite the absence of national legislation that specifically regulates the provisional application of treaties, the practice of the Salvadoran State has reflected the ratification of international treaties that contain clauses providing for their provisional application. Therefore, the Republic of El Salvador recognizes the need to provide clarity concerning the way in which such application operates in the context of treaty law, and will continue to support that work within the framework of the International Law Commission.

14. Estonia

Statement made in the Sixth Committee, Seventy-second session (2017), 20th meeting, 25 October 2017:[31]

> Section 23 of the *Estonian Foreign Relations Act* states that the performance of a treaty shall be guaranteed by the Government, or a governmental authority authorised therefor. The Government may temporarily (*i.e.*, provisionally) apply a treaty after approval and prior to the entry into force on the condition that the fundamental rights and freedoms of persons are not restricted thereby and the treaty or a legal act of the Government prescribes temporary (*i.e.*, provisional) application of the treaty.

[31] Full text available at: https://www.un.org/en/ga/sixth/72/pdfs/statements/ilc/estonia_1.pdf.

15. Finland[32]

Communication transmitted to the Secretariat, 17 June 2022:

> The Constitution of Finland or other legislation does not contain specific provisions on the procedure for deciding on the Provisional Application of Treaties. In accordance with established practice, Provisional Application of Treaties is decided in accordance with the same procedure that is followed when committing to treaties in general. If a treaty includes provisions that require the approval of the Finnish Parliament, Finland can apply these kinds of provisions provisionally only after having received the parliamentary approval. The Provisional Application of a Treaty begins from either the date stated in the Treaty, the date decided on by the President of the Republic or the Finnish Government, or the date specified in the Finnish notification. Finland applies Treaties provisionally very rarely.

[32] See also the submission of the Nordic Countries, below at p. 47, below.

16. Germany

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:[33]

> States may decide to limit the extent of provisional application of a treaty. This has been done in many treaties concluded with Germany's participation. In that case, the extent of provisional application is determined either in the treaty itself or in the instrument containing the agreement on provisional application.
>
> In many States—including Germany—internal law determines to what extent provisional application of a treaty may be agreed to or to what extent a treaty may be provisionally applied. If the implementation of a treaty requires change or adoption of internal national legislation in a negotiating State, the provisional application of this treaty will be impossible for the State, at least until the respective law has been changed or adopted by the legislative bodies. The same might be true if the financial funding demanded by the treaty requires parliamentary approval.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 24th meeting, 4 November 2013:[34]

> In many States—including Germany—constitutional and internal law determine to what extent provisional application of a treaty can be agreed to, or to what extent a treaty may be provisionally applied. States have found several ways to agree on provisional application of a treaty taking into account such constitutional requirements.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021:[35]

> In a dualist legal system like in Germany, where treaties must be transposed or incorporated into national law to become effective, it is a typical requirement of constitutional law that the competent organ may only agree to provisional application of a treaty if national law is already in conformity with the treaty or is brought into conformity with it first.
>
> This plays an important role especially against the background of the legal effects of provisional application at the level of international law. The principles of *pacta sunt servanda* and State responsibility apply also for provisional application of treaties.
>
> Due to the principle enshrined in the Article 25 of the German Basic Law, that general rules of international law shall be an integral part of federal law, Germany supports the possibility to apply treaties provisionally because the course of actions facilitated by the provisional application of a treaty usually helps to build confidence between the contracting parties, creates an incentive to ratify the treaty and enables the parties to take preparatory measures and thereby serves the further development of international relations.

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[33] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/germany_3.pdf.

[34] Summarised in UN Doc. A/C.6/68/SR.24, para. 64.

[35] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg_germany_1.pdf.

17. Ghana

Statement made in the Sixth Committee, Sixty-seventh session (2012), 23rd meeting, 6 November 2012:[36]

> It is not uncommon to find States enquiring whether bilateral treaties Ghana has signed could enter into force provisionally in light of our national constitutional provision requiring all agreements to be ratified by Parliament. Despite this constitutional provision, Ghana has signed a number of treaties, including ECOWAS Protocols requiring provisional entry into force pending compliance with national constitutional procedures or legislative approval. Ghana endeavours to ratify such treaties as soon as possible after signature.

[36] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/ghana.pdf.

18. Hungary

Statement made in the Sixth Committee, Sixty-seventh session (2012), 20th meeting, 2 November 2012:[37]

> [*Reference to the practice of the European Union:*]
>
> [D]uring the last decade the number of international treaties containing provisional application clauses has substantially increased. This also applies to Hungary which as a member of the European Union has become a party to numerous multilateral international treaties which were concluded between the EU, its member states and third countries. These treaties would usually enter into force after all parties have ratified them. This would normally require twenty-nine ratifications, but to reduce the time before the full application, these treaties in almost every case include a provisional application clause.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 18th meeting, 29 October 2013:[38]

> In Hungary the relevant domestic law, namely Act 50 of 2005 on the conclusion of international treaties, contains detailed rules on the provisional application of international treaties. According to these rules the provisional application has to be decided by the same entity which is authorised to give Hungary's consent to be bound by a treaty. In Hungary only the Parliament and the Government has the power to express this consent. The Parliament gives its authorisation in the form of an act and the Government in the form of a government decree. In these very same laws, if necessary, the Parliament or the Government can decide on the provisional application of the treaty as well.
>
> In case the termination of such a provisional application is necessary it is done in the same manner, namely in the respective act or decree. Since the respective laws in which the Parliament or Government agrees to the provisional application of a treaty also contain the text of the international treaty, in the Hungarian legal system the provisional application of a treaty has the same effect as the entry into force of the said treaty, and therefore Hungary has to comply with the articles of the provisionally applied treaty.

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[37] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/hungary.pdf.

[38] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/hungary.pdf.

19. India

Statement made in the Sixth Committee, Seventy-first session (2016), 30th meeting, 3 November 2016:[39]

> India being a dualistic State, a treaty will not automatically form part of the domestic law; it applies only as a result of their acceptance by internal procedures. Thus, resort to provisional application of treaties *i.e.*, treaties being applicable on the States before its entry into force, will go against the principle of dualism.

Statement made in the Sixth Committee, Seventy-second session (2017), 19th meeting, 24 October 2017:[40]

> India being a dualistic State, treaties do not automatically form part of the domestic law. Their provisions become applicable only as a result of their acceptance by internal procedures.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021:[41]

> In a dualist legal system like in India, where treaties must be transposed or incorporated into national law to become effective, it is a typical requirement of domestic law of certain States that the competent organ may only agree to provisional application of a treaty if national law is already in conformity with the treaty or is brought into conformity with it.

[39] Full text available at: https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/india_3.pdf.

[40] Full text available at: https://www.un.org/en/ga/sixth/72/pdfs/statements/ilc/india_1.pdf.

[41] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg_india_1.pdf.

20. Indonesia

Statement made in the Sixth Committee, Seventy-fourth session (2019), 27th meeting, 31 October 2019:[42]

> In our case, we remain [of the view that there] require[s] further consideration concerning the guide on the provisional application, especially having the latest ruling made by the Indonesian Constitutional Court on the new interpretation towards the Law No. 24 of 2000 on Treaties.
>
> Through such ruling, the Court has expanded the classifications of treaties which requires the involvement of [the] Indonesian parliament, and consequently further extends the process to apply certain types of treaty.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 19th meeting, 28 October 2021:[43]

> Even though Indonesia is not a party, we are of the view that the 1969 Vienna Convention on the Law of Treaties is certainly the basis on which the Commission should develop a mechanism or a set of guidelines that would provide States with guidance relating to the provisional application of treaties.

Communication transmitted to the Secretariat, 18 May 2022:[44]

> Indonesian Law is silent on the practice and regulation concerning provisional application of treaties matter.
>
> The relevant Law in Indonesia on international treaties is Law No. 24/2000 which contains, for example, provisions on the ratification of international treaties and its entry into force mechanism as follows:[45]
>
> > *Article 3*
> >
> > The Government of the Republic of Indonesia binds itself to a treaty through the following means:
> >
> > *a*. signature;
> >
> > *b*. ratification;
> >
> > *c*. exchange of documents constituting a treaty diplomatic notes;
> >
> > *d*. other means as agreed upon by the parties to treaty.
>
> *[Explanation] of Article 3 (d):*
>
> “Other methods” as agreed upon by the parties (such as the simplified procedure) means automatic binding to a treaty if, after a certain given period, a written notification is not given with respect to their refusal to be bound.

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[42] Edited by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/indonesia_1.pdf.

[43] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/19mtg_indonesia_1.pdf.

[44] Edited by the United Nations Secretariat.

[45] Unofficial translation (from Indonesian) provided by the delegation of Indonesia.

Chapter II
Implementation of Treaties[46]

Article 15

1. In addition to treaties which require the ratification by a law or presidential decree, the Government of the Republic of Indonesia may conclude a treaty, which, enters into force, on the date of its signing or on the exchange of the documents of treaties/ diplomatic notes, or through other means as agreed upon by the parties to the treaty.

2. A treaty comes into force and binds the parties thereto after it fulfills all the conditions specified therein.

[Explanation of] Article 15 (1):

A treaty which does not require ratification in order to enter into force and which contains matters which are technical in nature or constitutes the implementation of an umbrella agreement, can immediately enter into force after the signature, exchange of documents/diplomatic notes or by way of other means as have been agreed upon by the parties to the treaty.

Treaties which fall into such category are, among others, treaties which govern the technical aspects of cooperation in the fields of education, social, culture, tourism, information, health, family planning, agriculture, forestry, and [cooperation with] sister provinces/cities.

[46] *Ibid.*

21. Iran (Islamic Republic of)

Statement made in the Sixth Committee, Seventieth session (2015), 25th meeting, 11 November 2015:[47]

> [T]here is no provision concerning the provisional application of treaties in the Constitution of the Islamic Republic of Iran.

[47] Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/iran_3.pdf.

22. Israel

Statement made in the Sixth Committee, Sixty-seventh session (2012), 23rd meeting, 6 November 2012:[48]

> [T]he practice in Israel is that, while there is a possibility for the use of provisional application of treaties, it is applied only in exceptional circumstances.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 25th meeting, 5 November 2013:[49]

> [T]he practice in Israel is that, while there is a possibility for the use of provisional application of treaties, it is applied only in exceptional circumstances. For example, provisional application may be relevant in cases of urgency or if exceptional flexibility is needed, or where a treaty is of great political significance or it is important not to wait for the completion of the lengthy process of compliance with States' constitutional requirements for the approval of a treaty. As a general policy, however, Israel does not provisionally apply treaties.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 25th meeting, 3 November 2014:[50]

> As noted in previous meetings, the provisional application of treaties does not fall within Israel's general policy with regard to treaty law. However, in exceptional circumstances only, a treaty may be provisionally applied. Such exceptional circumstances may include cases of urgency and cases in which there would be a great political or financial significance for the prompt application.
>
> Any such provisional application would require prior approval by the Government of the State of Israel which would include a statement as to the extraordinary circumstances that would justify the provisional application of the treaty in the specific case. All treaties that were provisionally applied by Israel thus far were approved in advance by the Israeli Government. The Government of Israel's decision included the approval of the treaty itself and of its provisional application.

Statement made in the Sixth Committee, Seventieth session (2015), 25th meeting, 11 November 2015:[51]

> As noted in the past, Israel does not provisionally apply treaties. However, there are exceptional circumstances in which the provisional application of treaties may be permitted. These include situations in which there is a clear financial or political significance for the provisional application of a treaty; cases in which there is a need for exceptional flexibility; or instances in which it is important not to wait for the completion of the lengthy internal requirements for the approval of the treaty. This practice is not part of the written legal framework but is rather a matter of uncodified practice.
>
> In any case, the Government of the State of Israel must approve the treaty and its provisional application prior to the date in which the agreement is provisionally applied. The Government's decision must contain special approval for provisional application before the treaty enters into force. The explanatory note submitted to the Government prior to its decision, must include a statement that the approval of the provisional application deviates from the general practice, and states the reasons for the exceptional approval in the specific case.

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[48] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/israel_3.pdf.

[49] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/israel_3.pdf.

[50] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/israel_3.pdf.

[51] Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/israel_3.pdf.

23. Italy

Statement made in the Sixth Committee, Seventy-first session (2016), 20th meeting, 24 October 2016:[52]

> Apart from the specific dimension of treaty-making within the EU, there is little doctrinal convergence within our own domestic legal system on the applicability of treaties before the Parliament's formal ratification—which in Italy also encompasses the execution phase. Our Constitution sets a very strict threshold on treaties that require parliamentary approval before gaining legal force.

[52] Full text available at: https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/italy.pdf.

24. Malaysia

Statement made in the Sixth Committee, Sixty-eighth session (2013), 25th meeting, 5 November 2013:[53]

> [T]here exists a number of States, like Malaysia, that have established, almost rigid procedures on the internalization and application of treaties.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 27th meeting, 5 November 2014:[54]

> In the context of Malaysia's experience and practice, the signing of a treaty does not necessarily create a legal obligation when the treaty further requires ratification, accession, approval or acceptance processes, unless the treaty otherwise provides. The effect of signing in this regard means a State is not yet a Party albeit being a signatory to the treaty, pending its subsequent act of ratification, accession, approval or acceptance of the treaty. The effect emanating from this process is subject to the understanding as enshrined under Article 18 of the [Vienna Convention on the Law of Treaties] whereby the State must refrain from acts which may defeat the object and purpose of the treaty. Malaysia opines that the effect expounded from this context is confined to moral and political outcomes without giving rise to any legal consequences. Be that as it may, prior to signing or becoming a Party to a treaty, Malaysia will usually ensure that its domestic legal framework is in place and ready in order to implement the treaty.

Statement made in the Sixth Committee, Seventieth session (2015), 25th meeting, 11 November 2015:[55]

> It is to be highlighted that in Malaysia, Article 39 of the Federal Constitution provides that "The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong and exercisable by him or by the Cabinet or any Minister authorized by the Cabinet". Further, under Article 80(1), the executive authority of the Federation extends to all matters with respect to which Parliament may make laws "[b]y virtue of the 'Federal List'", matters with respect to which Parliament may make laws include "external affairs" which in turn include "treaties, agreements and conventions with other countries". The executive authority of the Federation thus extends to the making or concluding of treaties, agreements and conventions with other countries.
>
> Malaysia's domestic law does not provide for any express provision that prohibits or allows for the provisional application of treaties. In this regard, Malaysia has been very conscientious in ensuring obligations in the treaty are carried out accordingly once Malaysia ratifies a treaty by ensuring that its domestic legal framework is in place before the treaty is binding upon Malaysia.
>
> …
>
> The effect emanating from this process is subject to the understanding as enshrined under Article 18 of the [Vienna Convention on the Law of Treaties], whereby the State must refrain from acts which may defeat the object and purpose of the treaty. Malaysia opines that the effect expounded from this context is confined to moral and political outcomes without giving rise to any legal consequences. Be that as it may, prior to signing or becom-

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[53] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/malaysia_3.pdf.

[54] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/malaysia_3.pdf.

[55] Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/malaysia_3.pdf.

> ing a Party to a treaty, Malaysia will ensure that its domestic legal framework is in place and ready in order to implement the treaty.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 18th meeting, 27 October 2021:[56]

> Malaysia's domestic law does not provide for any express provision that prohibits or allows for the provisional application of treaties. Nevertheless, in preparation of ratifying or acceding to any treaty, Malaysia as a dualist State will ensure that its domestic laws are in place to be in line with the requirements under the international law. This is to ensure that Malaysia will be able to fulfil its obligations made under the treaty and devoid from any breach of international legal principles. Thus, Malaysia has been very conscientious in ensuring obligations in the treaty are carried out accordingly once Malaysia ratifies a treaty, by ensuring domestic legal framework to be in place before the treaty is binding upon Malaysia.

[56] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/18mtg_malaysia_1.pdf.

25. Mexico

Statement made in the Sixth Committee, Sixty-eighth session (2013), 25th meeting, 5 November 2013:[57]

> Suffice it to say that Mexico made a declaration of provisional application to give immediate effect to certain provisions of the Arms Trade Treaty (ATT), so that they are implemented in our country on a voluntary basis until its entry into force. Indeed, in accordance with article 23 of the ATT, Mexico undertakes to provisionally apply until its entry into force, articles 6 and 7, relative to the prohibited exports and the risk assessment mechanism.

[57] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/mexico_3.pdf.

26. Micronesia (Federated States of)

Statement made in the Sixth Committee, Sixty-ninth session (2014), 25th meeting, 3 November 2014:[58]

> Micronesia has a long history with the mechanism of provisional application. When Micronesia emerged from the trusteeship system, Micronesia made sure to notify the United Nations that it intended to provisionally apply a number of treaties that the United States had extended to Micronesia as its administering power during the trusteeship, until such time that Micronesia had completed a thorough review of whether to formally enter into those treaties as an independent sovereign. The provisional application of treaties was therefore one of the first acts undertaken by Micronesia under international law and as part of the international community, and it remains a matter of great interest for Micronesia.
>
> Micronesia is not a Party to the 1969 *Vienna Convention on the Law of Treaties* … Nevertheless, Micronesia asserts that article 25 of the Convention is now part of customary international law, even though its specific content and parameters remain to be established in an authoritative manner.

[58] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/micronesia_3.pdf.

27. The Netherlands (Kingdom of)

Communication transmitted to the Secretariat, 20 April 2016:

The decision to provisionally apply a treaty

With respect to the provisional application of treaties, the point of departure under the *Constitution of the Kingdom of the Netherlands* is that it shall not be bound by treaties without prior parliamentary approval (Article 91 of the Constitution).[59] The exceptions to this rule are stipulated in the *Kingdom Act on the Approval and Publication of Treaties* of 7 July 1994 (the Kingdom Act),[60] which recognises the provisional application of treaties as one such exception to the requirement of parliamentary approval. It should be noted that when no prior parliamentary approval is required for a treaty, due for instance to the nature or duration of the treaty, provisional application is possible and not subject to the rules described below, they only apply to provisional application of treaties that are in principle subject to prior parliamentary approval. In addition to the Kingdom Act, the explanatory memorandum to the bill approving the *Vienna Convention on the Law of Treaties* (VCLT), passed in 1985 (Explanatory Memorandum to the VCLT),[61] provides further information on the implementation of the issue of provisional application of treaties in the Dutch legal order.

The Government may decide to apply a treaty provisionally in accordance with the terms of Section 15 of the Kingdom Act. Paragraph 1 of this Section contains the general rule that provisional application of treaties is permitted if the interests of the Kingdom so require and provided the treaty to be applied provisionally does not conflict with the Constitution or results in such conflict. Provisional application is thus subject to two conditions. First, the phrase "if the interests of the Kingdom so require" limits provisional application to situations in which the interests of the Kingdom in applying the treaty provisionally outweigh the interests of parliament in exercising its constitutional rights with respect to the prior approval of treaties. Under the applicable approval procedures, the Government is required to justify its decision to apply a treaty provisionally in the explanatory memorandum accompanying the bill approving a treaty. The practice of the Council of State, consultation of which is a mandatory phase for the approval of treaties by parliament, shows that this Council requires the Government to provide specific justification for its decision to deviate from the constitutional powers of parliament. Failing such justification, the Government will be requested to complete its explanatory memorandum accordingly.[62] Secondly, provisional application of a treaty will be prohibited in case of conflict between the relevant treaty and the Dutch Constitution. This constitutes an absolute bar to the provisional application of a treaty.

Section 15, paragraph 2 of the Kingdom Act provides that provisional application is also not permitted for provisions contained in a treaty requiring the prior approval of parliament which conflict with statute law or result in such conflict.

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[59] https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.

[60] http://wetten.overheid.nl/BWBR0006799/geldigheidsdatum_27-01-2015.

[61] Kamerstukken (Parliamentary Papers) II, 1982/83, 17798 (R 1227), nr. 3.

[62] For example, Opinion of the Council of State in respect of the provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part and the Ancillary Agreement to that Agreement.

In exercising its advisory functions in respect of the approval of treaties, the Council of State pays particular attention to the constitutional requirements concerning the provisional application of treaties and requires the Government to account for any omission in violation of the Constitution.[63] Thus, the Council of State requires the Government to abide strictly by the rule contained in Section 15, paragraph 4 of the Kingdom Act, which provides that if a treaty is to be applied provisionally, parliament[64] shall be notified of this without delay. The Council has indicated that it considers a period of almost two months between signature of a treaty and notification to parliament not in conformity with this requirement.[65] Similarly, the Government is required to submit to parliament without delay the bill approving the treaty concerned.

The termination of such provisional application

In the Explanatory Memorandum to the VCLT[66], the Government indicated that the provisional application of a treaty terminates when the treaty enters into force for the State concerned or when that State issues a notification that it will not become a party to the treaty.

In addition, the explanatory memorandum describes the situation in which the treaty concerned provides for possibility for States to declare, on an individual basis, to apply the treaty provisionally. In such a situation, it is the view of the Government that in addition to the grounds for termination mentioned above, the State concerned may also end the provisional application by withdrawing its declaration to that effect. However, it was also pointed out that (unconditional) withdrawal may not be possible under all circumstances, particularly in relation to third parties acting in good faith that would be adversely affected by such withdrawal. Obligations owed to third parties derived from the provisional application of the treaty before withdrawal of the declaration must be respected.[67] Recent practice of the Kingdom of the Netherlands has not revealed any situations giving rise to such issues.

In recent years, the Kingdom of the Netherlands has terminated provisional application of a number of bilateral social security agreements following the introduction of new legislation policies in the field of social security in 2011 This concerned, amongst others, its bilateral agreements with Botswana, Brazil and Mali, respectively. With respect to Botswana the agreement had already been ratified by the Kingdom of the Netherlands (but not yet by Botswana) and Botswana was therefore informed of the withdrawal of the ratification of the agreement by the Kingdom of the Netherlands, thus terminating provisional application of Article 5 of the agreement.[68] In the case of Brazil, neither party had ratified the agreement and the Brazilian authorities were therefore informed of the termination of provisional application in accordance with the terms of Article 25, paragraph 2, of the VCLT.[69] In respect of Mali, the agreement had already been ratified by Mali, but not by the Netherlands which informed Mali of the termination of provisional application in accordance with the terms of Article 25, paragraph 2, of the VCLT as the Netherlands no longer intended to ratify the agreement and, consequently.[70]

[63] *Idem.*

[64] Parliament meaning the respective parliaments of the four countries making up the Kingdom of the Netherlands, *i.e.* the parliaments of the Netherlands (States General), Aruba, Curaçao and Sint Maarten.

[65] See footnote 60.

[66] Kamerstukken (Parliamentary Papers) II, 1982/83, 17798 (R 1227), nr. 3.

[67] *Idem.*

[68] Trb. (Tractatenblad; Netherlands Treaty Series) 2011, 260.

[69] Trb. (Tractatenblad; Netherlands Treaty Series) 2012, 32.

[70] Trb. (Tractatenblad, Netherlands Treaty Series) 2011, 249.

The legal effect of provisional application

According to the Netherlands, a distinction must be made between the international and the national level as regards the legal effects of provisional application of treaties. Provisional application of a treaty has legal effects under international law. In its Explanatory Memorandum to the VCLT,[71] the Government indicated that the provisional application of a treaty gives rise to an (international) obligation to perform all treaty provisions, unless it is expressly stated that limitations apply. It added that this is a provisional obligation which ceases to exist upon termination of provisional application.

At the national level reference must be made to Section 15, paragraph 3 of the Kingdom Act. This section deals with the specific situation in which the Government wishes to apply provisions of a treaty which it considers binding on all persons (self-executing treaty provisions) provisionally. The section is based on Article 93 of the Dutch Constitution providing that "Provisions of treaties … which may be binding on all persons by virtue of their contents shall become binding after they have been published." In such instances, both the text of the treaty and the fact that it is to be applied provisionally must be published in the Netherlands Treaty Series before the provisional application may take effect. In accordance with the terms of Section 19, paragraph 1, of the Kingdom Act, provisional application of provisions "binding on all persons" would only be possible on the first day of the second month following publication of the treaty in the Netherlands Treaty Series but the Minister of Foreign Affairs (responsible under the Kingdom Act for the publication of treaties) may decide, in accordance with Section 19, paragraph 2 of the Kingdom Act, to shorten that period to the (one) day after publication in the Netherlands Treaty Series. Timely publication of the treaty in the Netherlands Treaty Series is also an aspect taken into account by the Council of State in reviewing the constitutionality of the provisional application of a treaty.

During the parliamentary examination of the bill approving the VCLT the situation in which the notification of provisional application of (provisions of) a treaty at the international level had been given in violation of the required constitutional procedures was also discussed. With reference to Article 46 of the VCLT, the Government stated that failure to comply with constitutional procedures could not be invoked as a ground invalidating the State's entering into a legal obligation at the international level.[72]

[*Reference to the practice of the European Union:*]

[A]s a Member State of the European Union (EU), the Kingdom of the Netherlands participates in the so-called "mixed agreements" concluded by the EU and its Member States and another (third) State. Such agreements may also provide for provisional application by the EU (and the third State) pending completion of the national approval procedures in each individual Member State, which may take considerable time. Provisional application of mixed agreements by the EU is necessarily limited to the topics falling under EU competence.[73] Such provisional application by the EU also binds the Kingdom of the Netherlands as a Member State of the European Union, which takes effect upon notification by the EU of the completion of its internal procedures (relevant EU Council Decisions allowing for provisional application), indicating the parts of the agreement that will be provisionally applied and the deposit of the instrument of ratification by the other (third) State.

[71] Kamerstukken (Parliamentary Papers) II, 1982/83, 17798 (R 1227), nr. 3.

[72] Kamerstukken (Parliamentary Papers) I, 1983/84, 17798 (R 1227), nr. 44a, p. 5.

[73] Since mixed agreements largely cover subject matter falling under EU competence, in practice this means that a vast majority of its provisions are applied provisionally.

28. Nicaragua

Statement made in the Sixth Committee, Seventy-third session (2018), 28th meeting, 30 October 2018:[74]

> In the case of Nicaragua, the Constitution states that international treaties must be approved by the National Assembly so that they […] acquire legal effects inside and outside Nicaragua "once they have entered into force internationally, by deposit or exchange of ratifications or compliance with the requirements or deadlines, provided for in the text of the international treaty or instrument". In Nicaragua the provisional application of a treaty would require that the instrument be approved by the National Assembly in order for it to have legal effects inside and outside of Nicaragua.
>
> A recent example that evidences the practice of Nicaragua in this regard is the 2010 International Cocoa Agreement, which entered into force provisionally on July 15, 2013, the date on which the instrument of accession was deposited with the Secretary General of the United Nations, having undergone the normal process of adhesion before the National Assembly, regardless of whether the instrument was destined to be applied provisionally.
>
> In a context that is not the same but similar, the *Association Agreement of the European Union with Central America* is provisionally applied partially on the understanding that only the provisions relating to commercial aspects are applied. At this point, it is worth clarifying that this type of partial provisional application must be differentiated from a total provisional entry into force of an instrument such as the first example. In any case, both modalities require the approval of the National Assembly.

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[74] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/73/pdfs/statements/ilc/nicaragua_2.pdf.

29. Nordic Countries (Denmark, Finland,[75] Iceland, Norway and Sweden)

Finland (on behalf of the Nordic Countries)

Statement made in the Sixth Committee, Sixty-eighth session (2013), 23rd meeting, 4 November 2013:[76]

> As far as the treaties among the Nordic countries are concerned, provisional application has not been resorted to very frequently, but I wish to mention one example. In 2010 the Nordic countries concluded a General Security Agreement on the Mutual Protection and Exchange of Classified Information which provides that
>
>> [u]ntil the entry into force of this Agreement, each Party may notify at the time of the deposit of the instrument of ratification, acceptance or approval, or any other subsequent time, that it shall consider itself bound by the Agreement in its relations with any other Party having made the same notification. These notifications shall take effect thirty days after the date of receipt of the notification.
>
> That example illustrates that provisional application may also be based on a provision avoiding such terminology.

Norway (on behalf of the Nordic countries)

Statement made in the Sixth Committee, Sixty-ninth session (2014), 25th meeting, 3 November 2014:[77]

> The Nordic countries have previously mentioned examples of agreements where provisional application has been resorted to, such as the 2010 *General Security Agreement on the Mutual Protection and exchange of Classified Information between the Nordic countries* and the 2013 *Arms Trade Treaty*.
>
> One model of provisional application is the adoption of the decision 1/CMP.8, where the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol recognized that Parties may provisionally apply the Doha Amendment pending its entry into force in accordance with Articles 20 and 21 of the Kyoto Protocol. The Parties intending to provisionally apply the Doha Amendment pending its entry into force in accordance with Articles 20 and 21 of the Protocol may provide notification to the Depositary of their intention to provisionally apply the Amendment. The Nordic countries implement the above-mentioned treaties provisionally with the same legal effects as if they had formally been in force.

Norway (on behalf of the Nordic countries)

Statement made in the Sixth Committee, Seventieth session (2015), 23rd meeting, 9 November 2015:[78]

> As has been stated before, when the Nordic countries agree to apply treaties provisionally, we are of the view that they produce the same legal effects as if they were formally in force.

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[75] See separate submission by Finland, above at p. 29.

[76] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/nordic_3.pdf.

[77] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/nordic_3.pdf.

[78] Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/nordic_3.pdf.

30. Paraguay

Communication transmitted to the Secretariat, 29 January 2015:[79]

The provisional application of treaties takes place only very rarely in the Republic of Paraguay. There is no law or statute governing the provisional application of international treaties, other than the *Vienna Convention on the Law of Treaties* of 23 May 1969, article 25 of which provides for provisional application. The Vienna Convention was approved in Paraguay through Act No. 289/71 of 4 November 1971.

In recent years, the Republic of Paraguay has signed only one bilateral treaty that provides for provisional application: the *Agreement between the Republic of Paraguay and the European Community on Certain Aspects of Air Services*, done at Brussels on 22 February 2007, and approved by Paraguay through Act No. 4648/12 of 20 July 2012.

Article 9 of the aforementioned instrument, entitled “Entry into force and provisional application”, provides as follows:

> 1. This Agreement shall enter in force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.
>
> 2. Notwithstanding paragraph 1, the Parties agree to apply this Agreement provisionally from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.
>
> 3. Agreements and other arrangements between Member States and the Republic of Paraguay which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*). This Agreement shall apply to all such agreements and arrangements upon their entry into force or provisional application.

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[79] Unofficial translation (from Spanish) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/paraguay_s.pdf.

31. Peru

Statement (on behalf of CELAC) made in the Sixth Committee, Seventy-second session (2017), 19th meeting, 24 October 2017:[80]

> [I]n Peru there is no internal norm that refers directly to the provisional application of treaties, with the exception of Article 25 of the *Vienna Convention on the Law of Treaties*—as it is part of domestic law according to the 1993 Political Constitution of Peru. Peru, at the time of expressing its consent to said Convention, entered a reservation, subjecting the possibility of provisional application of the treaties to prior compliance with the provisions of the Constitution of Peru regarding the approval and ratification of treaties.
>
> We have been able to identify cases in the practice of Peru of instances in which the decision has been made to provisionally apply a treaty, although such decision is not made by a single body or authority but rather a series of State bodies and authorities that participate in different stages of the treaty-making process.
>
> As an example of provisional application of a treaty we have the *Multiparty Trade Agreement between Peru and Colombia, on the one hand, and the European Union and its Member States, on the other*, signed in Brussels on June 26, 2012, to which Ecuador has recently been added ("Trade Agreement of 2012"), whose article 330, paragraph 3, makes Provisional Application possible. It should be noted that the said Agreement continues to be provisionally applied to date.
>
> As for the termination of the provisional application of a treaty, it normally ends with the entry into force. In this regard, Peru wishes to cite certain examples:
>
> i. *Agreement between Peru and the Netherlands on the Establishment of Training Workshops*, Article VI (December 9, 1965);
>
> ii. Protocol, 1979, for the Fifth Extension of the *Wheat Trade Agreement*, 1971, Article 8 (March 21, 1979);
>
> iii. Agreement for the exchange of notes between Peru and Argentina (June 17, 1979);
>
> iv. *International Sugar Agreement*, article 37 (July 5, 1984).

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[80] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/72/pdfs/statements/ilc/peru_1.pdf.

32. The Philippines

Communication transmitted to the Secretariat, 28 July 2022:

> Executive Order No. 459[81] provides the guidelines on the negotiation and conclusion of international agreements by the Philippines, including the determination of the date of entry into force of such agreements.
>
> Sec. 6(*a*) provides that, as a general rule, an international agreement enters into force only upon compliance with the domestic requirements stated in EO No. 459. By way of exception, an international agreement may be given provisional effect, provided that certain conditions are satisfied.
>
> Sec. 2(*f*) defines "provisional effect" as the "recognition by one or both sides of the negotiation process that an agreement be considered in force pending compliance with domestic requirements for the effectivity of the agreement."
>
> Sec. 6(*b*) provides that in order for an international agreement to be given provisional effect, there must be a showing that a pressing national interest will be upheld thereby.
>
> "National interest" is defined under Sec. 2(*e*) as an "advantage or enhanced prestige or benefit to the country as defined by its political and/or administrative leadership."
>
> The conclusion of any international agreement by the Philippines presupposes the fulfillment of an underlying national interest. However, mere national interest is insufficient to justify the application of provisional effect to an international agreement. The national interest to be upheld by the application of provisional effect should be "pressing."
>
> The determination of what is a pressing national interest is a function reposed in the Department of Foreign Affairs, which, pursuant to Sec. 6(*b*), shall determine, in coordination with the concerned agencies, whether a treaty or an executive agreement, or any amendment thereto, shall be given provisional effect.
>
> EO No. 459 has to be construed alongside relevant provisions of the *1987 Constitution*. In particular, Sec. 21 of Art. VII of the *Constitution* provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." Further, Sec. 25 of Art. XVIII of the *Constitution* provides that "foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State."
>
> The above Constitutional provisions make Senate concurrence as a legal imperative prior to the entry into force of a treaty, precluding the grant of provisional effect thereon.
>
> Treaties are defined under Sec. 2(*b*) of EO No. 459 as "international agreements entered into by the Philippines which require legislative concurrence after executive ratification."
>
> Within the domestic legal sphere, they are considered superior to executive agreements, which are defined under Sec. 2(*c*) of EO No. 459 as international agreements that are "similar to treaties except that they do not require legislative concurrence."

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[81] *Providing for the Guidelines in the Negotiation of International Agreements and [Their] Ratification*, 25 November 1997.

In *Pangilinan* v. *Cayetano,*[82] the Supreme Court expounded on the scope of international agreements that will require Senate concurrence, *viz*:

Article VII, Section 21 [of the 1987 Constitution] does not limit the requirement of [S]enate concurrence to treaties alone. It may cover other international agreements, including those classified as executive agreements, if: (1) they are more permanent in nature; (2) their purposes go beyond the executive function of carrying out national policies and traditions; and (3) they amend existing treaties or statutes.

In *Saguisag* v. *Ochoa,*[83] the Supreme Court stated that "under international law, the distinction between a treaty and an international agreement or even an executive agreement is irrelevant for purposes of determining international rights and obligations."

In Philippine treaty practice, multilateral or bilateral treaties negotiated by the Bureau of Investments and international legal cooperation agreements negotiated by the Department of Justice, such as extradition, mutual legal assistance, and transfer of sentenced persons agreements, have not been given provisional application.

In view of the above-cited laws and jurisprudence, the provisional application of international agreements may only be given:

1. to those that do not require Senate concurrence;
2. that a national interest of a pressing character will be upheld by such provisional application; and
3. such determination shall be made by the Department of Foreign Affairs, through an inter-agency mechanism.

[82] G.R. Nos. 238875, 239483, and 240954, 16 March 2021.

[83] G.R. Nos. 212426 and 212444, 12 January 2016.

33. Poland

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:[84]

> Our delegation fully concurs with the Commission's conclusion that the provisional application of the treaty shall have the same effect as its entry into force, unless otherwise agreed. This view is clearly supported by Polish treaty practice. Poland does not have a specific domestic law on the provisional application of treaties. The Polish practice in this regard is based on Article 25 of the 1969 *Vienna Convention on the Law of Treaties* and the general rules of domestic law regarding the conclusion of the treaties. Under our constitutional order, we consider as optimal to apply a treaty temporarily only when we complete our domestic procedures necessary for its entry into force.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 19th meeting, 28 October 2021:[85]

> The Republic of Poland uses provisional application on an exceptional basis, particularly because it cannot be used as a means of bypassing parliamentary procedures.

[84] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/poland_3.pdf.

[85] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/19mtg_poland_1.pdf.

34. Portugal

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:[86]

> In what concerns Portugal, practice is based on a restrictive interpretation of Article 8(2) of the Portuguese Constitution. According to such interpretation, Portugal is only bound by a treaty after it has been internally approved and published in the official gazette, and the treaty itself enters into force in the international legal order. Hence, in the case of Portugal, the provisional application of a treaty is not admissible.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 16th meeting, 25 October 2021:[87]

> For my delegation, the special relevance of this Guide also stems from the fact that Portugal, in accordance with its constitutional framework, is prevented from applying treaties provisionally.
>
> Therefore, Portugal welcomes the acknowledgement that States, and international organizations retain the right (i) to submit a reservation concerning the provisional application of the treaties which they have signed; and (ii) to oppose the provisional application of a treaty by another State or international organization, by means of a unilateral declaration.

[86] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/portugal_3.pdf.

[87] Edited by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/16mtg_portugal_1.pdf.

35. Republic of Korea

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:[88]

> For the provisional application of the *Free Trade Agreement between the Republic of Korea and the EU*, the consent of the National Assembly of Korea was required, as in case of its entry into force. Since the agreement was provisionally applied with the consent of the Assembly, additional measures have not been taken for its entry into force.

Statement made in the Sixth Committee, Sixty-eighth session (2013) 24th meeting, 4 November 2013:[89]

> The *Free Trade Agreement between the [Republic of Korea] and the EU*, signed in 2010 and applied provisionally from 1st July 2011, is an example.

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[88] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/rok_3.pdf.

[89] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/rok_3.pdf.

36. Romania

Communication transmitted to the Secretariat, 22 July 2022:[90]

Relevant national legislation

With regard to the particular issue of provisional application of treaties, in its *Law no. 590 of 22 December 2003 on treaties* Romania has relevant provisions concerning specifically the matter of provisional application. At a national level, international treaties are categorized by the level at which they were concluded, resulting in three categories: state level, governmental level and department level treaties.

Article 27 of the said law states that Treaties signed at [the] governmental level that do not require ratification according to Article 19 para. (1) and, respectively, at departmental level may be applied provisionally from the date of signature, either in full or in respect of some of their provisions, provided that an express provision to that effect is included in the treaty.

Paragraph 2 of article 27 states that treaties concluded at state level, as well as the treaties at governmental level which, according to Article 19 para. (1) must be ratified cannot enter into force at the date of the signing and may not be applied provisionally from the date of signature.

This rule has only one exception, which is stipulated in *Law no. 276 of December 7, 2011 on the procedure by which Romania becomes a party to the treaties concluded between the European Union and the Member States, on the one hand, and third countries or international organizations, on the other hand*. Article 7, par. (1) of the said law states that treaties (even those requiring ratification by Parliament) between the European Union and its Member States, on the one side and third States, on the other side, can be applied provisionally before their entry into force if the treaty expressly provides so.

It is worth mentioning that the rules mentioned above did not exist in previous national laws that regulated the matter of international treaties.

Procedures

The national procedure for concluding international treaties that will be provisionally applied does not differ substantially from the procedure used for other types of treaties. However, *Law no. 590/2003* does provide that the procedure for approving the signing of such treaties must be completed in an expeditious manner and that the signing of the document can take place only after it has been approved by the competent authorities, and full powers have been awarded.

Relevant practice

Bilateral treaties

On a bilateral level, Romania has applied some treaties provisionally, although practice on this subject is quite scarce, given the extraordinary nature of provisional application of treaties in Romania under the current national law.

Because the national law forbids provisional application of treaties at a date sooner than the date of signature and since there is no regulation on how late after the date of signature a treaty can be provisionally applied, the practice on this matter varies. For example, in one case[91], the parties agreed that the treaty will be applied provisionally starting [from]

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[90] Edited by the United Nations Secretariat.

[91] *Agreement between the Government of Romania and the Government of the Republic of Hungary on cooperation in the field of natural gas transmission pipelines and transmission power lines intersecting*

the 45th day from the date of signature. In other cases[92], treaties were applied provisionally starting [from] the 15th day from the [date] of signature.

However, today the usual practice for Romania is that whenever the parties agree on provisional application of bilateral treaties, the treaty is provisionally applied starting [from] the date of its signature.

For reference it is worth mentioning that, even if there was no regulation on provisional application under the laws that preceded the current national law in effect, Romania has still applied some treaties or parts of the treaties it has concluded, starting [from] the date of signature or later.

Multilateral Treaties

Multilateral treaties are very rarely applied provisionally in Romania due to the fact that these treaties are usually concluded at state level and, as stated before, the national law forbids the provisional application of treaties concluded at this level.

However, multilateral treaties concluded at governmental level that do not require ratification can be applied provisionally, for example the *Memorandum of Understanding concerning cooperation in fighting corruption through the South Eastern European anti-corruption initiative* was applied provisionally in Romania as of the day of the signature by the Romanian party on 31 August 2007.

Even if the national law does provide strict rules on which treaties can be applied provisionally, there are some instances where multilateral treaties concluded at state level were applied in Romania before their entry into force.

One such case is the *Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA).* This Agreement states that "the European Community and its Member States and at least one Associated Party, may decide to apply provisionally this Agreement among themselves from the date of signature, in accordance with the application of domestic law".

Because in order for this treaty to be applied in Romania, it had to be ratified, the Romanian delegation presented a declaration stating that:

> Romania declares that it can provisionally apply this Agreement pursuant to paragraph 3 of Article 29 only from the date on which it has notified the European Community as the Depository of this Agreement of the completion of its internal procedures necessary for the entry into force of this Agreement.

As such, from the national Romanian law viewpoint, the Agreement was applied fully (following the usual procedure), but from the viewpoint of the other participants to the treaty, it was applied provisionally.

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the Romanian-Hungarian border, signed at Budapest, on 12 May 2010.

[92] *Agreement between Romania and Spain on the readmission of persons in an illegal situation*, signed at Bucharest, on 29 April 1996 and the *Agreement, by exchange of verbal notes, between the Government of Romania and the Government of Spain regarding the movement regime of the citizens of the 2 countries, holders of diplomatic passports*, signed at Bucharest, on 29 April 1996.

37. Russian Federation

Communication transmitted to the Secretariat, 9 April 2014:[93]

The provisional application of a treaty is vigorously used by the Russian Federation in the practices of inter-State intercourse.

As a rule, the Russian Federation resorts to provisional application of a treaty in exceptional cases in which the subject of a treaty is of particular interest both to the Russian Federation and to its counterparty, as a result of which both are interested in "jump-starting" the mechanism of the treaty without waiting for it to enter into force.

At present, the Russian Federation is provisionally applying more than 120 treaties pertaining to, by and large, questions of trade, power engineering, and customs tariffs regulation.

The question of the provisional application of treaties in the Russian Federation at the national level is governed by the Federal Law on Russian Federation Treaties, paragraph 1 of article 23 of which essentially reproduces paragraph 1 of article 25 of the *Vienna Convention on the Law of Treaties*:

> A treaty or part of a treaty, before its entry into force, may be applied by the Russian Federation provisionally if the treaty provides so or if agreement to that end has been reached by the treaty signatories.

The provision on provisional application of a treaty is, in most cases, included in the text itself of a draft treaty. As a rule, the following formulation is used:

> "This Agreement shall be provisionally applied as of the date of signature" (*Agreement between the Government of the Russian Federation and the Government of the Republic of Serbia on Deliveries of Natural Gas from the Russian Federation to the Republic of Serbia*, 13 October 2012);
>
> "This Agreement shall commence to be provisionally applied 30 days after the date of signature" (*Agreement between the Government of the Russian Federation and the Government of the Republic of Azerbaijan on the Construction of an Automobile Bridge across the Samur River in the Vicinity of the Yarag-Kazmalyar (Russian Federation) and Samur (Republic of Azerbaijan) Checkpoints on the Russian–Azerbaijan State Border*, 13 August 2013).

Sometimes, in order to prevent excessive delays in the completion of the internal procedures necessary for the entry into force of a treaty, the treaty specifies the period of provisional application. For example, the *Agreement between the Russian Federation and the Republic of Tajikistan on Cooperation on Border Matters*, of 2 September 2011, contains the following clause:

This Agreement shall be provisionally applied as of the date of signature for a period of 6 months and shall enter into force as of the date of receipt of the final written notification of the completion by the Parties of the internal procedures necessary for its entry into force. If, within that 6-month period, the Parties have not completed the internal procedures necessary for the entry into force of this Agreement, the Agreement shall terminate its provisional application.

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[93] Unofficial translation (from Russian) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/russia_r.pdf.

Cases of the provisional application of only part or parts of a treaty (*Protocol to the Treaty between the Russian Federation and the United States of American on Measures for the Further Reduction and Limitation of Strategic Offensive Arms*, 8 April 2010) and cases of the resumption of provisional application (*Agreement on the Resumption of the Provisional Application of the Agreement between the Government of the Russian Federation and the Government of the Kingdom of Morocco on Cooperation in the Field of Marine Fisheries*, 3 June 2010) are also not unknown to Russian practice.

Under the above-mentioned federal law, the decision on the provisional application by the Russian Federation of a treaty is taken by the Government of the Russian Federation or the President of the Russian Federation (depending on within whose competence the questions constituting the subject of the treaty reside). If a provision on the treaty's provisional application is included in the draft treaty, it is approved by the Government or by the President when the decision is made to sign the treaty. See, for example, the *Order of the Russian Government No. 2315-r, of 10 December 2013, on the Signature of the Protocol between the Government of the Russian Federation and the Government of the Republic of Belarus on the Extension of the Term of the Agreement on the Arrangements for the Payment and Remittance of Export Customs Duties (and Other Duties, Taxes, and Fees of Equivalent Effect) in the Export of Crude Oil and Certain Categories of Petroleum Derivatives from the Territory of the Republic of Belarus to Points Outside the Customs Territory of the Customs Union*, 9 December 2010).

In all other cases (when a provision on a treaty's provisional application is not included in the draft treaty), the Government of the Russian Federation and the President of the Russian Federation take separate decisions. Such cases include, for example, the *Order of the President of the Russian Federation No. 767-rp, of 17 December 1993, on the Provisional Application of the Agreement Establishing an International Science and Technology Centre; the Decree of the Government of the Russian Federation No. 324, of 17 March 1997, on the Provisional Application of the Protocol to the Partnership and Cooperation Agreement Establishing a Partnership between the European Communities and their Member States, on the One Part, and the Russian Federation, on the Other Part.*

The Federal Law on Russian Federation Treaties establishes specific limitations on the provisional application of a treaty the decision on the consent to be bound by which is, for the Russian Federation, taken in the form of a federal law (as a rule, ratification). Such treaties must be submitted to the State Duma of the Federal Assembly of the Russian Federation within a period of no more than six months after the date of the commencement of its provisional application (second paragraph of article 23 (2) of the Law).

It is important to bear in mind that the failure to submit the treaty to the State Duma within the period indicated does not automatically result in consequences in international law that take the form of the termination of its provisional application. That would contravene both article 23 of the Law and article 18 of the *Vienna Convention on the Law of Treaties*, 1969, according to which, for the termination to result, the intention to not become a party to the treaty must be clearly expressed. A decision to that effect, taken in the same manner as a decision to commence the provisional application, would serve as the legal basis for the Russian Federation's expression of such an intention.

The Russian Federation's consent to the provisional application of a treaty means that the treaty becomes part of the legal system of the Russian Federation and is subject to application on an equal basis with treaties that have entered into force.

The question of the provisional application of treaties has also been the subject of consideration in the Constitutional Court of the Russian Federation, to which in 2012, citizen I. D. Ushakov applied with a request that article 23 (1) of the Law, which provides for the

possibility of the provisional application by the Russian Federation of a treaty or part of it, be declared inconsistent with the Constitution of the Russian Federation. The reason for applying to the Constitutional Court was that Russian customs authorities had ordered that citizen to pay customs duties not on the basis of the Russian Federation Customs Code, but on the basis of a provisionally applied treaty that set higher rates for customs charges.[94] The claimant asserted that the treaty was not subject to application because it had not been officially published (under the above-mentioned Federal Law, only treaties that had entered into force were subject to official publication at that time).

In its decision (ruling No. 8-P of 27 March 2012), the Constitutional Court declared, *inter alia*, that the provisional application of treaties by Russia did not contravene the Constitution of the Russian Federation. The Constitutional Court pointed to the fact that:

> deeming article 23 (1) of the Federal Law on Russian Federation Treaties as not contravening the Constitution of the Russian Federation … does not call into question the Russian Federation's obligation to comply in good faith in inter-State relations with the universally recognized principle of international law *pacta sunt servanda* (articles 26 and 27 of the Vienna Convention on the Law of Treaties) and, as a general rule, cannot serve as justification for the failure of the Russian Federation to perform the obligations arising from treaties it is provisionally applying in its relations with other States parties.

At the same time, the Constitutional Court ordered the federal legislature to establish rules for the official publication of provisionally applied treaties of the Russian Federation that affect human and civil rights, freedoms, and duties and that set rules other than those specified by the law. Pursuant to the decision of the Court the *Federal Law on the Amendment of Article 30 of the Federal Law on Russian Federation Treaties and of Article 9.1 of the Federal Law on Rules for the Publication and Entry into Force of Federal Constitutional Laws, Federal Laws, and Acts of the Houses of the Federal Assembly*, was adopted. It stipulates the following rules for the publication of provisionally applied treaties:

A treaty that makes provision for the Russian Federation's provisional application, before entry into force, of all or parts of the treaty or an agreement on the provisional application of which that is reached in some other manner (with the exception of treaties of an interdepartmental nature) shall, at the request of the Ministry of Foreign Affairs of the Russian Federation, be subject to immediate publication in the Bulletin of Treaties and to placement (publication) on the Official Internet Portal of Legal Information (www.pravo.gov.ru).

Statement made in the Sixth Committee, Seventy-third session (2018), 26th meeting, 26 October 2018:[95]

> The Russian legislation on treaties is based on the provisions of the Vienna Convention on the Law of Treaties and allows for provisional application. The total number of treaties provisionally applied by the Russian Federation remains relatively unchanged—there are about one hundred such treaties. We believe however, that this concept is exceptional and should be used only when there is a real necessity to begin implementation of a treaty before its entry into force. The Legal Department of the Russian MFA is trying to maintain this policy. Nevertheless, we regularly confront practical issues of various natures.

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[94] *Agreement on the Rules for the Movement of Goods by Individuals across the Customs Border of the Customs Union and for the Performance of Customs Operations Associated with Their Release*, 18 June 2010 (between the Russian Federation, Belarus, and Kazakhstan).

[95] Unofficial translation (from Russian) provided by the Russian Federation. Text in Russian available at: https://www.un.org/en/ga/sixth/73/pdfs/statements/ilc/russia_2.pdf.

…

Recently we witnessed another interesting incident. The Russian Federation terminated its provisional application of a multilateral treaty by notifying the depositary on its intent not to become a party to it. At the same time the depositary of the treaty is interpreting the situation in such a way that Russia terminated the provisional application of the treaty but remains bound by the obligations deriving from the signing of the treaty. On our part, we proceed from the understanding that the sending of notification of intention not to become a party to the treaty does not only terminate its provisional application but also lifts all obligations of the State deriving from its signature. Nevertheless, there is a subject for research on that issue as well.

38. Serbia

Communication transmitted to the Secretariat, 29 January 2016:

> The relevant laws of the Republic of Serbia provide that the Government may, exceptionally and upon agreement of the competent Committee of the National Assembly, authorize a delegation of the Republic of Serbia to accept that an international treaty to be ratified be provisionally applied either in its entirety or in parts until its entry into force. The procedure to ratify the treaty must be initiated with 30 days of the date of its signature.
>
> The provisional application of a treaty will be terminated if the Republic of Serbia decides not to become a party to the treaty and after it informs the other parties among which the treaty is provisionally applied of the decision, in accordance with the provisions of the treaty and generally accepted rules of international law.
>
> A treaty applied provisionally is considered to be in force in the sense of international law just like any other treaty that is in force.
>
> The Republic of Serbia concludes the treaties that provide for provisional application rarely. In the last four years only three such treaties, out of 468 concluded, have been signed.

39. Sierra Leone

Statement made in the Sixth Committee, Seventy-sixth session (2021), 16th meeting, 25 October 2021:[96]

> Sierra Leone acknowledges that provisional application of treaties, contemplated by the *Vienna Convention on the Law of Treaties*, 1969, in Article 25, has become more common as a tool in State practice to give effect to all or some provisions of a treaty pending the completion of formalities for their entry into force, including for African States. Sierra Leone's constitutional law, however, still requires internal approval for provisional application, that is completion of the required formalities internally, in the same way for a treaty that has entered into force.

[96] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/16mtg_sierraleone_1.pdf.

40. Singapore

Statement made in the Sixth Committee, Sixty-seventh session (2012), 22nd meeting, 6 November 2012:[97]

> [T]he "provisional" application of treaties is well-used in the area of bilateral and multilateral civil aviation treaties. As an aviation hub, these are matters which are not just of academic interest to Singapore, but also practical application. Interestingly, there are even instances where some provisional bilateral aviation treaties, which although [they] have never entered into force, are subsequently replaced by updated but nevertheless still "provisional" treaties.

[97] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/singapore_3.pdf.

41. Slovenia

Statement made in the Sixth Committee, Seventy-fourth session (2019), 25th meeting, 30 October 2019:[98]

> [*Reference to the practice of the European Union:*]
>
> Slovenia is ready to submit a written proposal on draft model clause 1[99] and thus allow the states to complete the relevant internal treaty-making procedures before provisionally applying [the treaty]. The latter is of particular interest to those states that have internal limitations on the use of provisional application. Such a provisional application mechanism is applied by the European Union in the field of air transport agreements, which partly fall under the competence of EU Member States.

[98] Full text available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/slovenia_1.pdf.

[99] Editorial note: See document A/74/10, annex A, for the text of draft model clause 1, as proposed by the Special Rapporteur for consideration by the International Law Commission).

42. South Africa

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:[100]

> In South Africa, new procedures for the conclusion of treaties were introduced in democratic South Africa, first by the *Interim Constitution of the Republic of South Africa, 1993, and finally by the Constitution of the Republic of South Africa*, 1966. In view of the enhanced status the 1996 Constitution accords to international law, it may be of particular relevance to … consider South African law with respect to the formation and domestic effect of provisional applicable treaties.
>
> The customary right of the State to enter into provisionally [applied] treaties is recognised in Section 232 of the 1996 Constitution. Unless the agreement on provisional application itself requires ratification, the power of the Executive to agree to the provisional application of a treaty without prior Parliamentary approval is established by the following sub-Sections of the Constitution:
>
>> Sub-Section 231 (1) authorises the executive to negotiate and sign international agreements, which includes the power to negotiate and sign agreements on provisional application; and it can be inferred from sub-Section 231 (3) that the provisional application may commence without Parliamentary consent in three circumstances:
>>
>> (*a*) Where the treaty that is provisionally applied is of a technical, administrative or executive nature;
>>
>> (*b*) Where the agreement on provisional application of a treaty is itself an agreement of a technical, administrative or executive nature; and
>>
>> (*c*) Where the agreement on provisional application of a treaty is one that requires neither ratification nor accession.
>
> Arguably these approaches encompass almost, if not all, of the methods by which a State may agree to apply a treaty provisionally. This may be done by the inclusion of a provision to this effect in the treaty itself, an agreement in simplified form, a resolution of a conference, or a notification or declaration of provisional application. In the South African context, whatever form it takes, an agreement on provisional application must be tabled in the National Assembly and the National Council of Provinces, the two Houses of Parliament, within a reasonable time—failure to do so may constitute a breach of the Constitution.
>
> The Executive in South Africa may decline to ratify a treaty approved by Parliament should the other party/parties delay or refuse to ratify, the entire treaty has become obsolete, or there is a need to renegotiate some terms. If the South African Government decides not to ratify a provisionally applied treaty, the Executive could choose to terminate the provisional application (provided the agreement on provisional application does not prohibit this).
>
> Section 233 of the 1996 Constitution commands that, when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law—it is believed that 'international law' in this context would include treaties that have entered into force for the Republic of South Africa and also those that it applies provisionally.

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[100] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/south_africa_3.pdf.

43. Spain

Statement made in the Sixth Committee, Sixty-seventh session (2012), 22nd meeting, 6 November 2012:[101]

> [*Reference to the practice of the European Union:*]
>
> Thus, among the wide variety of legal issues that arise, the use of provisional application that States and international organizations such as the European Union are doing in the agreements mixed of a commercial nature concluded with third States could be highlighted. Thus, through the mechanism of provisional application, within the framework of the European Union, it is possible to advance the application of that part of the treaty that falls under the exclusive competence of the Union.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:[102]

> After all, once a treaty is being provisionally applied, States abide by the rule set out in article 27 of the Vienna Convention [on the Law of Treaties, 1969,] according to which they may not invoke the provisions of their internal law as justification for their failure to comply with their international obligations even those provisionally undertaken. And that is precisely the reason why the Bill on Treaties and other international agreements that the Spanish Senate approved last Wednesday and that will enter into force in a matter of weeks contains specific safeguards and limits regarding provisional application.
>
> …
>
> [*Reference to the practice of the European Union:*]
>
> We would also like to draw attention to the importance of the practice of International Organizations on this issue, namely the European Union which has made extensive and quite interesting use of the provisional application of treaties as provided for in article 218.5 of the *Treaty on the Functioning of the European Union*. This is the case, for example, of some mixed agreements (between the Union and its member States, on the one hand, and a third party on the other hand) in which only the parts affecting matters within the Union's competence are provisionally applied.

Statement made in the Sixth Committee, Seventieth session (2015), 25th meeting, 11 November 2015:[103]

> [*Reference to the practice of the European Union:*]
>
> Regarding the provisional application of treaties concluded by international organizations, it may be appropriate to take into account the practice, common within the European Union, of mixed agreements (that is, agreements concluded jointly by the European Union and its Member States, on the one hand, and one or more third States, on the other). Such practice restricts provisional application to provisions that fall within the scope of European Union competence and in which, therefore, the decision concerning provisional application is adopted by the European Union, without the Member States

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[101] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/spain_3.pdf.

[102] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/spain_3.pdf.

[103] Unofficial translation (from Spanish) by the delegation of Spain. Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/spain_3e.pdf.

qua talis having to intervene (beyond their presence as members in the Council of the European Union, a body to which Article 218.5 of the *Treaty on the Functioning of the European Union* entrusts the decision on the application of the international agreements of the European Union).

44. Switzerland

Communication transmitted to the Secretariat, 27 January 2014:[104]

1. The decision to provisionally apply a treaty

(a) Swiss legal bases and practice

In Switzerland, the Federal Assembly (Parliament) approves international treaties, with the exception of those whose conclusion falls within the sole competence of the Federal Council (Government) by virtue of a law or an international treaty.[105] In principle, the Parliament approves, before their entry into force, the treaties which have been negotiated and signed by the government. But the latter can, when a law or an international treaty approved by the Parliament authorizes it, conclude the treaties alone, without parliamentary approval.

The competence to decide on the provisional application of a treaty rests in Switzerland with the government. This competence of the Federal Council has always been implicitly deduced from its constitutional competence in the field of foreign affairs in general.[106] Thus a "customary constitutional law"[107] has emerged. In accordance with a practice which for a long time hardly was contested,[108] the Federal Council decided on such a provisional application when it was required to safeguard essential Swiss interests or a particular emergency situation.[109]

Under domestic law, these conditions must of course only be met for treaties submitted for approval by the Federal Assembly. For treaties whose approval falls within its sole competence, the Federal Council may decide to have them enter into force upon signature; *a fortiori* it may also thus decide to apply them provisionally.[110] However, even in the case of treaties which come under its own approval competence, the Federal Council makes relatively limited use of provisional application, since it prefers entry into force of the treaty upon signature when the partners can also do so.[111]

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[104] Unofficial translation (from French) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/switzerland_2014_f.pdf.

[105] Art. 166 (2) of the Federal Constitution of the Swiss Confederation of April 18, 1999 (Cst., Recueil systématic [RS] 101).

[106] Art. 184 (1) Cst. provides that "the Federal Council is responsible for foreign affairs subject to the participation rights of the Federal Assembly; he represents Switzerland abroad". Art. 102, ch. 8, of the old Federal Constitution of 29 May 1874 (RS 1 3) provided for its part that "[the Federal Council] oversees the interests of the Confederation abroad, in particular the observance of its international relations, and it is, in general, in charge of external relations ".

[107] Communication from the Department of Public International Law DDIP and the Federal Office of Justice of 14 December 1987, JAAC/VPB 51.58, ch. 8.

[108] However see Valentin Zellweger, Die demokratische Legitimation staatsvertraglichen Rechts, in Der Staatsvertrag in Schweizerischen Verfassungsrecht, Stampfli Verlag AG, Beme 2001, pp. 251–416, 395–400.

[109] See, *e.g.*, Opinion of the Federal Council of 18 February 2004 on the report of 18 November 2003 of the Committee on Political Institutions of the Council of States on the parliamentary initiative "Provisional application of international treaties", Federal Bulletin (FF) 2004 939, 942; Message from the Federal Council of 4 July 2012 concerning the federal law on the competence to conclude International Treaties of Minor Scope and on the Provisional Application of International Treaties (Amendment of the Law on the Organization of Government and Administration and the Law on Parliament), FF 2012 6959, 6970. See also FF 1995 iV 749, 755 and 1999 IV 4471, 4492.

[110] See Opinion of the Federal Council of 18 February 2004, *ibid.*, FF 2004 939, p. 940, footnote 4.

[111] Claude Schenker, Guide to Practice in International Treaties, Federal Department of Foreign Affairs, Berne 2010, p. 14, ch. 55.

The practice of considering these two conditions as alternatives (essential interests or particular urgency) for the treaties submitted for the approval of the Federal Assembly changed however after the end of 2001.

The Federal Council had decided to provisionally apply the *Agreement of 18 October 2001 between Switzerland and Germany relating to the provision of air navigation services over part of German territory by Switzerland and to the effects of the operation of Zurich airport on the territory of Germany*. However, the Federal Assembly refused to approve the treaty.[112]

Following a parliamentary intervention, the establishment of an explicit legal basis to allow provisional application was therefore required for the first time.[113] Such a legal basis seemed necessary because "the provisional application may, *de facto*, undermine the competence of the Parliament in matters of approval of treaties, to the extent that the provisional application risks creating a *de facto* situation, from which it is difficult to return"[114]. Secondly, it was provided that the two abovementioned conditions (essential interests and special urgency) had to be cumulatively fulfilled so that a treaty could be applied provisionally.[115] The debates relating to this parliamentary intervention made it appear that it was undeniable that the provisional application of an international treaty is, under certain conditions, adequate and necessary. The very nature of international relations sometimes requires prompt action to protect Switzerland's interests. This may be the case, for example, for economic treaties, where it is important to avoid the Swiss economy being placed at a disadvantage owing to the fact that it cannot yet benefit from the effects of a new treaty which has not been applied immediately."[116]

Since 1 April 2005, a legal provision in Switzerland has explicitly governed the "provisional application of international treaties by the Federal Council".[117] It provides in substance that the two aforementioned conditions must be fulfilled cumulatively in order to be able to decide on the provisional application of a treaty whose approval is the responsibility of the Federal Assembly. In addition, the Federal Council is obliged to submit the treaty to the Federal Assembly for approval within six months from the commencement of provisional application. Finally, according to another provision which entered into force at the same time, "the Federal Council consults the competent [parliamentary] committees before provisionally applying an international treaty whose approval is the responsibility

[112] FF 2002 3171. For a summary of the history of this agreement, cf. the Message of the Federal Council of July 4, 2012 cited in footnote 109 above (FE 2012 6959), p. 6965.

[113] Spoerry parliamentary initiative of 3 October 2002: make impossible the provisional application of international treaties leading to negative effects (02.456; Official Bulletin of the Federal Assembly [BO] 2003 E 75ff).

[114] Report of 18 November 2003 of the Committee on Political Institutions of the Council of States, 03.459, FF 2004 703, 706. In its opinion of the Federal Council of 18 February 2004 cited in footnote 109 above (FF 2004 939), the Federal Council responded to this report by being favorable, for reasons of clarity, to the creation of a legal basis regulating the material conditions for the provisional application of treaties and expressing their preferences regarding the formulation of the legal basis.

[115] *Idem.*, p. 709.

[116] *Ibid.* It is in particular with these arguments that, when the eventual removal of any provisional application has been mentioned, the maintenance of this possibility was then decided.

[117] Art. 7*b* (1), of the law of 21 March 1997 on the organization of government and administration (LOGA; RS 172.010), the following content: "If the approval of an international treaty is the responsibility of the Federal Assembly, the Federal Council may decide or agree to its application on a provisional basis if the safeguard of essential interests of Switzerland and a particular emergency so require."

of the Federal Assembly".[118] In cases where the Federal Council decides to provisionally apply such a treaty, the Federal Assembly remains competent for the approval of the said treaty. However, this takes place *a posteriori*.[119]

There are other legal provisions concerning the provisional application of treaties that have yet to be pointed out. Thus, the Swiss law on external economic measures provides that,

> [in] order to safeguard essential Swiss economic interests, the Federal Council may provisionally apply agreements not subject to a referendum which affect the traffic of goods, services and payments. In urgent cases, the provisional application of agreements providing for membership of an international organization is also possible.[120]

Likewise, the law on customs tariffs provides that,

> [w]hen the interests of the Swiss economy require, the Federal Council may provisionally apply agreements relating to customs duties and provisionally put into force the resulting tariffs. It can also provisionally bring into force the tariff rates resulting from agreements that the Federal Council can apply provisionally according to [the law] on external economic measures.[121]

These two provisions permit provisional application if (essential) economic interests so require, the condition of urgency having to be cumulatively satisfied only for agreements which provide for membership in an international organization. As *lex specialis*, these rules take precedence over the aforementioned provision which in all cases provides for a combination of the two conditions.

The number of treaties provisionally applied by Switzerland is relatively small. In recent years, they have amounted to less than half a dozen treaties per year. This number nevertheless testifies to the necessity, or at least the usefulness, of the institution. The provisional application of treaties has in the vast majority of cases not been a problem.

A single treaty provisionally applied by the Federal Council has not been approved by the Federal Assembly.[122]

Another provisionally applied agreement was initially rejected by Parliament for other reasons. Parliament then confirmed the provisional application notwithstanding its refusal of the agreement. This was finally adopted after the presentation of an additional message from the Federal Council. This is the Agreement of 11 October 2007 between Switzerland and the European Community in the audiovisual field, establishing the firm and conditions for Switzerland's participation in the MEDIA 2007 community program.[123]

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[118] Art. 152(3*bis*) of the law of 13 December 2002 on the Parliament (LParl; RS 177.10). Note the rejection of a parliamentary proposal by a minority who wanted to grant Parliament, or even in an emergency to its competent committees, real competence for the approval of the provisional application (Report of 18 November 2003 cited in footnote 109 above (FF 2004 703), p. 713ff).

[119] Message from the Federal Council of 4 July 2012 cited in footnote 109 above (FF 2012 6959), p. 6972.

[120] Art. 2 (provisional application of agreements) of the federal law of 25 June 1982 on external economic measures (RS 946.201).

[121] Art. 4 (1) of the law of October 9, 1986 on the customs tariff (LTaD; RS 632.10). See also Zellweger, *op. cit.* footnote 108 above, p. 396s.

[122] See above section 1 (*a*) and footnote 112.

[123] RS 0.784.405.226.8. The chairpersons of the competent parliamentary committees, consulted as a matter of urgency, had issued a positive opinion concerning the provisional application. See Message from the Federal Council of November 26, 2008 additional to the message of September 21, 2007

(b) Recent developments

The Swiss legal provisions that entered into force in 2005 were next considered on 31 March 2010. On that date, the Federal Council decided to provisionally apply the *Protocol of 31 March 2010,* amending the *Agreement of August 19, 2009 between the Swiss Confederation and the United States of America concerning the request for information from the Internal Revenue Service of the United States of America relating to the Swiss company UBS SA*[124] despite the negative advice of the Parliamentary Committees consulted.[125]

Parliament subsequently requested a modification of the existing legal bases, so that provisional application could no longer be decided without the approval of the competent Parliamentary Committees.[126]

In response, the Federal Council, recognizing that the current situation was not entirely satisfactory, introduced a bill. This provides that the Federal Council would be bound, in matters of provisional application of a treaty, by a negative notice from the competent committees if such notice was decided by a qualified majority of two thirds in the Committees of the two chambers of Parliament. The government considers it justified to strengthen the involvement of Parliament to some extent in this way. However, it did not propose approval by the Parliamentary Committees of the provisional application, but rather the possibility of them vetoing such provisional application in the event of a qualified majority. Such position was motivated by:

1) its [the Federal Council's] desire to avoid provisional application when there exists a "considerable risk" that the treaty in question will not subsequently be approved by Parliament;

2) the wish to guarantee a certain leeway "necessary for an active foreign policy adapted to the circumstances";

3) its [the Federal Council's] desire not to modify in principle the distribution of powers between the legislature and the executive, with the decision on the provisional application of a treaty remaining within the remit of the Federal Council.[127]

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approving this agreement, FF 2008 8165, 8170; Message from the Federal Council of 4 July 2012 cited in footnote 109 above (FF 2012 6959), p. 6972 and references.

[124] See RS 0.672.933.612 and the Message from the Federal Council of 14 April 2010 relating to the approval of this agreement, FF 2010 2693, 2714ff.

[125] However, this treaty was subsequently approved by Parliament. For a summary of the history of this agreement, see FF 2012 6959, 6964.

[126] Motion of the Foreign Policy Commission of the Council of States of 27 May 2010: legal basis for the conclusion of international treaties by the Federal Council (10.3354, BO 2010 E 435); Motion by the Council's Committee on Economy and Royalties National Council of 2 June 2010: revision of the legal bases governing the conclusion of an international treaty by the Federal Council (10.3366, BO 2010 N 830); see also Joder parliamentary initiative of 17 June 2010: conclusion and approval of international treaties, review of the respective competences of Parliament and government (10.457, BO 2013 N 635). It should be noted that a comparable proposal providing for the approval of the provisional application by the parliamentary committees was not retained during the adoption of Art. 7*b* LOGA and 152 (3), LParl entered into force on 1 April 2005, reasons taken in particular that the Federal Council must always be able to choose to provisionally apply a treaty in order to assume its responsibilities in terms of the conduct of foreign policy and that, since the Federal Council is competent in foreign affairs (art. 184 (1), Cst.), it is advisable not to dilute the responsibilities in this area (see Report of 18 November 2003 cited in footnote 114 above (FF 2004 703), p. 712 and 714 and Message from Federal Council of 4 July 2012 cited in footnote 109 above (FF 2012 6959), p. 6971).

[127] Message of 4 July 2012 cited in footnote 109 above (FF 2012 6959), p. 6976.

(c) Tensions between international law and domestic law

As this bill is currently being debated in the Federal Assembly, it is not yet possible to express an opinion on the precise contours of the legal provisions which will, over the next few years, regulate the provisional application of the treaties in Switzerland. The debates are continuing and it remains to be seen whether the approval of provisional application could in Switzerland be transformed, from a government measure of emergency and necessity, into a parliamentary prerogative[128] of provisional approval with an accelerated procedure.

In any event, it is possible and it seems desirable to anchor provisions in domestic law to determine the competences and conditions for the provisional application of a treaty. A deviation may thus be made in the regime relating to the approval and ratification of treaties,[129] but it is fully justified by the undeniable utility, even the necessity, of the institution of provisional application in the law of international treaties.

2. Termination of provisional application

(a) Legal bases and Swiss practice

Swiss law provides that

> the provisional application of an international treaty terminates if, within six months from the start of the provisional application, the Federal Council has not submitted to the Federal Assembly the draft Federal decree approving the treaty concerned. The Federal Council notifies the Contracting States of the end of the provisional application.[130]

Commenting on this provision before it was adopted, the Federal Council indicated that in the vast majority of cases it would meet such deadline. In the event of delay, the rule will not pose a problem if the provisional application results from a unilateral act of Switzerland: when the Federal Council decides on the provisional application, it can also decide on the end of such provisional application by notification to the Contracting States. On the other hand, where provisional application results from an agreement between the parties, the provision will have only a limited scope.[131]

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[128] According to Anthony Aust, Modern Treaty Law and Practice, 2nd ed., University Press, Cambridge 2007, p. 173, footnote 47, parliamentary approval of the provisional application is required in several states.

[129] See, *e.g.*, Denise Mathy, Article 25, in Olivier Corten and Pierre Klein (eds), The Vienna Conventions on the Law of Treaties: A Commentary, vol. I, University Press, Oxford 2011, p. 653, chp. 8.

[130] Art. 7*b*, al. 2 and 3, LOGA.

[131] The Federal Council continued as follows: "In particular, Switzerland will not be able, in all cases, to terminate provisional application without at the same time notifying the co-contracting States of its wish to renounce the ratification of the treaty. However, any delay by the Federal Council in presenting a message to the Federal Assembly relating to a provisionally applied treaty does not necessarily mean that Switzerland does not intend to ratify the agreement. However, in order to be able to terminate provisional application, such possibility should have been provided for in the agreement itself or the co-contractors should consent to the termination of the provisional application. To avoid problems of public international law, the Federal Council should only accept a clause providing for provisional application if the clause reserves the possibility of terminating such application by means of a unilateral act. Such a policy is in principle possible, yet it has the consequence of further limiting the scope for negotiation. In addition, the other Parties to the treaty would not understand if Switzerland were to reserve the possibility of terminating the provisional application of a treaty while ratifying it anyway thereafter (following approval by Parliament) and bringing it into force definitively …". (Opinion of the Federal Council of February 18, 2004 cited in footnote 109 above (FF 2004 939), p. 943ff.).

This legal provision, however, only covers the hypothesis of failure by the Federal Council to comply with the deadline imposed on it to submit the treaty in question for parliamentary approval. Such outcome has never arisen. The scenario of a refusal of approval by the Federal Assembly of a treaty provisionally applied and submitted to it within the time limit is not mentioned in the law. However, also in such case, the Federal Council must notify the other signatory states of Switzerland's intention not to become a party to the treaty, thus automatically terminating the provisional application, in accordance with Article 25, paragraph 2, of the Vienna Convention on the Law of Treaties (Vienna Convention).[132]

As already indicated, only one bilateral treaty provisionally applied by the Federal Council has been rejected by the "Federal Assembly"[133] in recent years. This was on 18 March 2003, *i.e.* before the aforementioned legal provisions came into force. The Federal Council then informed the partner on 28 March 2003 of the parliamentary refusal and, therefore, of Switzerland's intention not to become party to the treaty.

(b) Time limits

Switzerland wishes to address the issue of possible time limits to be observed by a State which, in the absence of any provision in a treaty, unilaterally wishes to terminate its provisional application. As a general rule, the termination of provisional application should be possible with immediate effect, at least in cases where notification is made within a reasonable time after the start of provisional application.

Thus, in the case of the aforementioned bilateral treaty, concluded on 18 October 2001 but rejected by the Swiss Parliament on 10 March 2003, Switzerland notified this information to its partner on 28 March 2003, on which date provisional application ended, immediately.

This immediate effect may be necessary from the point of view of internal procedures and law, as a Parliament can expect the provisional application of a treaty which it rejects under the terms of the treaty to be terminated very quickly in accordance with a regular procedure of reasonable duration.

In some situations, however, the longer the effective provisional application has lasted, the more difficult it will be to claim an immediate end. In the event of a long duration of a provisional application, the principle of good faith may require a reasonable period for the end of the provisional application and thus prevent such application from being terminated with immediate effect. In Switzerland's view, such principle may even require, depending on the circumstances, that the termination of provisional application be subject to the terms and time limits relating to the denunciation of the treaty in question. Therefore, the possibility for a State to unilaterally end the provisional application at any time must be qualified, in particular with regard to the principle of good faith.[134]

For example, Switzerland signed a bilateral treaty in 1997 with a view to avoiding double taxation in terms of taxes on income and on capital, and subsequently notified the partner in 1998 of the completion of its procedures allowing for definitive entry into force. In the absence of a corresponding notification from the partner, the signatory governments

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[132] See Message from the Federal Council of 4 July 2012 cited in footnote 109 above (FF 2012 6959), p. 6972.

[133] The bilateral agreement concluded with Germany on October 18, 2001, see above at footnote 112.

[134] See in this regard the considerations of the Memorandum of 1 March 2013 of the Secretariat (A/CN.4/658), reproduced below at p. 266 at footnote 48 and paras. 74–79, according to which, notwithstanding the words "in force" of art. 26 of the Vienna Convention, the *pacta sunt servanda* principle [and thus 'good faith performance requirement] also apply to provisionally applied treaties; see also Mark E. Villiger, Commentary on the 1969 Vienna Convention on the Law of Treaties, Martinus Nijhoff, Leiden and Boston 2009, p. 357, c. 11; Mathy, *op. cit.* footnote 129, p. 652.

amended the treaty at the end of 2000 and further agreed to apply provisionally from 1 January 2001 the 1997 treaty as amended in 2000. In January 2012, the partner notified Switzerland of its intention not to become party to the amended 1997 treaty, which was nevertheless applied in practice. It indicated that the provisional application was terminated with immediate effect. In February 2012, Switzerland informed the partner that it did not share its approach regarding the modalities for terminating the provisional application of the amended 1997 treaty. It argued that, with regard to a double taxation agreement—the application of which had started on January 1 to fully cover each fiscal year—and after eleven years of effective provisional application, the principle of good faith required a *mutatis mutandis* application of the period for denunciation provided for by the treaty, by providing a written notice of denunciation of at least six months prior to the end of the calendar year.

(c) Termination of provisional application under the treaty or agreement

It is likely rare for treaties to contain explicit provisions relating to the modalities and time limits for the termination of provisional application. Switzerland wonders, however, whether doing so might not be a way of bringing greater legal certainty to contractual relations in general and greater credibility to the institution of provisional application in particular. It seems in practice that, when a treaty is applied provisionally, some of the parties who are bound by such provisional application sometimes tend to neglect the steps still necessary for the treaty to come into force definitively. As the agreement is already applied in practice, the urgency or importance of a definitive entry into force may indeed tend to disappear, for example when the objectives of the treaty are achieved before provisional application has ended. Parties may, of course, agree to terminate provisional application, but such an agreement is often illusory in the circumstances described.

Switzerland wishes to point out the possible difficulties of domestic law, of a constitutional or even procedural nature, as examples of other grounds that may be invoked when provisional application is prolonged.

Switzerland has concluded a bilateral agreement which has been formally applied provisionally since its signature in 1989, then it notified the partner in 1990 of the completion of its procedures allowing final entry into force. But such agreement has never been materially implemented and the partner informed Switzerland, as late as 2005, that its Parliament had not yet ratified it. However, it seems in fact that following the result of constitutional changes granting international powers in the field of treaties to the decentralized entities of the partner state, the central government no longer has the power to ratify this agreement itself. Neither state, however, has notified its intention not to become party to the treaty.

The provisional application should by definition be terminated relatively quickly. The two main hypotheses are then either the final entry into force of the treaty or, exceptionally, announcement of the end of the provisional application according to Article 25, paragraph 2, of the Vienna Convention. In this regard, however, an alternative which seems to constitute one of the best solutions could also be to provide from the outset, in the treaties subject to provisional application, that such application will have a predetermined maximum duration.[135]

By way of examples which do not require any act or declaration from States, two multilateral treaties of which Switzerland is depositary and which provide for the possibility of

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[135] In particular art. 7 (3), of the Agreement of 28 July 1994 relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, RS 0.747.305.1517, UNTS No. 31364, vol. 1836, p. 3.

provisional application furthermore stipulate that "[t]he period of provisional application cannot not exceed five years " (*Convention on the use of the Platform of the International Commission on Civil Status for the international communication of civil status data by electronic means*, done in Rome on 19 September 2012 (art. 15, para. 1, i.f.); and *Convention on the issue of multilingual and coded extracts and certificates of civil status documents*, adopted in Bern on September 26, 2013 (art. 13, para. 1, i.f.)).[136]

Switzerland further considers that, for treaties without such a clause, which are formally applied provisionally but which are not or have not been so for some time, a presumption as to the end of provisional application would be desirable after a specified reasonable period of time, for States which have applied a treaty provisionally without (succeeding in) ratifying it. Such a presumption should, of course, be limited to treaties of which the signatory States do not make use. Conversely, the presumption of a definitive entry into force, since the essential act of ratification is lacking, and the presumption of an application of indefinite duration, which could be even more so, would be more difficult to imagine. definitive that it lasts. This would indeed contradict the character of provisional application, by definition temporary, also by virtue of domestic law requirements.

Switzerland therefore considers that a bilateral trade and investment protection agreement is still being provisionally applied, since its signature in 1963, despite not having been ratified. The partner, which recalled this fact on several occasions, notably in 1973 and 1974, limited itself to imprecise oral declarations followed by neither facts nor written submission, according to which it purported to declare that it no longer intended to be bound by such agreements but was still considering the matter.

3. Legal effects of provisional application

(a) Swiss legal bases and practice

For Switzerland, the provisional application of an international treaty is aimed at permitting the full legal consequences of the treaty to arise prior to the treaty's approval by the Federal Assembly. Provisional application makes it possible lawfully to implement the provisions of the treaty. This is, however, subject to the resolutive power of a possible negative decision by Parliament. Such an interpretation follows from the intention of the Swiss legislator when it drew up the aforementioned legal bases.[137]

Swiss law logically provides that "[treaties] provisionally applied before their entry into force are published in the Official Digest as soon as possible once the decision on provisional application has been made"; since legal obligations arise as soon as the texts in question have been duly published.[138]

One of the main differences between provisional application and final entry into force is precisely that it is in principle possible to terminate the provisional application of a treaty more easily than a treaty that has entered into force definitively and which would then be subject to deadlines, or even conditions, for denunciation often provided for in its final provisions. In Switzerland's view, however, certain cases should be reserved, such as that mentioned

[136] See www.dfae.admin.ch/depositaire. These two treaties are not yet in force or provisionally applied. It is likely that the depositary will announce notifications relating to 4 decisions of provisional application that it will produce effects at most for 5 years, specifying the end of this maximum period. This solution seems in fact preferable to that requiring a new notification *proprio motu* of the depositary at the end of the five-year period.

[137] FF 2010 2693, 2717; see above section 1 (*a*), at footnotes 117 and 118.

[138] Art. 8 (1) of the law of 18 June 2004 on official publications (LPubl; RS 170.512) and art. 33 (6) of the order of 17 November 2004 on official publications (OPubl; RS 170.512. 1).

above,[139] in which it would be justified to apply at the end of the provisional application the same time limits as those which are provided for by the treaty for denunciation.

(b) Partial provisional application

Partial provisional application of a treaty, also provided for in Article 25, paragraph 1, of the Vienna Convention, may in practice raise interesting questions, for example in relation to the necessary balance to be maintained between all the provisions of the treaty. Thus, partial provisional application appears difficult in the case of a so-called "integral" treaty.[140]

Just as, unless otherwise agreed or if the treaty so provides, parties cannot unilaterally bring into force or partially denounce a treaty, nor can they provisionally apply it only partially. And even where a treaty provides for (full) provisional application, a state cannot, unless otherwise agreed, provisionally apply only part of it. It is in fact necessary to prevent this State from applying temporarily the only provisions which would be favorable to it, for example.

Switzerland concluded with the European Union (EU) on August 14, 2013 an Agreement in the form of an exchange of notes concerning the adoption of EU Regulation No. 604/2013 of the European Parliament and of the Council of June 26, 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.[141] This regulation is applied by the Member States of the EU from January 1, 2014.[142] However, Switzerland has also undertaken[143] to "apply provisionally, as far as possible" the content of such acts from the date set for their entry into force and until it notifies [the EU of] the fulfillment of its constitutional requirements. Switzerland has therefore decided to apply this regulation provisionally from 1 January 2014, with the exception, however—which the partner does not oppose—of the provisions of this regulation which require legislative changes in Switzerland, because the entry into effect of such provisions takes longer.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021:[144]

Three cumulative conditions must be met for the Swiss government to be able to consent to the provisional application of treaties whose approval is a matter for Parliament: first, the essential interests of the country must be at stake and, second, there must be a particular emergency. Third, the relevant parliamentary committees must be consulted and not oppose the application.

It should also be noted that this procedure has to be undertaken within a predetermined time frame: if the government has not submitted the said treaty for approval to Parliament within 6 months of the start of the provisional application, the latter ceases.

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[139] See section 2 (*b*), *supra*.

[140] Villiger, *op. cit.* footnote 134, p. 355.

[141] RS 0.142.392.680.01, see also Official Journal of the European Union (OJ) L 180 of 29 June 2013, p. 31.

[142] *Idem.*, see art. 49.

[143] In application of art. 4 (3), in *fine*, of the Agreement of 26 October 2004 between the Swiss Confederation and the European Community on the criteria and mechanisms for determining the State responsible for examining an asylum application lodged in a member state or in Switzerland (RS 0.142.392.68).

[144] Unofficial translation (from French) by the United Nations Secretariat.

Communication transmitted to the Secretariat, 22 July 2022:[145]

> Switzerland refers to the information already transmitted on 27 January 2014 and wishes to point out two developments that have taken place since then:
>
> First, in its contribution of 27 January 2014, Switzerland made reference to a proposed piece of legislation (para. 1.*b*, p. 4 *in initio*), which aimed to grant the competent committees of both houses of the Swiss Parliament the right to oppose the provisional application of treaties. The Parliament then passed the legislation, which went into effect on 1 May 2015 and stipulates that the Swiss Government, the Federal Council, "shall renounce the provisional application if the competent committees of the two councils oppose it".[146]
>
> Secondly, the Parliament considered that it might be urgent not only to apply a treaty falling within its authority, but also to terminate it, concluding that the Federal Council should be given the authority to urgently terminate a treaty if dictated by the need to protect the vital interests of Switzerland or to address a specific emergency. In such a case, the Federal Council must also consult the competent parliamentary committees beforehand. The piece of legislation also stipulates that "the Federal Council shall renounce the urgent termination of a treaty if the competent committees of the two councils opposed it".[147] This new urgent termination regulation went into effect on 2 December 2019. It does, in a way, mirror the regulation concerning provisional application.
>
> Furthermore, the number of treaties provisionally applied by Switzerland has remained stable and relatively modest: from 2014 to date, 33 treaties have been provisionally applied (cf. annex), an average of just over four per year. The introduction of the right of opposition of the competent parliamentary committees has therefore not led to a statistically significant change compared to the previous period, for which we reported a provisional application rate of six treaties per year.
>
> There is no particular problem with these provisional applications. During the reporting period, there was never any opposition from the parliamentary committees, such that the Federal Council was always able to confirm to contractual partners the provisional application of the treaties desired and contemplated in negotiations.
>
> There were two cases of treaties applied provisionally that did not contain a provisional application clause:
>
> The first case involves two exchanges of notes dated 20 December 2018 between Switzerland and the European Union (EU; see Nos. 22 and 23 of the annex), following which certain provisions of two European Union regulations were provisionally applied, from 28 December 2019 to 11 May 2021. Without such partial provisional application, cooperation under the Schengen Information System would have been considerably hampered and the regulations would not have been adopted as rapidly as expected by the European Union. The Federal Council determined that the partial provisional application was dictated by the need to protect the vital interests of Switzerland and to address a specific emergency, such

[145] Unofficial translation (from French) by the United Nations Secretariat. The original submission is available at: https://legal.un.org/legislativeseries/pdfs/chapters/book26/switzerland_2022_f.pdf.

[146] Art. 7(*b*) (1 *bis*) of the Organization of Government and Administration Act of 21 March 1997 (RS 172.010) and art. 152 (3 *bis*) (3 *ter*) of the Parliament Act (RS 171.10); see also RO 2015 969; FF 2012 6959.

[147] Art. 7(*b*) (1 *bis*) of the Organization of Government and Administration Act and art. 152 (3 *bis*) (3 *ter*) of the Parliament Act; see also RO 2019 3119; FF 2018 3591 5405.

that the conditions of Swiss law for provisional application were met.[148] After consulting with the relevant parliamentary committees, which shared its opinion, the Federal Council approved the partial provisional application of the provisions concerned.[149]

The second case involves the 9 December 2019 *Agreement in the form of an exchange of letters between Switzerland and the European Union in the context of negotiations under article XXVIII of the General Agreement on Tariffs and Trade (GATT)* 1994 (No. 27 of the annex). On 26 August 2020, the Federal Council decided to apply the Agreement provisionally beginning on 1 January 2021, for the following reason: in 2015, the Parliament had amended the customs tariffs set in the *Swiss Customs Tariff Act*. Switzerland then had to renegotiate with the World Trade Organization (WTO) members concerned those tariffs, which were set in an annex to the GATT. It presented the result of the negotiations to WTO on 12 February 2020. In accordance with existing WTO procedures, the legal effects of the modification went into force on 3 June 2020.[150] The content of the Agreement in the form of an exchange of letters is identical to the result of the negotiations presented to WTO; Switzerland concluded it at the request of the European Union, whose internal law requires such an act for the conclusion of negotiations. In this case too, the provisional application was dictated by the need to fulfil the international obligations of Switzerland as quickly as possible, which was expected by partners, while at the domestic level, these agreements still had to be approved by the Parliament and, in the event of a referendum, by the people.[151]

This shows that with provisional application, in cases specified by law, it is possible to mitigate the effects of sometimes longer entry-into-force timeframes, since the Parliament and the people have the power to approve treaties.

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[148] See art. 7(*b*) (1) of the Organization of Government and Administration Act, *supra*.

[149] See the message on the approval and implementation of the exchange of notes between Switzerland and the European Union concerning the adoption of the legal basis for the establishment, operation and use of the Schengen Information System (SIS) (developments of the Schengen *acquis*) and the amendment of the Federal Joint Foreigners and Asylum Information System Act of 6 March 2020, FF 2020 3361, 3371, 3450.

[150] According to the GATT decision of 26 March 1980 on procedures for modification and rectification of tariff concessions, in the absence of comments or reservations, the modifications provided are deemed certified, meaning that they are definitively approved, and have legal effect; see the message concerning the approval of the modification of Schedule LIX-Switzerland-Liechtenstein for seasoned meat of 20 January 2021, FF 2021 348, 5.

[151] See message, p. 10. Due to domestic law, the modification of the schedule could only enter into force following the approval by the Parliament of 19 March 2021 and the expiry of the referendum timeframe (8 July 2021); see the Federal Order of 19 March 2021, FF 2021 679. The European Union notified the completion of the internal approval procedures by note verbale dated 13 July 2020, and Switzerland did so by note verbale dated 12 May 2022. It is stipulated in the Agreement that it shall enter into force on the date of receipt of the last notification. Switzerland also informed the WTO of the completion of its internal procedures by letter received from the latter on 24 March 2022, such that, in keeping with WTO practice, the Schedule entered into force on that date.

45. Thailand

Statement made in the Sixth Committee, Seventy-third session (2018), 26th meeting, 26 October 2018:[152]

> With regard to the commencement of provisional application, Thailand is a country with a dualist system. Therefore, the application of a treaty or the provisional application of a treaty or a part of a treaty will not automatically form part of Thai law unless properly legislated domestically through internal procedures.

[152] Full text available at: https://www.un.org/en/ga/sixth/73/pdfs/statements/ilc/thailand_2.pdf.

46. Türkiye

Statement made in the Sixth Committee, Seventy-first session (2016), 29th meeting, 2 November 2016:[153]

> Turkish law doesn't allow for provisional application of treaties
>
> …
>
> [The] internal law of many countries, including [Türkiye], does not provide for provisional application of treaties.

Statement made in the Sixth Committee, Seventy-second session (2017), 20th meeting, 25 October 2017:[154]

> In this regard, the Commission should continue to bear in mind that some States, including [Türkiye], are not in a legal position to provisionally apply treaties due to their Constitutional provisions on treaties.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 18th meeting, 27 October 2021:[155]

> In order for [Türkiye] to be legally bound by any international agreement, such agreement has to be approved in accordance with the relevant domestic procedures. In this regard, [the] mere signing of the agreement does not suffice. I also note that [Türkiye] is not party to the *Vienna Convention on the Law of Treaties*, 1969.

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[153] Full text available at: https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/turkey_23.pdf.

[154] Full text available at: https://www.un.org/en/ga/sixth/72/pdfs/statements/ilc/turkey_1.pdf.

[155] Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/18mtg_turkey_1.pdf.

47. United Kingdom of Great Britain and Northern Ireland

Communication transmitted to the Secretariat, 22 July 2022:

Policies and procedures

The Foreign, Commonwealth and Development Office's *Treaties and Memoranda of Understanding (MOUs) Guidance on Practice and Procedures* (March 2022) sets out the United Kingdom's policy and procedures in respect of provisional application of treaties.[156] The relevant section of the Guidance reads:

Provisional Application

12. Treaties which are subject to ratification can contain an Article which provides for them to be applied provisionally pending their ratification and entry into force ("provisional application"). Provisional application may be either from signature or following notification of the parties' intent to provisionally apply the treaty. The United Kingdom uses provisional application on an exceptional basis. Provisional application is not, and cannot be used as, a means of bypassing Parliamentary procedures (nor is it a substitute for the application of the standard international rules and processes for securing full legal entry into force of treaties). As with ratification, a Letter of Legal Assurance will need to be provided to the FCDO confirming that all legislative steps will have been completed before the United Kingdom agrees to provisionally apply a treaty. It is essential that departments consult FCDO legal advisers and/or International Agreements policy team at the earliest possible opportunity when considering the inclusion of provisions allowing for provisional application in a treaty.

Treaty actions

A survey of United Kingdom practice in respect of provisional application of treaties over the last 5 years (2017–2022) shows that in total the United Kingdom has signed or acceded to 63 treaties which contain provisional application clauses. Provisional application was agreed in respect of one other treaty by way of an exchange of notes. In total the United Kingdom has used provisional application in respect of 29 treaties. Of these, 17 are currently being provisionally applied. Further detail is contained in the [following] four documents, the contents of which are summarised as follows:

Annex 1: United Kingdom Treaties Provisional Application Practice 2017–2022: This annex contains a table listing all United Kingdom treaties in respect of which there are provisional application provisions. The table indicates whether provisional application was used, and if so the date of provisional application, as well as the date of entry into force of the treaty for the UK, if applicable.

Annex 2: United Kingdom Treaty Series 2017–2022 Provisional Application Terms: This annex contains a list of 2 treaties not published in either the United Kingdom Country or Miscellaneous Series between 2017 and 2022 which contain provisional application clauses, including the terms of those clauses. We have also included in the list a treaty which was provisionally applied pursuant to an exchange of notes. The exchange has been published on gov.uk but not in *United Kingdom Treaty Series*.

Annex 3: United Kingdom Country Series 2017–2022 Provisional Application Terms: This annex contains a list of all treaties published in the United Kingdom Country

[156] The Guidance can be accessed at: https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures.

Series between 2017 and 2022 which contain provisional application clauses, including the terms of those clauses.

Annex 4: United Kingdom Miscellaneous Series 2017–2022 Provisional Application Terms: This annex contains a list of all treaties published in *United Kingdom Miscellaneous Series* between 2017 and 2022 which contain provisional application clauses, including the terms of those clauses.

Annex 1: *United Kingdom Treaties Provisional Application Practice 2017–2022*

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
UK Treaty Series 2017–2022 and other				
1. UK/EU: Agreement concerning Security Procedures for Exchanging and Protecting Classified Information [TS No.9/2021]	Y	01/01/2021	Y	01/05/2021
2. UK/EU and EAEC: Trade and Cooperation Agreement [TS No.8/2021]	Y	01/01/2021	Y	01/05/2021
3. Exchange of letters on the provisional application of the Agreement between the European Atomic Energy Community and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Safe and Peaceful Uses of Nuclear Energy	Y	01/01/2021	Y	01/05/2021
UK Country Series 2017–2022				
1. UK/Albania: Partnership, Trade and Cooperation Agreement [CS Albania No.1/2021]	N		Y	03/05/2021
2. UK/Ghana: Interim Trade Partnership Agreement [CS Ghana No.1/2021]	Y	05/03/2021	N	

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
3. UK/Italy: Agreement concerning the Protection of Classified Information [CS Italy No.1/2021]	Y	22/09/2020	N	
4. UK/Mexico: Trade Continuity Agreement [CS Mexico No.1/2021]	Y	01/01/2021	Y	01/06/2021
5. UK/Moldova: Strategic Partnership, Trade and Cooperation Agreement [CS Moldova No.1/2021]	Y	01/01/2021	N	
6. UK/Serbia: Partnership, Trade and Cooperation Agreement [CS Serbia No.1/2021]	Y	20/05/2021	Y	15/07/2021
7. UK/Switzerland: Temporary Agreement on Services Mobility [CS Switzerland No.2/2021]	Y	31/12/2020	N	
8. UK/Switzerland: Convention on Social Security Coordination [CS Switzerland No.4/2021]	Y	01/11/2021	N	
9. UK/Turkey: Free Trade Agreement [CS Turkey No.1/2021]	Y	01/01/2021	Y	20/04/2021
10. UK/Viet Nam: Free Trade Agreement [CS Viet Nam No.1/2021]	Y	31/12/2020	N	
11. UK/Canada: Agreement on Trade Continuity [CS Canada No.1/2020]	N		Y	01/04/2021
12. UK/Cote d’Ivoire: Stepping Stone Economic Partnership Agreement [CS Cote d’Ivoire No.1/2020]	N		Y	31/12/2020

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
13. UK/Netherlands: Agreement concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link [CS Netherlands No.1/2020]	Y	16/10/2020	N	
14. UK/Norway: Agreement on the Continued Application and Amendment of the Convention Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters signed at London on 12 June 1961 [CS Norway No.2/2020]	N		Y	31/12/2020
15. UK/Norway: Framework Agreement on Fisheries [CS Norway No.1/2020]	N		Y	01/01/2021
16. UK/North Macedonia: Partnership, Trade and Cooperation Agreement [CS North Macedonia No.1/2020]	Y	31/12/2020	N	
17. UK/Singapore: Free Trade Agreement [CS Singapore No.1/2020]	Y	31/12/2020	N	
18. UK/Chile: Agreement establishing an Association [CS Chile No.2/2019]	N		Y	31/12/2020
19. UK/Chile: Agreement on Trade in Organic Products [CS Chile No.1/2019]	N		Y	31/12/2020

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
20. UK/Denmark: Free Trade Agreement in respect of the Faroe Islands [CS Denmark No.1/2019]	N		Y	31/12/2020
21. UK/Georgia: Strategic Partnership and Cooperation Agreement [CS Georgia No.1/2019]	N		Y	31/12/2020
22. UK/Indonesia: Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade in Timber Products [CS Indonesia No.1/2019]	Y	04/01/2021	N	
23. UK/Israel: Trade and Partnership Agreement [CS Israel No.1/2019]	N		Y	31/12/2020
24. UK/Korea: Free Trade Agreement (with Exchange of Notes) [CS Korea No.1/2019]	N		Y	31/12/2020
25. UK/Lebanon: Agreement establishing an Association [CS Lebanon No.1/2019]	N		Y	31/12/2020
26. UK/Liechtenstein: Additional Agreement extending certain provisions of UK/Swiss Trade Agreement to Liechtenstein [CS Liechtenstein No.1/2019]	N		Y	31/12/2020
27. UK/Morocco: Agreement regarding the System of British Schools in Morocco [CS Morocco No.1/2019]	Y	05/07/2018	Y	07/04/2022

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
28. UK/Morocco: Agreement establishing an Association [CS Morocco No.2/2019]	Y	01/01/2021	N	
29. UK/Montenegro: Agreement concerning Air Services [CS Montenegro No.3/2019]	Y	01/01/2021	Y	09/06/2021
30. UK/New Zealand: Agreement on Sanitary Measures Applicable to Trade in Live Animals and Animal Product [CS New Zealand No.1/2019]	N		Y	01/01/2021
31. UK/New Zealand: Agreement on Mutual Recognition in Relation to Conformity Assessment [CS New Zealand No.2/2019]	N		Y	01/01/2021
32. UK/Norway: Agreement on International Road Transport, with Protocol [CS Norway No.1/2019]	N		Y	30/12/2020
33. UK/Spain: Agreement on the Participation in Certain Elections of Nationals of each Country Resident in the territory of the other [CS Spain No.2/2019]	Y	31/12/2020	N	
34. UK/Switzerland: Agreement on the International Carriage of Passengers and Goods by Road [CS Switzerland No.1/2019]	N		Y	31/12/2020
35. UK/Switzerland: Agreement relating to Scheduled Air Services [CS Switzerland No.2/2019]	N		Y	31/12/2020

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
36. UK/Switzerland: Agreement on Direct Insurance other than Life Insurance and Decision [CS Switzerland No.3/2019]	N		Y	31/12/2020
37. UK/Switzerland: Trade Agreement [CS Switzerland No.4/2019]	N		Y	31/12/2020
38. UK/Switzerland: Agreement on Citizens' Rights following Withdrawal of UK from the EU and Free Movement of Persons Agreement [CS Switzerland No.5/2019]	Y	31/12/2020	Y	01/03/2021
39. UK/Switzerland: Agreement on Admission to the Labour Market for a Temporary Transitional Period following the withdrawal of the UK from the EU and the Free Movement of Persons Agreement [CS Switzerland No.6/2019]	N		N	
40. UK/Switzerland: Transitional Agreement on Social Security for a Temporary Period following the Withdrawal of the UK [CS Switzerland No.7/2019]	N		N	
41. UK/Uzbekistan: Partnership and Cooperation Agreement [CS Uzbekistan No.1/2019]	N		Y	01/05/2021

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
UK Miscellaneous Series 2017–2022				
1. UK/Cameroon: Interim Agreement establishing an Economic Partnership [MS No.2/2021]	Y	30/04/2021	Y	09/07/2021
2. Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland [MS No.3/2021]	Y	UK & Norway: 01/12/2021 UK & Liechtenstein: 01/01/2022	N	
3. Special Arrangement between the Governments of France, Belgium, the Netherlands and the UK concerning Security Matters relating to Trains using the Channel Fixed Link [MS No.3/2020]	Y	07/07/2020	N	
4. Agreement between France, Belgium, Netherlands and UK amending the Agreement between Belgium, France and UK concerning Rail Traffic between Belgium and UK using Channel Fixed Link with Protocol, done at Brussels on 15 December 1993 [MS No.4/2020]	N (other States have)		N	
5. Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty [MS No.5/2020]	Y	31/12/2020	N	

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
6. Agreement on Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway [MS No.8/2020]	Y	31/12/2020	Y	22/02/2021
7. Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part [MS No.9/2020]	N		Y	22/03/2021
8. Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the UK [MS No.4/2019]	N		Y	01/01/2021
9. Interim Political, Trade and Partnership Agreement between UK and PLO for the benefit of the Palestinian Authority [MS No.14/2019]	N		Y	31/12/2020
10. Interim Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and the Pacific States [MS No.15/2019]	Y	31/12/2020	N	
11. Agreement between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway on Trade in Goods [MS No.17/2019]	N		N	

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
12. Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [MS No.18/2019]	Y	31/12/2020	N	
13. Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, of the other part [MS No.22/2019]	N		Y	31/12/2020
14. International Coffee Agreement, 2007 [MS No.28/2019]	N		Y	14/12/2020
15. International Sugar Agreement, 1992 [MS No.30/2019]	N		Y	01/01/2021
16. Grains Trade Convention, 1995 [MS No.31/2019]	N		Y	01/01/2021
17. Agreement Establishing an Association between the UK and Central America [MS No.32/2019]	N		Y	31/12/2020
18. Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility on the Accession of the UK [MS No.33/2019]	Y	19/03/2018	Y	18/06/2021

Treaty title	*Has it been provisionally applied by the UK, either in whole or part? (Yes/No)*	*If Yes, from what date was it provisionally applied by the UK? (DD/MM/YYYY)*	*Has the treaty entered into force for the UK? (Yes/No)*	*If Yes, on what date did it enter into force for the UK? (DD/MM/YYYY)*
19. UK/SACU and Mozambique: Economic Partnership Agreement [MS No.34/2019]	N		Y	31/12/2020
20. Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer [MS No.2/2017]	N		Y	01/01/2019

Annex 2: *United Kingdom Treaty Series 2017–2022 Provisional Application Terms*

UK/EU: Agreement concerning Security Procedures for Exchanging and Protecting Classified Information [TS No.9/2021]

Article 19

1. This Agreement shall enter into force on the same date as the date on which the Trade and Cooperation Agreement enters into force, provided that, prior to that date, the Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

2. This Agreement shall apply as from the date of application of the Trade and Cooperation Agreement or from the date the Parties have notified each other that they have completed their respective internal requirements and procedures to release classified information under this Agreement, whichever is the later. If the Parties have not notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound by this Agreement by the date on which provisional application of the Trade and Cooperation Agreement ceases, this Agreement shall cease to apply.

3. This Agreement may be reviewed for consideration of possible amendments at the request of either Party.

4. Any amendment to this Agreement shall be made in writing only and by mutual agreement of the Parties.

UK/EU and EAEC: Trade and Cooperation Agreement [TS No.8/2021]

Article 783
Entry into force and provisional application

1. This Agreement shall enter into force on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

2. The Parties agree to provisionally apply this Agreement from 1 January 2021 provided that prior to that date they have notified each other that their respective internal requirements and procedures necessary for provisional application have been completed. Provisional application shall cease on one of the following dates, whichever is the earliest:

(*a*) 28 February 2021 or another date as decided by the Partnership Council; or

(*b*) the day referred to in paragraph 1.

3. As from the date from which this Agreement is provisionally applied, the Parties shall understand references in this Agreement to "the date of entry into force of this Agreement" or to "the entry into force of this Agreement" as references to the date from which this Agreement is provisionally applied.

Exchange of letters on the provisional application of the Agreement between the European Atomic Energy Community and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Safe and Peaceful Uses of Nuclear Energy

A. Letter from the European Atomic Energy Community

HE. Tim Barrow
UK Ambassador to the EU
UK Mission to the European Union

Brussels, 30 December 2020

Dear Ambassador,

Reference is made to the *Agreement between the European Atomic Energy Community and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Safe and Peaceful Uses of Nuclear Energy* ('the Agreement').

I have the honour to inform you that the European Atomic Energy Community is prepared to apply the Agreement on a provisional basis with effect from 1 January 2021, pending its entry into force and the completion of the final legal-linguistic revision process of all language versions of the Agreement, provided that the Government of the United Kingdom of Great Britain and Northern Ireland is prepared to do the same and has further notified the European Atomic Energy Community prior to 1 January 2021 of the completion of its internal requirements and procedures necessary for provisional application.

If the Agreement is provisionally applied, the Parties shall understand references in the Agreement to the entry into force of the Agreement as references to the date from which the Agreement is provisionally applied, namely 1 January 2021. For greater certainty, Article 24(3) of the Agreement shall be understood to apply where provisional application ceases without the Agreement being concluded.

The European Atomic Energy Community proposes that Article 25 of the Agreement is replaced by the following: 'This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages. All language versions of the Agreement shall be subject to final legal-linguistic revision, which shall be completed by 30 April 2021. The language versions resulting from this legal-linguistic revision shall replace ab initio the signed versions of the Agreement and shall be established as authentic and definitive by an exchange of diplomatic notes between the Parties.'

I should be obliged if you would confirm the agreement to the foregoing by the Government of the United Kingdom of Great Britain and Northern Ireland on the conditions specified in this letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Atomic Energy Community
Ilze Juhansone

B. Letter from the United Kingdom of Great Britain and Northern Ireland

Ms. Ilze Juhansone
Secretariat-General
European Commission

30th December 2020

Dear Secretary-General,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

> Reference is made to the *Agreement between the European Atomic Energy Community and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Safe and Peaceful Uses of Nuclear Energy* ("the Agreement").

I have the honour to inform you that the European Atomic Energy Community is prepared to apply the Agreement on a provisional basis with effect from 1 January 2021, pending its entry into force and the completion of the final legal-linguistic revision process of all language versions of the Agreement, provided that the Government of the United Kingdom of Great Britain and Northern Ireland is prepared to do the same and has further notified the European Atomic Energy Community prior to 1 January 2021 of the completion of its internal requirements and procedures necessary for provisional application.

If the Agreement is provisionally applied, the Parties shall understand references in the Agreement to the entry into force of the Agreement as references to the date from which the Agreement is provisionally applied, namely 1 January 2021. For greater certainty, Article 24(3) of the Agreement shall be understood to apply where provisional application ceases without the Agreement being concluded.

The European Atomic Energy Community proposes that Article 25 of the Agreement is replaced by the following: "This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages. All language versions of the Agreement shall be subject to final legal-linguistic revision, which shall be completed by 30 April 2021. The language versions resulting from this legal-linguistic revision shall replace *ab initio* the signed versions of the Agreement and shall be established as authentic and definitive by an exchange of diplomatic notes between the Parties.»

I have the honour to confirm the agreement of the Government of the United Kingdom of Great Britain and Northern Ireland to provisional application of the Agreement on the conditions specified in your letter, including further notification of completion of its internal requirements and procedures necessary for provisional application.

Please accept, Madam, the assurance of my highest consideration.

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland
Lindsay Croisdale-Appleby, CMG

Annex 3: *United Kingdom Country Series 2017–2022 (Provisional Application Terms)*

UK/Albania: Partnership, Trade and Cooperation Agreement [CS Albania No.1/2021]

Article 12
Entry into force and provisional application

1. Articles 135 and 136 of the *EU-Albania Agreement* shall not be incorporated into this Agreement.

2. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the *EU-Albania Agreement* ceases to apply to the United Kingdom; and

(*b*) the date of the later of the Parties' notifications that they have completed their internal procedures.

4. Pending entry into force of this Agreement, the negotiating States may agree to provisionally apply this Agreement, or specific provisions thereof, by an exchange of notifications signifying the completion of ratification or such other domestic procedures as are required for provisional application. Such provisional application shall take effect on the later of:

(*a*) the date on which the *EU-Albania Agreement* ceases to apply to the United Kingdom; and

(*b*) the date of the later of the negotiating States' notifications.

5. A negotiating State may terminate the provisional application of this Agreement by giving written notice to the other negotiating State. Such termination shall take effect one month following the date of notification.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term 'entry into force of this Agreement' in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to Albania's Ministry of Foreign Affairs or its successor. Albania shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

UK/Ghana: Interim Trade Partnership Agreement [CS Ghana No.1/2021]

Article 83
Ratification and entry into force

1. This Agreement shall be ratified or approved by each Party in accordance with their respective constitutional rules and procedures.

2. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force, or provisional application, of this Agreement.

3. This Agreement shall enter into force on the first day of the first month, or on such other date as the Parties may otherwise agree, following the date on which Ghana and the UK have notified each other of the completion of the procedures for this purpose.

4. Pending the entry into force of this Agreement, Ghana and the UK may agree to provisionally apply the Agreement, in whole or in part. Such provisional application shall take effect from the date of the later notification by which the Parties notify each other that they have completed their respective legal requirements and procedures for provisional application.

5. A Party may terminate the provisional application of this Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the first month following notification.

6. If, pending the entry into force of this Agreement, the Parties decide to apply it provisionally, all references to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

7. Notwithstanding paragraph 4 of this Article, Ghana and the UK may take measures to apply this Agreement, in whole or in part, before provisional application, to the extent feasible.

8. This Agreement shall be superseded by a free trade agreement concluded at the regional level between West Africa and the UK from the date of entry into force of that agreement. In this case, the Parties will endeavour to ensure that the free trade agreement at a regional level preserves most of the benefits obtained by Ghana through this Agreement.

UK/Italy: Agreement concerning the Protection of Classified Information [CS Italy No.1/2021]

Article 15
Final Provisions

(1) Each Party shall notify the other Party by the exchange of diplomatic notes once the internal legal procedures necessary for entry into force of this Agreement have been completed. This Agreement shall enter into force on the first day of the second month following the receipt of the later notification.

(2) This Agreement shall be applied provisionally from the date of signature.

(3) This Agreement may be amended at any time at the request of either Party. Agreed amendments shall enter into force on the first day of the second month following the exchange of diplomatic notes.

(4) The NSAs or CSAs may conclude implementing arrangements pursuant to this Agreement.

(5) This Agreement shall remain in force until further notice. Either Party may terminate this Agreement by submitting a diplomatic note to the other Party. In that case, this Agreement shall terminate six months after the notification is received by the other Party.

(6) In case of termination of this Agreement, all Classified Information generated and/or provided by the Parties shall continue to be protected in accordance with the provisions set forth herein. If requested, such Classified Information shall be securely returned by the Receiving Party to the Providing Party.

(7) After the entry into force of this Agreement, the Party in whose territory the Agreement is concluded shall take immediate measures so as to have this Agreement registered by the Secretariat of the United Nations in accordance with Article 102 of the UN Charter. That Party shall notify the other Party of the registration and of the registration number in the UN Treaty Series as soon as the UN Secretariat has issued it.

(8) Upon the entry into force of this Agreement, the General Security Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Italian Republic concerning the protection of classified infor-

mation exchanged for the purposes of research, development, production and procurement between the two countries, dated 16 February 2004 as amended, shall be terminated. Any Classified Information generated and/or provided previously under that Arrangement shall be protected in accordance with the provisions of this Agreement.

UK/Mexico: Trade Continuity Agreement [CS Mexico No.1/2021]

Article 12
Entry into force and provisional application

1. Articles 59 and 60 of the EU-Mexico EPPCCA shall not be incorporated into this Agreement.

2. Each Party shall notify the other Party in writing, through diplomatic channels, of the completion of its domestic procedures required for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date of receipt of the later of the Parties' notifications that they have completed their domestic procedures; or

(*b*) the date on which the EU-Mexico EPPCCA ceases to apply to the UK.

4. Notwithstanding paragraph 3 and pending its entry into force, the Parties may apply this Agreement provisionally, in accordance with their respective internal procedures, as applicable.

5. The provisional application shall begin on the later of:

(*a*) the date on which both: i. the UK has notified Mexico of the completion of its internal procedures for such purpose; and ii. Mexico has notified the UK of the completion of its internal procedures; or

(*b*) the date on which the EU-Mexico EPPCCA ceases to apply to the UK.

6. If this Agreement is provisionally applied in accordance with paragraph 5, the Parties shall understand the term "entry into force of this Agreement" as meaning the date of provisional application.

UK/Moldova: Strategic Partnership, Trade and Cooperation Agreement [CS Moldova No.1/2021]

Article 392
Entry into force and provisional application

1. This Agreement shall be ratified or approved in accordance with each of the Parties' own internal procedures. Each Party shall notify the other Party of the completion of those procedures.

2. This Agreement shall enter into force on the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. Pending entry into force of this Agreement, the Parties agree to provisionally apply this Agreement in accordance with each of the Parties' own internal procedures.

4. This Agreement shall be applied provisionally between the Parties on the later of:

(*a*) the date on which the EU-Moldova Agreement ceases to apply to the United Kingdom; and

(*b*) the date of receipt of the later notification of provisional application from the United Kingdom or from the Republic of Moldova.

5. Notifications under paragraphs 2 and 4 of this Article shall be submitted by the United Kingdom to the Republic of Moldova's Ministry of Foreign Affairs and European Integration or its successor and by the Republic of Moldova to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

6. If pending the entry into force of this Agreement it is provisionally applied pursuant to paragraphs 3 and 4, unless this Agreement provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

7. Either Party may give written notification, through diplomatic channels, to the other Party of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect two months after receipt of the notification by the other Party of this Agreement.

UK/Serbia: Partnership, Trade and Cooperation Agreement [CS Serbia No.1/2021]

Article 12
Entry into force and provisional application

1. Articles 138 and 139 of the *EU-Serbia Agreement* shall not be incorporated into this Agreement.

2. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the date of the later of the Parties' notifications that they have completed their internal procedures.

4. Pending entry into force of this Agreement, the negotiating States may agree to apply this Agreement provisionally. Such provisional application shall take effect on the date of the later of the negotiating States' notifications that they have completed their internal procedures for provisional application.

5. A negotiating State may terminate the provisional application of this Agreement by giving written notice to the other negotiating State. Such termination shall take effect one month following the date of notification.

6. Where this Agreement is provisionally applied, the term 'entry into force of this Agreement' shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to Serbia's Ministry of Foreign Affairs or its successor. Serbia shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

UK/Switzerland: Temporary Agreement on Services Mobility [CS Switzerland No.2/2021]

Article 19
Entry into force, provisional application and duration

1. The Parties shall ratify or approve this Agreement in accordance with their domestic procedures. Each Party shall notify the other Party of the completion of those procedures.

2. This Agreement shall enter into force when the FMOPA ceases to apply to the United Kingdom, provided that the Parties have notified each other pursuant to paragraph 1 by that date. Otherwise, this Agreement shall enter into force on the first day of the second month following the later of the Parties' notifications pursuant to paragraph 1.

3. Pending entry into force of this Agreement, the Parties may, in accordance with their respective internal requirements and procedures, provisionally apply this Agreement. A Party intending to provisionally apply this Agreement shall notify the other Party of the completion of its internal requirements and procedures in this regard. Such provisional application shall take effect on the later of:

(*a*) the date on which the FMOPA ceases to apply to the United Kingdom; and

(*b*) the date of the later of the Parties' notification of the completion of its internal requirements and procedures for provisional application.

4. A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following that notification. Where this Agreement is provisionally applied, the term "entry into force of this Agreement" shall be deemed to refer to the date on which such provisional application takes effect.

5. A Party may terminate this Agreement by notification to the other Party of its intention to do so. It shall cease to be in force six months after receipt of that notification.

6. This Agreement shall end two years from its entry into force, unless the Parties agree otherwise.

UK/Switzerland: Convention on Social Security Coordination [CS Switzerland No.4/2021]

Article 73
Provisional application

(1) Pending its entry into force, the States may agree to provisionally apply this Convention by an exchange of notes through diplomatic channels. Provisional application shall take effect on the day following the later of the States' notes.

(2) Either State may terminate the provisional application of this Convention by giving written notice to the other State. Such termination shall take effect on the first day of the second month following notification.

(3) Where this Convention is provisionally applied, the term "entry into force of this Convention" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

UK/Turkey: Free Trade Agreement [CS Turkey No.1/2021]

Article 13.3
Entry into force and termination

1. This Agreement is subject to ratification. The Parties shall notify each other in writing, through diplomatic channels, of the completion of their respective legal requirements for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the receipt of the later of the notifications between the Parties pursuant to the first paragraph.

3. Pending entry into force, this Agreement or specific provisions thereof shall apply as of 1 January 2021 for both Parties, on the condition that the Parties notify each other to that effect through diplomatic channels before that date.

4. Either Party may terminate this Agreement after it has entered into force by providing written notice through diplomatic channels of its intent to terminate the Agreement to the

other Party. Termination shall take effect six months after the date on which a Party has provided that written notice to the other Party, or on such other date as the Parties may agree.

UK/Viet Nam: Free Trade Agreement [CS Viet Nam No.1/2021]

Article 9
Final provisions

1. Each Party shall notify the other Party of the completion of its applicable internal legal procedures required for the entry into force of this Agreement.

2. Unless the Parties agree to such other date, this Agreement enters into force on the later of:

(*a*) the first day of the second month following the date of receipt of the latter of the Parties' notifications that they have completed their applicable internal legal procedures; or

(*b*) the date on which the EU-Viet Nam FTA ceases to apply to the United Kingdom.

3. (*a*) Pending entry into force of this Agreement, the Parties may provisionally apply this Agreement by an exchange of written notifications. Such provisional application shall take effect from the date of receipt of the later of the Parties' notifications.

(*b*) A Party may terminate the provisional application of this Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the second month following the date of receipt of the notification.

4. Where this Agreement is provisionally applied, the term 'entry into force of this Agreement' in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

5. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs of Viet Nam or its successor. Viet Nam shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

6. This Agreement is drawn up in the English and Vietnamese languages, each of these texts being equally authentic.

UK/Canada: Agreement on Trade Continuity [CS Canada No.1/2020]

Article VII
Entry into force and provisional application

1. This Agreement shall be approved by the Parties in accordance with their domestic procedures.

2. This Agreement shall enter into force on:

(*a*) the later of:

(i) the date on which CETA ceases to apply to the United Kingdom; or

(ii) the date of the later of the Parties' notifications that they have completed their domestic procedures; or

(*b*) such other date as the Parties may otherwise agree.

3. Pending the entry into force of this Agreement, the Parties may provisionally apply this Agreement or provisions thereof by an exchange of written notifications. Such provisional application shall take effect on the later of:

(*a*) the date on which CETA ceases to apply to the United Kingdom; or

(*b*) the date of the later of the Parties' notifications that they have completed their respective internal requirements and procedures necessary for provisional application of this Agreement.

4. A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following the date the notification is received, unless the notification provides for a later date.

5. If the Parties provisionally apply this Agreement, or certain provisions of it, the term "entry into force of this Agreement" in this Agreement, or in those provisions, shall be deemed to refer to the date that such provisional application takes effect.

6. The United Kingdom shall submit notifications under this Article to Canada's Department of Foreign Affairs, Trade and Development or its successor. Canada shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

7. The Canada-UK Joint Committee and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement. Any decisions adopted in the exercise of their functions will cease to be effective if the provisional application of this Agreement is terminated under paragraph 4.

UK/Cote d'Ivoire: Stepping Stone Economic Partnership Agreement [CS Cote d'Ivoire No.1/2020]

Article 74
Entry into force and denunciation

1) This Agreement shall be signed, ratified or approved in accordance with the constitutional rules specific to each Party.

2) Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force of this Agreement.

3) This Agreement shall enter into force on the later of:

a) the date on which the EU-Côte d'Ivoire Stepping Stone EPA ceases to apply to the United Kingdom; or

b) the date of the later notification by which the Parties notify each other that they have completed their respective legal requirements and procedures; or

c) from such other date as the Parties agree.

4) Pending entry into force of the Agreement, the Parties may agree to apply it provisionally, in accordance with their respective laws or by ratification of the Agreement.

a) Such provisional application shall take effect from the later of: i. the date on which the EU-Côte d'Ivoire Stepping Stone EPA ceases to apply to the United Kingdom; ii. the date of the later notification by which the Parties notify each other that they have completed their respective legal requirements and procedures for provisional application; or iii. from such other date as the Parties agree.

b) A Party may terminate the provisional application of the Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the first month following notification.

c) If a Party intends not to provisionally apply a provision of this Agreement, it shall first notify the other Party of the provisions that it will not provisionally apply, and the Parties shall enter consultations promptly to reach an agreement in writing of those provisions exempt from provisional application. The provisions that are not subject to a notification by a Party and agreement by the other Party shall provisionally apply from the date provisional application of this Agreement comes into effect under subparagraph (*a*).

5) If this Agreement or certain provisions of this Agreement are provisionally applied pending its entry into force, unless this instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date that such provisional application takes effect.

6) The United Kingdom shall submit notifications under this Article to Côte d'Ivoire's Ministry of African Integration and Ivorians Abroad or its successor. Côte d'Ivoire shall submit notifications under this Article to the United Kingdom's Department for International Trade or its successor.

7) Notwithstanding paragraph 4, the UK and Côte d'Ivoire may apply the agreement, in whole or in part, before its provisional application, to the extent that this is possible under their national legislation.

8) Either Party may give written notice to the other of its intention to denounce this Agreement. Denunciation shall take effect six months after notification to the other Party.

9) This Agreement shall be superseded by a global EPA concluded at regional level with the UK on the date of its entry into force. In this case, the Parties shall endeavour to ensure that the global EPA at regional level preserves most of the benefits obtained by Côte d'Ivoire under this Agreement.

UK/Netherlands: Agreement concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link [CS Netherlands No.1/2020]

Article 21
Provisional Application

1. Either Contracting Party may, at the time of its signature or at any time thereafter, notify the other Contracting Party in writing that it will provisionally apply this Agreement and its Protocol, in full or limited to certain provisions, pending its entry into force in accordance with Article 20. Such provisional application shall take effect on the date of the later Contracting Party's notification.

2. A Contracting Party may terminate the provisional application of this Agreement and its Protocol by giving written notice to the other Contracting Party. Such termination shall take effect on the first day following the expiry of a two month period after the date upon which the notification is received, unless the Contracting Parties mutually agree for the termination to take effect sooner.

UK/Norway: Agreement on the Continued Application and Amendment of the Convention Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters signed at London on 12 June 1961 [CS Norway No.2/2020]

Article 3

1. Each of the Parties to this Amendment Agreement shall notify the other Party of the completion of the procedures required by its law for the entry into force of this Amendment Agreement.

2. This Amendment Agreement shall enter into force on the later of:

(i) the date on which the *Lugano Convention* 2007 ceases to apply to the United Kingdom; and

(ii) the date on which both the Parties have notified each other in accordance with paragraph (1).

3. Pending entry into force of this Amendment Agreement the Parties may agree to provisionally apply this Amendment Agreement, by an exchange of notifications through diplomatic channels. Such provisional application shall take effect on the later of:

(i) the date on which the *Lugano Convention* of 2007 ceases to apply to the United Kingdom;

(ii) the date of the later of the Parties' notifications.

4. A Party may terminate the provisional application of this Amendment Agreement by written notification to the other Party. Such termination shall take effect on the first day of the second month following that notification.

UK/Norway: Framework Agreement on Fisheries [CS Norway No.1/2020]

Article 11
Entry into Force, Duration and Termination

1. This Agreement shall enter into force on:

(*a*) 1 January 2021, provided that, prior to that date, the Parties have notified each other in writing through the diplomatic channel of the completion of their respective domestic requirements necessary for the entry into force of this Agreement; or

(*b*) the date of receipt of the latter of the written notifications referred to in the previous sub-paragraph in the event that this is later than 1 January 2021.

2. This Agreement shall remain in force for an initial period ending on 31 December 2026 and thereafter for subsequent, consecutive periods of 4 years unless terminated in accordance with paragraph 3 of this Article.

3. Either Party may terminate this Agreement by giving notice to the other Party at least one year before the expiry of the initial period referred to in paragraph 2 of this Article, or at least one year before the expiry of each subsequent 4 year period. Where notice is given under this paragraph the Agreement shall cease to have effect at the end of the period in question.

4. Pending its entry into force in accordance with paragraph 1(*b*), this Agreement shall be provisionally applied from 1 January 2021, unless the Parties otherwise agree by exchange of diplomatic notes.

5. Provisional application of this Agreement shall be terminated upon entry into force of the Agreement, or upon receipt of notice given by one Party to the other.

6. Notice under paragraphs 3 and 5 shall be given in writing through the diplomatic channel.

UK/North Macedonia: Partnership, Trade and Cooperation Agreement [CS North Macedonia No.1/2020]

Article 12
Entry into Force and Provisional Application

1. Articles 127 and 128 of the *EU-North Macedonia Agreement* shall not be incorporated into this Agreement.

2. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the *EU-North Macedonia Agreement* ceases to apply to the United Kingdom; or

(*b*) the date of the later of the Parties' notifications that they have completed their internal procedures.

4. Pending entry into force of this Agreement, the negotiating States may agree to provisionally apply this Agreement, or specific provisions thereof, by an exchange of notifications signifying the completion of ratification or such other domestic procedures as are required for provisional application. Such provisional application shall take effect on the later of:

(*a*) the date on which the *EU-North Macedonia Agreement* ceases to apply to the United Kingdom; or

(*b*) the date of the later of the negotiating States' notifications.

5. A negotiating State may terminate the provisional application of this Agreement by giving written notice to the other negotiating State. Such termination shall take effect one month following the date of notification.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term 'entry into force of this Agreement' in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to North Macedonia's Ministry of Foreign Affairs or its successor. North Macedonia shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

UK/Singapore: Free Trade Agreement [CS Singapore No.1/2020]

Article 9
Final provisions

1. This Agreement shall enter into force on the first day of the second month following the later of the Parties' written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement. The Parties may agree on another date, provided such date occurs after the completion of the exchange of notifications referred to above.

2. Pending entry into force of this Agreement, this Agreement shall be provisionally applied on the date on which the *EU-Singapore FTA* ceases to apply to the United Kingdom, provided that the Parties have exchanged notifications signifying completion of such domestic procedures as are required for provisional application. Otherwise, such provisional application shall take effect on such date as the Parties may agree.

3. During the period of such provisional application, the term "entry into force" in this Agreement means the date on which such provisional application takes effect.

4. A Party may terminate the provisional application of this Agreement by written notification to the other Party. Such termination shall take effect on the first day of the second month following such notification.

5. The provisional application of this Agreement terminates upon the earlier of its entry into force in accordance with paragraph 1 or the date of effect for termination in accordance with paragraph 4.

6. The United Kingdom shall submit notifications under this Article to the Director, North America and Europe Division, Singapore Ministry of Trade and Industry or its successor. Singapore shall submit notifications under this Article to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

7. English shall be the sole authentic text of this Agreement.

UK/Chile: Agreement establishing an Association [CS Chile No.2/2019]

Article 10
Entry into Force and Provisional Application

1. Article 198 of the EU-Chile Agreement shall not be incorporated into this Agreement.

2. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

3. This Agreement shall enter into force on:

(*a*) the later of: (i) the date on which the *EU-Chile Agreement* ceases to apply to the United Kingdom;[157] or (ii) the first day of the second month following the date of the later of the notifications by which the Parties notify each other that they have completed their respective legal requirements and procedures; or

(*b*) such date as the Parties may otherwise agree.

4. Notwithstanding paragraph 3, the negotiating States agree to apply this Agreement, or specific provisions thereof, from the later of:

(*a*) the date on which the *EU-Chile Agreement* ceases to apply to the United Kingdom; or

(*b*) the date of the later of the negotiating States' notifications signifying the completion of such domestic procedures as are required for provisional application.

5. A negotiating State may terminate the application of the Agreement, or specific provisions thereof, as agreed under paragraph 4, by giving written notice to the other negotiating State. Such termination shall take effect on the first day of the second month following the date of such notification.

6. Where this Agreement is, or certain provisions of this Agreement are, applied under paragraph 4, any reference to the term 'entry into force of this Agreement' in such provisions shall be deemed to refer to the date from which the negotiating States agree to apply those provisions in accordance with paragraph 4.

7. The United Kingdom shall submit notifications under this Article to the General Directorate of International Economic Relations (DIRECON) of the Ministry of Foreign Affairs of Chile or its successor. Chile shall submit notifications under this Article to the United Kingdom's Department for International Trade or its successor.

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[157] For certainty, Chile will be notified of the date referred to in this paragraph and paragraph (4)(*a*) either by the United Kingdom or through other means.

UK/Chile: Agreement on Trade in Organic Products [CS Chile No.1/2019]

Article 9
Entry into Force and Provisional Application

1. Paragraph 1 of Article 15 of the *EU-Chile Organics Agreement* shall not be incorporated into this Agreement.

2. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

3. This Agreement shall enter into force on:

(*a*) the later of: (i) the date on which the *EU-Chile Organics Agreement* ceases to apply to the United Kingdom;[158] or (ii) the first day of the second month following the date of the later of the notifications by which the Parties notify each other that they have completed their respective legal requirements and procedures; or

(*b*) such date as the Parties may otherwise agree.

4. Notwithstanding paragraph 3, the negotiating States agree to apply this Agreement, or specific provisions thereof, from the later of:

(*a*) the date on which the *EU-Chile Organics Agreement* ceases to apply to the United Kingdom; or

(*b*) the date of the later of the negotiating States' notification signifying the completion of such domestic procedures as are required for provisional application.

5. A negotiating State may terminate the application of this Agreement, or specific provisions thereof, as agreed under paragraph 4, by giving written notice to the other negotiating State. Such termination shall take effect on the first day of the second month following the date of such notification.

6. Where this Agreement is, or certain provisions of this Agreement are, applied under paragraph 4, any reference to the term 'entry into force of this Agreement' in such provisions shall be deemed to refer to the date from which the negotiating States agree to apply those provisions in accordance with paragraph 4.

7. The United Kingdom shall submit notifications under this Article to the General Directorate of International Economic Relations (DIRECON) of the Ministry of Foreign Affairs of Chile or its successor. Chile shall submit notifications under this Article to the United Kingdom's Department for International Trade or its successor.

UK/Denmark: Free Trade Agreement in respect of the Faroe Islands [CS Denmark No.1/2019]

Article 10
Entry into Force and Provisional Application

1. Article 40 of the *EU-Faroe Islands Agreement* shall not be incorporated into this Agreement.

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[158] 3 For certainty, Chile will be notified of the date referred to in this paragraph and paragraph (4)(*a*) either by the United Kingdom or through other means.

2. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the *EU-Faroe Islands Agreement* ceases to apply to the United Kingdom; or

(*b*) the date of receipt of the later of the Parties' notifications that they have completed their domestic procedures required for entry into force.

4. (*a*) Pending entry into force of this Agreement, the Parties may agree to provisionally applying this Agreement in accordance with such domestic procedures as are required for provisional application. Such provisional application shall take effect on the later of: (i) the date on which the *EU-Faroe Islands Agreement* ceases to apply to the United Kingdom; or (ii) the date of the later of the negotiating States' notifications that they have completed their domestic procedures for allowing provisional application pending the entry into force of this Agreement.

(*b*) A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.

(*c*) If a Party intends not to provisionally apply a provision of this Agreement, it shall first notify the other Party of the provisions that it will not provisionally apply, and the Parties shall enter consultations promptly to agree those provisions exempt from provisional application. The provisions that are not subject to a notification by a Party under this subparagraph, shall provisionally apply from the date the provisional application of this Agreement comes into effect under subparagraph (*a*).

5. If this Agreement or certain provisions of this Agreement are provisionally applied pending its entry into force, unless this Instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date that such provisional application takes effect.

6. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs and Trade of the Faroe Islands or its successor. The Faroe Islands shall submit notifications under this Article to the United Kingdom's Department for International Trade or its successor.

UK/Georgia: Strategic Partnership and Cooperation Agreement [CS Georgia No.1/2019]

Article 366
Entry into force and provisional application

1. This Agreement shall be ratified or approved in accordance with each of the Parties' own internal procedures. Each Party shall notify the other Party of the completion of those procedures.

2. This Agreement shall enter into force on the later of:

(*a*) the date on which the *EU-Georgia Agreement* ceases to apply to the United Kingdom, or

(*b*) The date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement in accordance with each of the Parties' own internal legislation and procedures.

4. Where agreed pursuant to Article 366(3), this Agreement shall be applied provisionally between the Parties on the later of:

(*a*) the date on which the *EU-Georgia Agreement* ceases to apply to the United Kingdom, or

(*b*) the date of receipt of the later of the notification of provisional application from the United Kingdom or of the ratification or provisional application from Georgia.

5. Notifications regarding completion of internal procedures under paragraphs 1 and 3 of this Article shall be submitted by the United Kingdom to Georgia's Ministry of Foreign Affairs or its successor and by Georgia to the United Kingdom's Foreign and Commonwealth Office or its successor.

6. If pending the entry into force of this Agreement it is provisionally applied pursuant to paragraphs 3 and 4, unless this instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect, to the extent permitted by national legislation.

7. Either Party may give written notification to the other Party of its intention to terminate the provisional application of this Agreement. Notwithstanding Article 364(2), termination of provisional application shall take effect two months after receipt of the notification by the other Party.

UK/Indonesia: Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade in Timber Products [CS Indonesia No.1/2019]

Article 24
Provisional Application

1. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement by an exchange of notifications. Such provisional application shall take effect on the later of:

(*a*) the date on which the *Voluntary Partnership Agreement between the European Union and Indonesia* ceases to apply to the United Kingdom; and

(*b*) the date of the later of the Parties' notifications.

2. A Party may terminate the provisional application of the Agreement by giving written notice to the other Party. Such termination shall take effect one month following notification.

3. Notification, for the purpose of this Article, shall be made through diplomatic channels.

UK/Israel: Trade and Partnership Agreement [CS Israel No.1/2019]

Article 9
Entry into Force and Provisional Application

1. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

2. This Agreement shall enter into force on the later of:

(*a*) the date on which the EU-Israel Trade Agreements cease to apply to the United Kingdom; or

(*b*) the date of the second of the Diplomatic Notes by which the Parties notify each other that they have completed their respective legal requirements and procedures.

3. Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement, or provisions of it, in accordance with Article 9(4).

4. This Agreement, or provisions of it, shall be provisionally applied from the later of: (*a*) the date on which the EU-Israel Trade Agreements cease to apply to the United Kingdom; or (*b*) the date of the later of either the receipt of notification of provisional application by the United Kingdom, or of receipt of the Diplomatic Note by which Israel notifies ratification and provisional application.

5. A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the third month following the notification.

6. The provisional application of this Agreement shall terminate upon its entry into force.

7. If, pending the entry into force of this Agreement, this Agreement is applied provisionally, unless this Instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

UK/Korea: Free Trade Agreement (with Exchange of Notes) [CS Korea No.1/2019]

Article 15.10
Entry into Force

1. This Agreement shall enter into force when the Korea-EU FTA ceases to apply to the United Kingdom, provided that the Parties have notified each other that they have completed their domestic procedures by that date. Otherwise, this Agreement shall enter into force on such date as the Parties may agree.

2. (*a*) This Agreement shall be provisionally applied from the first day of the month following the date on which the United Kingdom and Korea have notified each other of the completion of their respective relevant procedures or from such other date as the Parties agree.

(*b*) A Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the month following notification.

(*c*) Where this Agreement is provisionally applied, the term "entry into force of this Agreement" shall be understood to mean the date of provisional application.

UK/Lebanon: Agreement establishing an Association [CS Lebanon No.1/2019]

Article 11
Entry into force and provisional application

1. Articles 92 and 93 of the *EU-Lebanon Association Agreement* and Article 23 of the *EU-Lebanon Dispute Settlement Mechanism Protocol* shall not be incorporated into this Agreement.

2. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the EU-Lebanon Agreements cease to apply to the United Kingdom; and

(*b*) the date of the later of the notifications by which the Parties notify each other that they have completed their respective legal procedures.

4. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement, or provisions of it, by an exchange of notifications signifying the completion of ratification or such other domestic procedures as are required for provisional application. Such provisional application shall take effect on the later of:

(*a*) the date on which the EU-Lebanon Agreements cease to apply to the United Kingdom; and

(*b*) the date of the later of the Parties' notifications.

5. A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the second month following notification.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term "entry into force of this Agreement" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs and Emigrants of Lebanon. Lebanon shall submit notifications under this Article to the United Kingdom's Foreign and Commonwealth Office or its successor.

UK/Liechtenstein: Additional Agreement extending certain provisions of UK/Swiss Trade Agreement to Liechtenstein [CS Liechtenstein No.1/2019]

Article 3

1. This Additional Agreement shall be approved by the Parties in accordance with their domestic procedures.

2. This Additional Agreement shall enter into force when the *United Kingdom-Switzerland Trade Agreement* enters into force.

3. Pending entry into force of this Additional Agreement, the Parties shall in accordance with their respective internal requirements and procedures, provisionally apply this Additional Agreement when the *United Kingdom-Switzerland Trade Agreement* is provisionally applied. A Party may terminate the provisional application of this Agreement by written notice to the other Parties. Such termination shall take effect on the first day of the second month following that notification.

4. This Additional Agreement:

(*a*) may be terminated by written notification to the other Parties. It shall cease to be in force twelve months after the receipt of that notification;

(*b*) shall, unless otherwise agreed between the Parties, cease to apply upon termination of: (i) the Customs Treaty; (ii) the *United Kingdom-Switzerland Trade Agreement*; or (iii) both the Incorporated *Free Trade Agreement and the Incorporated Agriculture Agreement*.

5. If the *Incorporated Agriculture Agreement*, or a part of that agreement, is suspended by the United Kingdom or Switzerland, the corresponding provisions of the Annex to this Additional Agreement shall simultaneously be suspended, unless otherwise agreed between the Parties.

6. If the Incorporated Agriculture Agreement ceases to apply between the United Kingdom and Switzerland, the Annex to this Additional Agreement shall simultaneously cease to apply, unless otherwise agreed between the Parties.

UK/Morocco: Agreement regarding the System of British Schools in Morocco [CS Morocco No.1/2019]

Article 15

1. This Agreement shall be applied provisionally from the date of its signature and shall enter into force on the date of receipt of the last notification by which one Party shall inform the other, through diplomatic channels, of the completion of the necessary procedures required for entry into force of this Agreement.

2. This Agreement will remain in effect for an indefinite period of time.

3. This Agreement may be amended by a joint decision of the Parties. Any amendments will enter into force in accordance with article 15 (1).

4. Either Party may, at any time, terminate this Agreement by written notification to the other Party through diplomatic channels. The termination will become effective two (2) years after the date of such notification.

UK/Morocco: Agreement establishing an Association [CS Morocco No.2/2019]

Article 11
Entry into force and provisional application

1. Article 96 of the *EU-Morocco Association Agreement* and Article 23 of the *EU-Morocco Dispute Settlement Mechanism Agreement* shall not be incorporated into this Agreement.

2. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the EU-Morocco Agreements cease to apply to the United Kingdom; and

(*b*) the date of the later of the notifications by which the Parties notify each other that they have completed their respective legal procedures.

4. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement, or provisions of it, by an exchange of notifications. Such provisional application shall take effect on the later of:

(*a*) the date on which the EU-Morocco Agreements cease to apply to the United Kingdom; and

(*b*) the date of the later of the Parties' notifications.

5. A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the second month following notification.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term "entry into force of this Agreement" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs and International Cooperation of Morocco or its successor. Morocco

shall submit notifications under this Article to the United Kingdom's Foreign and Commonwealth Office or its successor.

UK/Montenegro: Agreement concerning Air Services [CS Montenegro No.3/2019]

Article 24
Entry into Force

(1) This Agreement shall enter into force on the later of:

(*a*) the time at which the *Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area* ("the ECAA Agreement"),[159] ceases to apply to the United Kingdom; and

(*b*) the time of the later notification by which the Contracting Parties notify each other that they have completed their respective legal requirements and procedures

(2) Pending its entry into force, this Agreement shall be provisionally applied from the time at which the ECAA Agreement ceases to apply to the UK.

(3) Any bilateral air services agreement and/or arrangement, which was in force between the Contracting Parties immediately before the entry into force of this Agreement, shall terminate from the date of entry into force of this Agreement.

UK/New Zealand: Agreement on Sanitary Measures Applicable to Trade in Live Animals and Animal Product [CS New Zealand No.1/2019]

Article 8
Entry into Force and Provisional Application

1. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

2. This Agreement shall enter into force on the later of:

(*a*) the date of receipt of the later of the Parties' notifications that they have completed their domestic procedures required for entry into force; or

(*b*) the date on which the 1996 Agreement ceases to apply to the UK.

3. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement, or provisions of it, subject to the completion of the Parties' domestic procedures.

4. Where agreed pursuant to Article 8(3), this Agreement, or provisions of it, shall be applied provisionally between the Parties on the later of: (*a*) the date on which the 1996 Agreement ceases to apply to the United Kingdom; or (*b*) the date of receipt of notification of provisional application or ratification from the United Kingdom and New Zealand.

5. A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the second month following the notification.

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[159] EC Series No. 005 Cm 7782.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term "entry into force of this Agreement" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs and Trade of the Government of New Zealand or its successor. New Zealand shall submit notifications under this Article to the United Kingdom's Foreign and Commonwealth Office or its successor.

UK/New Zealand: Agreement on Mutual Recognition in Relation to Conformity Assessment [CS New Zealand No.2/2019]

Article 9
Entry into Force

1. Article 14(1) of the EC—New Zealand MRA shall not be incorporated into this Agreement.

2. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the EC—New Zealand MRA ceases to apply to the United Kingdom; or

(*b*) the date of receipt of the later of the Parties' notifications that they have completed their domestic procedures required for entry into force.

4. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement, or provisions of it, subject to the completion of the Parties' domestic procedures.

5. Where agreed pursuant to Article 9(4), this Agreement, or provisions of it, shall be applied provisionally between the Parties on the later of:

(*a*) the date on which the EC—New Zealand MRA ceases to apply to the United Kingdom; or

(*b*) the date of receipt of notification of provisional application or ratification from the United Kingdom and New Zealand.

6. A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the second month following the notification.

7. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term "entry into force of this Agreement" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

8. The United Kingdom shall submit notifications under this Article to the Ministry of Foreign Affairs and Trade of the Government of New Zealand or its successor. New Zealand shall submit notifications under this Article to the United Kingdom's Foreign and Commonwealth Office or its successor.

UK/Norway: Agreement on International Road Transport, with Protocol [CS Norway No.1/2019]

Article 15
Provisional Application

1. Pending entry into force of this Agreement and subject to paragraph 2, the Contracting Parties shall provisionally apply this Agreement from the point in time when the EEA

agreement ceases to apply to the UK. During the period of provisional application, the *Agreement on the International Carriage of Goods by Road* signed in Oslo on 11th June 1970 shall be suspended.

2. This Agreement shall only be provisionally applied pending its entry into force if there is, at the point of United Kingdom's departure from the European Union, no withdrawal agreement, with relevance to road transport, between the European Union and the United Kingdom.

3. A Contracting Party may terminate the provisional application of the Agreement by giving written notice to the other Contracting Party. Such termination shall take effect on the first day of the second month following notification.

UK/Spain: Agreement on the Participation in Certain Elections of Nationals of each Country Resident in the territory of the other [CS Spain No.2/2019]

Article 8
Provisional Application

1. Notwithstanding Article 6 of the Agreement the Parties agree to provisionally apply the Agreement from the date on which the United Kingdom leaves the European Union.

2. Either Party may terminate the provisional application of the Agreement by written notification to the other Party through diplomatic channels. The provisional application of the Agreement shall continue during thirty natural days from the date that the other Party receives the written notification.

UK/Switzerland: Agreement on the International Carriage of Passengers and Goods by Road [CS Switzerland No.1/2019]

Article 13
Entry into Force, Duration and Termination of this Agreement

1. The Parties shall ratify or approve this Agreement in accordance with their internal procedures. Each Party shall notify the other Party of the completion of those procedures.

2. This Agreement shall enter into force on the later of:

(*a*) the date on which the *Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road* signed in Luxembourg on 21st June 1999 ceases to apply to the UK; or

(*b*) the first day of the second month following the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. (*a*) Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement from the date on which the *Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road* signed in Luxembourg on 21st June 1999 ceases to apply to the UK. During the period of provisional application, the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council on the International Carriage of Goods by Road, signed in London on 20th December 1974, shall be suspended.

(*b*) A Party may terminate the provisional application of the Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.

4. From the date of its entry into force, this Agreement shall supersede the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland*

and the Swiss Federal Council on the International Carriage of Goods by Road, signed in London on 20th December 1974.

5. This Agreement shall remain in force unless one Party gives notice to terminate it in writing to the other Party. In that case this Agreement shall terminate six months after the date of receipt of the notice to the other Party, unless a different period is agreed.

UK/Switzerland: Agreement relating to Scheduled Air Services [CS Switzerland No.2/2019]

Article 29
Entry into Force

1. This Agreement shall enter into force when the Contracting Parties have notified each other by the exchange of diplomatic notes the fulfilment of their legal formalities with regard to the conclusion and the entering into force of international agreements.

2. Notwithstanding paragraph 1 of this Article, the Contracting Parties agree to provisionally apply this Agreement from the date on which the *Agreement between the European Community and the Swiss Confederation on Air Transport*, signed on 21 June 1999, ceases to apply to the United Kingdom. During the period of provisional application the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council for Air Services between and beyond their respective territories*, dated 5 April 1950 shall be suspended.

3. Upon entry into force, this Agreement shall supersede the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council for Air Services between and beyond their respective territories*, dated 5 April 1950.

UK/Switzerland: Agreement on Direct Insurance other than Life Insurance and Decision [CS Switzerland No.3/2019]

Article 44
Entry into Force

44.1. This Agreement was negotiated in English and drawn up in duplicate in German. Both of these texts are equally authentic.

44.2. The Contracting Parties shall ratify or approve this Agreement in accordance with their internal procedures. Each Contracting Party shall notify the other Contracting Party of the completion of those procedures.

44.3. This Agreement shall enter into force on the later of:

(*a*) the date on which the *Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance* ceases to apply to the United Kingdom of Great Britain and Northern Ireland; or

(*b*) the first day of the second month following the date of receipt of the later of the Contracting Parties' notifications that they have completed their internal procedures.

44.4. (*a*) Pending entry into force of this Agreement, the Contracting Parties shall provisionally apply this Agreement from the date on which the *Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance* ceases to apply to the United Kingdom of Great Britain and Northern Ireland.

(*b*) A Contracting Party may terminate the provisional application of the Agreement by giving written notice to the other Contracting Party. Such termination shall take effect on the first day of the second month following notification.

UK/Switzerland: Trade Agreement [CS Switzerland No.4/2019]

Article 9
Entry into force, provisional application and termination

1. Except insofar as, and only to the extent that, they provide for a notice period before termination or denunciation, the provisions of the Switzerland-EU Trade Agreements which allow for the authentication of texts, entry into force, provisional application, duration, denunciation or termination shall not be incorporated into this Agreement.

2. This Agreement shall be approved by the Parties in accordance with their domestic procedures.

3. This Agreement shall enter into force when the Switzerland-EU Trade Agreements cease to apply to the United Kingdom, provided that the Parties have notified each other that they have completed their domestic procedures by that date. Otherwise, this Agreement shall enter into force on the first day of the second month following the later of the Parties' notifications that they have completed their domestic procedures.

4. Pending entry into force of this Agreement, the Parties shall, in accordance with their respective internal requirements and procedures, provisionally apply this Agreement when the Switzerland-EU Trade Agreements cease to apply to the United Kingdom. A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following that notification. Where this Agreement is provisionally applied, the term "entry into force of this Agreement" shall be deemed to refer to the date on which such provisional application takes effect.

5. A Party may terminate this Agreement, or any Incorporated Agreement, by notification to the other Party of its intention to do so. This Agreement or the Incorporated Agreement that that Party intends to terminate shall cease to be in force twelve months after receipt of that notification, unless otherwise provided for in the Incorporated Agreement to be terminated.

UK/Switzerland: Agreement on Citizens' Rights following Withdrawal of UK from the EU and Free Movement of Persons Agreement [CS Switzerland No.5/2019]

Article 36
Entry into force and application

1. The Parties shall ratify or approve this Agreement in accordance with their internal procedures. Each Party shall notify the other Party of the completion of those procedures.

2. This Agreement shall enter into force on the later of:

(*a*) the specified date; or

(*b*) the first day of the second month following the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. (*a*) Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement from the specified date.

(*b*) A Party may terminate the provisional application of the Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.

UK/Switzerland: Agreement on Admission to the Labour Market for a Temporary Transitional Period following the withdrawal of the UK from the EU and the Free Movement of Persons Agreement [CS Switzerland No.6/2019]

Article 12
Entry into force and application

1. The Parties shall ratify or approve this Agreement in accordance with their internal procedures. Each Party shall notify the other Party in writing of the completion of those procedures.

2. This Agreement shall enter into force on the later of:

(*a*) the withdrawal date; or

(*b*) the first day of the second month following the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement on the later of:

(*a*) the withdrawal date; or

(*b*) the first day of the first month following the signature of this Agreement.

4. A Party may terminate the provisional application of the Agreement by giving written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.

UK/Switzerland: Transitional Agreement on Social Security for a Temporary Period following the Withdrawal of the UK [CS Switzerland No.7/2019]

Article 10
Provisional Application

Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement on the later of:

(*a*) UK exit; or

(*b*) the day of the signature of this Agreement,

save that this Agreement shall not be applied provisionally in the event that, prior to this Agreement being provisionally applied a relevant UK-EU Withdrawal Agreement comes into effect as notified in writing by the United Kingdom to Switzerland through diplomatic channels.

UK/Uzbekistan: Partnership and Cooperation Agreement [CS Uzbekistan No.1/2019]

Article 87

1. Each Party shall notify the other Party in writing of the completion of the internal procedures required by its law for entry into force of this Agreement.

2. This Agreement shall enter into force on the later of:

(*a*) the date on which the EU-Uzbekistan Agreement ceases to apply to the UK, and

(*b*) The first day of the next month following the date of receipt of the later of the Parties' notifications that they have completed their internal procedures for entry into force.

3. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement by an exchange of notifications signifying the completion of such internal procedures as are required by each Party's law for provisional application.

4. Where agreed pursuant to Article 87(3), this Agreement shall be applied provisionally between the Parties from the later of:

(*a*) the date on which the EU-Uzbekistan Agreement ceases to apply to the UK, and

(*b*) the date of receipt of the later of the Parties' notifications that they have completed such internal procedures for provisional application as are required by each Party's law.

5. Notifications regarding completion of internal procedures under paragraphs 1 and 3 of this Article shall be submitted by the UK to the Ministry of Foreign Affairs of the Republic of Uzbekistan or its successor and by the Republic of Uzbekistan to the UK's Foreign and Commonwealth Office or its successor.

6. If pending the entry into force of this Agreement it is provisionally applied pursuant to paragraphs 3 and 4, unless this instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

7. Either Party may give written notification to the other Party of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect two months after receipt of the notification by the other Party.

Annex 4: *United Kingdom Miscellaneous Series 2017–2022 (Provisional Application Terms)*

UK/Cameroon: Interim Agreement establishing an Economic Partnership [MS No.2/2021]

Article 98
Entry into force

1. This Agreement shall be signed, ratified or approved in accordance with constitutional or domestic rules and applicable procedures.

2. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of their internal procedures for entry into force of this Agreement.

3. Unless the Parties agree to such other date, this Agreement shall enter into force as between the UK and Cameroon on the date of the later of the Parties' notifications that they have completed their internal procedures.

4. Pending entry into force, the Parties may agree to provisionally apply this Agreement, or certain provisions thereof, in accordance with their respective internal procedures ('provisional application'). The Parties shall notify each other of the provisions of the Agreement which they intend to apply.

5. Unless the Parties agree to such other date, provisional application of this Agreement under paragraph 4 shall take effect from the date of the later of the Parties' notifications that they have completed their respective legal requirements and procedure for provisional application.

6. If this Agreement or certain provisions of this Agreement are provisionally applied pending its entry into force, unless this Agreement provides otherwise, all references in

this Agreement to the date of entry into force shall be deemed to refer to the date that such provisional application takes effect.

7. Notwithstanding paragraph 4, the Parties may unilaterally take measures to apply the Agreement, before provisional application, to the extent that this is possible.

8. Notifications under this Article shall be submitted by the UK to Cameroon's Ministry of External Relations, or its successor, and by Cameroon to the UK's Foreign, Commonwealth and Development Office or its successor, except that once the Government of Cameroon is assigned as the depositary under Article 101(3), all such notifications shall be sent by any Party, Central African regional organisation, or Central African Contracting State to the Depositary.

[…]

Article 101
Accession of States or of regional organisations in Central Africa

1. This Agreement shall be open to accession by any State or regional organisation in Central Africa. Any reference to 'accession' in this Agreement refers to an accession under this Article, unless explicitly stated otherwise. A request for accession shall be submitted to the EPA Committee. Any State which submits a request for accession shall attend the meetings of the EPA Committee as an observer.

2. On receipt of a request for accession: (*a*) the request shall be examined and negotiations begun in order to propose the necessary amendments to this Agreement, subject to sub-paragraph (*b*); (*b*) where this Agreement makes provision for amendments that will apply in the event of accession ('accession amendments'), those accession amendments shall be fully applied from the date this Agreement enters into force for the first state or regional organisation acceding to it; and (*c*) the accession protocol shall be submitted to the EPA Committee for approval.

3. Following the EPA Committee's approval of an application for accession, the acceding State or regional organisation may deposit an instrument of accession or a 60 notification confirming its provisional application of the Agreement with the Government of Cameroon, which shall be thereafter the depositary of this Agreement.

4. This Agreement shall enter into force or be provisionally applied in relation to the acceding State or regional organisation: (*a*) on the date its instrument of accession or note of provisional application is deposited; or (*b*) on such other date as the existing Parties and the acceding State shall agree.

Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland [MS No.3/2021]

Article 17.5
Entry into Force

1. This Agreement shall enter into force, in relation to those Parties which by then have notified the Depositary certifying that they have completed their respective internal requirements and procedures, and provided that at least one EEA EFTA State and the United Kingdom are among the States that have notified the Depositary certifying that they have completed their respective internal requirements and procedures, on the first day of the month following the date the Parties have notified the Depositary their written notifications.

2. In relation to an EEA EFTA State notifying the Depositary certifying that they have completed their respective internal requirements and procedures for entry into force of this

Agreement after the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary, this Agreement shall enter into force in relation to such EEA EFTA State on the first day of the month following the date the Depositary received its notification.

3. Any Party may agree to the provisional application of this Agreement, subject to its internal requirements and procedures for provisional application. Provisional application of this Agreement shall be notified to the Depositary. Such provisional application shall take effect as between the United Kingdom and an EEA EFTA State on the date on which they have both deposited their respective notifications with the Depositary.

4. Any Party may terminate its provisional application of this Agreement by means of a written notification to the Depositary. Such termination shall take effect: (*a*) as between the United Kingdom and an EEA EFTA State on the first day of the second month following the date of such notification by an EEA EFTA State; or (*b*) as between all Parties who have provisionally applied the Agreement on the first day of the second month following such notification by the United Kingdom.

Special Arrangement between the Governments of France, Belgium, the Netherlands and the UK concerning Security Matters relating to Trains using the Channel Fixed Link [MS No.3/2020]

Article 9

Any Contracting Party may, at the time of its signature, deposit a declaration that it will apply provisionally this Special Arrangement pending its entry into force. The Depositary shall notify the Contracting Parties of such declaration.

Agreement between France, Belgium, Netherlands and UK amending the Agreement between Belgium, France and UK concerning Rail Traffic between Belgium and UK using Channel Fixed Link with Protocol, done at Brussels on 15 December 1993 [MS No.4/2020]

Article 34

Any Contracting Party may, at the time of its signature, deposit a declaration that it shall provisionally apply this Agreement and its Protocol, in full or limited to certain provisions, pending their entry into force, in accordance with Article 33. The Depositary shall notify the Contracting Parties of such declaration.

Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty [MS No.5/2020]

Article 6
Provisional application

(1) Each signatory which applies the *Energy Charter Treaty* provisionally in accordance with Article 45(1) and each Contracting Party agrees to apply this Amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(2) (*a*) Notwithstanding paragraph (1):

(i) any signatory which applies the *Energy Charter Treaty* provisionally or Contracting Party may deliver to the Depository within 90 days from the date of the adoption of this Amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this Amendment;

(ii) any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article 45(2) may deliver to the Depository not later than the date

on which it becomes a Contracting Party or begins to apply the Treaty provisionally a declaration that it is not able to accept the provisional application of this Amendment.

The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depository.

(*b*) Neither a signatory or Contracting Party which makes a declaration in accordance with subparagraph (*a*) nor Investors of that signatory or Contracting Party may claim the benefits of provisional application under paragraph (1).

(3) Any signatory or Contracting Party may terminate its provisional application of this Amendment by written notification to the Depository of its intention not to ratify, accept or approve this Amendment. Termination of provisional application for any signatory or Contracting Party shall take effect upon the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depository. Any signatory which terminates its provisional application of the *Energy Charter Treaty* in accordance with Article 45(3)(*a*) shall be considered as also having terminated its provisional application of this Amendment with the same date of effect.

Agreement on Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway [MS No.8/2020]

Article 17
Entry Into Force and Provisional Application

1. This Agreement is subject to approval in accordance with the respective legal requirements of the Parties. The instruments of approval shall be deposited with the Depositary.

2. This Agreement shall only enter into force between the United Kingdom and at least one other Party, in the event that no other agreement(s) governing the future trade relationships have entered into force or are provisionally applied between the United Kingdom and that other Party or Parties.

3. Subject to paragraph 2, this Agreement shall enter into force in relation to those Parties which have deposited their instruments of approval, on the later of:

a. the end of the coverage period; or

b. the date on which the United Kingdom and at least one other Party have deposited their instruments of approval with the Depositary.

4. In relation to a Party depositing its instrument of approval after this Agreement has entered into force according to paragraph 3, this Agreement shall enter into force on the day following the deposit of its instrument.

5. Any Party may agree to provisionally apply this Agreement, pending its entry into force, by notifying the Depositary. Such provisional application shall take effect on the later of:

a. the end of the coverage period, provided that the United Kingdom and at least one other Party have deposited such notification; or

b. the date on which the United Kingdom and at least one other Party have deposited their notifications.

6. Any Party may terminate the provisional application of this Agreement by means of a written notification to the Depositary. Such termination shall take effect on the first day of the second month following the date of that notification.

7. The provisional application of this Agreement may also be terminated between only the United Kingdom and Iceland or between the United Kingdom and Norway. Such termination shall only affect the application of this Agreement between those Parties.

Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part [MS No.9/2020]

Article 138
Entry into Force

1. This Agreement shall be signed and ratified, or approved in accordance with the applicable constitutional or internal rules and procedures of the respective Parties.

2. This Agreement shall enter into force the first day of the second month, or on such date as the Parties may otherwise agree, following notification from both of the Parties of the completion of the internal legal procedures referred to in paragraph 1.

3. Notifications under paragraph 2 shall be sent, in the case of the EAC Partner State(s) to the Government of Kenya and in the case of the UK to the Government of the UK[160], who shall be joint depositaries of this Agreement. Each depositary shall notify the other depositary upon receipt of the notification indicating the completion of the Parties' internal legal procedures for the purpose of entry into force.

4. The joint depositary arrangements above shall be reviewed as part of the review provided for in paragraph 2 of Article 143 (Accession of Contracting Parties to *The Treaty for the Establishment of the East African Community*).

5. Pending entry into force of this Agreement, the EAC Partner State(s) and the UK may provisionally apply the provisions of this Agreement.

6. Provisional application of this Agreement shall be notified to the depositaries. Such provisional application shall take effect ten (10) days, or on such date as the EAC Partner State(s) and the UK may otherwise agree, following the date on which the last notification is made to the depositaries of the completion of the internal legal procedures necessary for that purpose.

7. Where a provision of this Agreement is applied in accordance with paragraph 5, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which the EAC Partner State(s) and the UK agree to apply that provision in accordance with paragraph 6.

8. Notwithstanding paragraph 5, the EAC Partner State(s) and the UK may unilaterally take steps to apply this Agreement, before provisional application, to the extent feasible.

Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the UK [MS No.4/2019]

Article 59
Entry into force, denunciation and duration

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of the respective Parties.

[160] Treaty Section, FCDO Legal Directorate, Foreign, Commonwealth and Development Office, WH.2.143, King Charles Street, London SW1A 2AH, United Kingdom.

2. This Agreement shall enter into force as between the UK and a Signatory ESA State either on the first day of the first month, or on such other date as the UK and that Signatory ESA State agree, following the deposit of the later of their respective instruments of ratification, acceptance or approval.

3. Notifications of ratification, acceptance or approval shall be sent to:

(*a*) the Authority designated by a Signatory ESA State; or

(*b*) the Secretary General of the Common Market of Eastern and Southern Africa, who shall be the depositories of this Agreement.

4. Pending entry into force of the Agreement, the UK and the Signatory ESA States agree to apply the provisions of this Agreement which fall within their respective competences ('provisional application'). This may be effected either by provisional application where possible or by ratification of this Agreement.

5. Provisional application shall be notified to the depositories. This Agreement shall be applied provisionally between the UK and a Signatory ESA State ten (10) days, or on such other date as the UK and that Signatory ESA State agree, after the later of either the receipt of notification of provisional application from the UK or of ratification or provisional application from the Signatory ESA State.

6. Notwithstanding paragraphs 2 and 4, the UK and Signatory ESA States may unilaterally take steps to apply the Agreement, before provisional application, to the extent feasible.

7. The UK or a Signatory ESA State(s) may give written notice to the other of its intention to denounce this Agreement.

8. Denunciation shall take effect one month after notification to the other Party.

Interim Political, Trade and Partnership Agreement between UK and PLO for the benefit of the Palestinian Authority [MS No.14/2019]

Article 10
Entry into Force and Provisional Application

1. Articles 75(1) and (2) of the amended EU-Palestinian Authority Interim Association Agreement shall not be incorporated into this Agreement.

2. Each Party shall notify the other Party of the completion of its domestic procedures required for the entry into force of this Agreement.

3. This Agreement shall enter into force on the later of:

(*a*) the date on which the amended EU-Palestinian Authority Interim Association Agreement ceases to apply to the United Kingdom; or

(*b*) the day following the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

4. Pending entry into force of this Agreement, the Parties may agree to provisionally apply this Agreement, or provisions of it, in accordance with the Parties' internal procedures.

5. Where agreed pursuant to Article 10(4), this Agreement, or provisions of it, shall be applied provisionally between the Parties on the later of:

(*a*) the date on which the amended EU-Palestinian Authority Interim Association Agreement ceases to apply to the United Kingdom; or

(*b*) the day following the later of either the receipt of notification of provisional application from the United Kingdom or of ratification, approval or provisional application from the Palestinian Authority. For the Government of the United For the Palestine Liberation Kingdom of Great Britain and Organization for the Northern Ireland: Palestinian Authority of the West Bank and the Gaza Strip:

(*c*) A Party may terminate the provisional application of this Agreement, or provisions of it, by written notification to the other Party. Such termination shall take effect on the first day of the third month following the notification.

6. Where this Agreement is, or certain provisions of this Agreement are, provisionally applied, the term "entry into force of this Agreement" in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

7. The United Kingdom shall submit notifications under this Article to the Palestinian Ministry for National Economy or its successor. The Palestinian Authority shall submit notifications under this Article to the United Kingdom's Department for International Trade or its successor.

Interim Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and the Pacific States [MS No.15/2019]

Article 75
Entry into force and duration

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed; or from such date as the Parties agree.

2. Pending entry into force of the Agreement, the UK and the Pacific States agree to provisionally apply the Agreement. Such application may be undertaken by provisional application pursuant to the laws of the UK and of the Pacific States or by ratification of the Agreement. The Agreement shall be applied provisionally 10 days after the Contracting Parties have notified each other in writing of the completion of the procedures necessary for this purpose; or from such date as the parties agree.

3. Where a Pacific State accedes to this Agreement, the Agreement shall be applied provisionally in the same manner as foreseen in paragraph 2, once the UK and that Pacific State have given notice accordingly.

4. Notwithstanding paragraph 2, the UK and the Pacific States may take steps to apply the Agreement, before provisional application, to the extent feasible.

5. Any Party may give written notice to the other of its intention to denounce this Agreement.

6. Denunciation shall take effect twelve months after notification to the other Party.

Agreement between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway on Trade in Goods [MS No.17/2019]

Article 17
Entry into Force and Provisional Application

1. This Agreement is subject to approval in accordance with the respective legal requirements of the Parties. The instruments of approval shall be deposited with the Depositary.

2. This Agreement shall only enter into force in the event that the United Kingdom withdraws from the European Union without any agreement between the United Kingdom

and the European Union on the terms of the United Kingdom's withdrawal or if any such agreement does not provide for the continued application to the United Kingdom of the Trade-Related Agreements between the European Union and one or both of Iceland and Norway in respect of trade in goods.

3. Subject to paragraph 2, this Agreement shall enter into force in relation to those Parties which have deposited their instruments of approval, on the later of:

(*a*) the point in time at which the United Kingdom ceases to be a Member State of the European Union and the Trade-Related Agreements between the European Union and one or both of Iceland and Norway cease to apply to the United Kingdom; or

(*b*) the date on which the United Kingdom and at least one other Party have deposited their instruments of approval with the Depositary.

4. In relation to a Party depositing its instrument of approval after this Agreement has entered into force according to paragraph 3, this Agreement shall enter into force on the day following the deposit of its instrument.

5. Any Party may agree to provisionally apply this Agreement, pending its entry into force, by notifying the Depositary. Such provisional application shall take effect on the later of:

(*a*) the point in time at which the United Kingdom ceases to be a Member State of the European Union and the Trade-Related Agreements between the European Union and one or both of Iceland and Norway cease to apply to the United Kingdom, provided that the United Kingdom and at least one other Party have deposited such notification; or

(*b*) the date on which the United Kingdom and at least one other Party have deposited their notifications.

6. Any Party may terminate the provisional application of this Agreement by means of a written notification to the Depositary. Such termination shall take effect on the first day of the second month following the date of that notification.

7. The provisional application of this Agreement may also be terminated between only the United Kingdom and Iceland or between the United Kingdom and Norway. Such termination shall only affect the application of this Agreement between those Parties.

Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [MS No.18/2019]

Article 242
Entry into force

1. This Agreement shall enter into force on the later of the date on which the CARIFORUM-EU EPA ceases to apply to the United Kingdom or the first day of the month following that in which the Parties have notified each other of the completion of the procedures necessary for this purpose, or from such other date as the Parties agree.

2. Instruments of ratification, acceptance or approval shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland which is hereby designated the depository of this Agreement[161].

[161] Treaty Section, FCO Legal Directorate, Foreign and Commonwealth Office, WH.2.143, King Charles Street, London SW1A 2AH, United Kingdom.

3. Pending entry into force of the Agreement, the United Kingdom and the Signatory CARIFORUM States shall agree to provisionally apply the Agreement, in full or in part. This may be effected by provisional application pursuant to the laws of a signatory or by ratification of the Agreement. Provisional application shall be notified to the depositary. The Agreement shall be applied provisionally from the date on which the CARIFORUM-EU EPA ceases to apply to the United Kingdom; or otherwise if the United Kingdom and the Signatory CARIFORUM States so agree, ten (10) days after the latter of the receipt of notification of provisional application from the United Kingdom or from all the Signatory CARIFORUM States; or from such other date as the United Kingdom and the Signatory CARIFORUM States agree.

4. Notwithstanding paragraph 3, the United Kingdom and Signatory CARIFORUM States may take steps to apply the Agreement, before provisional application, to the extent feasible.

Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, of the other part [MS No.22/2019]

Article 8
Entry into force and provisional application

1. Each Party shall notify in writing through diplomatic channels the completion of its internal procedures required for the entry into force or the provisional application of this Agreement to all other Parties and the Depositary.

2. This Agreement shall enter into force between the United Kingdom and each signatory Andean Country on:

(*a*) the later of:

(i) the first day of the month following the date of receipt by the Depositary of the later of the notifications that the United Kingdom and that signatory Andean Country have completed their internal procedures; or

(ii) the date on which the EU-Andean Countries Trade Agreement ceases to apply to the United Kingdom; or

(*b*) such other date as may be agreed between the United Kingdom and that signatory Andean Country.

3. Pending the entry into force of this Agreement, each of the Parties may, in accordance with their own internal procedures, provisionally apply this Agreement fully or partially.

4. If the United Kingdom and a signatory Andean Country have agreed the provisional application of this Agreement, it shall begin on:

(*a*) the later of:

(i) the first day of the month following the date of receipt by the Depositary of the later of the notifications that the United Kingdom and that signatory Andean Country have completed their internal procedures required for provisional application; or

(ii) the date on which the EU-Andean Countries Trade Agreement ceases to apply to the United Kingdom; or

(*b*) such other date as may be agreed between the United Kingdom and that signatory Andean Country.

5. A Party may terminate the provisional application of this Agreement by giving written notice to the other Parties. Such termination shall take effect on the first day of the second month following that notification.

6. If a Party intends not to provisionally apply a provision of this Agreement, it shall first notify the other Parties of the provisions that it will not provisionally apply, and the Parties shall enter consultations promptly to agree those provisions exempt from provisional application. The provisions that are not subject to a notification by a Party shall be provisionally applied from the date provisional application of this Agreement comes into effect between the United Kingdom and a signatory Andean Country under paragraph 4.

7. If this Agreement or certain provisions of this Agreement are provisionally applied pending its entry into force, unless this instrument provides otherwise, all references in this Agreement to the date of entry into force shall be deemed to refer to the date that such provisional application takes effect.

International Coffee Agreement, 2007 [MS No.28/2019]

Article 42
Entry into force

(1) This Agreement shall enter into force definitively when signatory Governments holding at least two-thirds of the votes of the exporting Members and signatory Governments holding at least two-thirds of the votes of the importing Members, calculated as at 28 September 2007, without reference to possible suspension under the terms of Article 21, have deposited instruments of ratification, acceptance or approval. Alternatively, it shall enter into force definitively at any time if it is provisionally in force in accordance with the provisions of paragraph (2) of this Article and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.

(2) If this Agreement has not entered into force definitively by 25 September 2008, it shall enter into force provisionally on that date, or on any date within twelve months thereafter, if signatory Governments holding votes as described in paragraph (1) of this Article, have deposited instruments of ratification, acceptance or approval, or have notified the Depositary in accordance with the provisions of Article 41.

(3) If this Agreement has entered into force provisionally but has not entered into force definitively by 25 September 2009, it shall cease to be in force provisionally unless those signatory Governments which have deposited instruments of ratification, acceptance or approval, or have notified the Depositary in accordance with the provisions of Article 41, decide, by mutual consent, that it shall continue in force provisionally for a specific period of time. Such signatory Governments may also decide, by mutual consent, that this Agreement shall enter into force definitively among themselves.

(4) If this Agreement has not entered into force definitively or provisionally by 25 September 2009 under the provisions of paragraph (1) or (2) of this Article, those signatory Governments which have deposited instruments of ratification, acceptance or approval, in accordance with their laws and regulations, may, by mutual consent, decide that it shall enter into force definitively among themselves.

International Sugar Agreement, 1992 [MS No.30/2019]

Article 39
Notification of Provisional Application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government for which the Council has established conditions for accession but which

has not yet been able to deposit its instrument may, at any time, notify the depositary that it will apply this Agreement provisionally either when it enters into force in accordance with article 40 or, if it is already in force, at a specified date.

2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or, if it is already in force, at a specified date shall, from that time, be a provisional Member until it deposits its instrument of ratification, acceptance, approval or accession and thus becomes a Member.

Article 40
Entry into Force

1. This Agreement shall enter into force definitively on 1 January 1993, or on any date thereafter if, by that date instalments of ratification, acceptance, approval or accession have been deposited on behalf of Governments holding 60 per cent of the votes in accordance with the distribution established in the annex to this Agreement.

2. If, by 1 January 1993, this Agreement has not entered into force in accordance with paragraph 1 of this article, it shall enter into force provisionally if by that date instruments of ratification, acceptance or approval or notifications of provisional application have been deposited on behalf of Governments satisfying the percentage requirements of paragraph 1 of this article.

3. If, by 1 January 1993, the required percentages for entry into force of this Agreement in accordance with paragraph 1 or paragraph 2 of this article are not met, the Secretary—General of the United Nations shall invite the Governments on whose behalf instruments of ratification, acceptance or approval or notifications of provisional application have been deposited to decide whether this Agreement shall enter into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine. If this Agreement has entered into force provisionally in accordance with this paragraph, it shall subsequently enter into force definitively upon fulfilment of the conditions set out in paragraph 1 of this article without the necessity of a further decision.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, 2 or 3 of this article, the instrument or notification shall take effect on the date of deposit and, with regard to notification of provisional application, in accordance with the provisions of article 39, paragraph 1.

Grains Trade Convention, 1995 [MS No.31/2019]

Article 26
Provisional Application

Any signatory Government and any other Government eligible to sign this Convention, or whose application for accession is approved by the Council, may deposit with the depositary a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Convention in accordance with its laws and regulations and be provisionally regarded as a party thereto.

Agreement Establishing an Association between the UK and Central America [MS No.32/2019]

Article 10
Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their own internal procedures. The Parties shall notify each other of the completion of those procedures, in accordance with paragraph 7.

2. This Agreement shall enter into force between the United Kingdom and each of the Republics of the CA Party from the later of:

(*a*) the date on which the EU-Central America Agreement ceases to apply to the United Kingdom; 2 or

(*b*) the date of the later of those Parties' notifications that they have completed their internal procedures.

3. Notwithstanding paragraph 2, this Agreement, or provisions of it, may be applied by the United Kingdom and each of the Republics of the CA Party from the later of:

(*a*) the date on which the EU-Central America Agreement ceases to apply to the United Kingdom; or

(*b*) the date of the later of those Parties' notifications that they have completed their internal procedures necessary for this purpose.

4. The United Kingdom and each of the Republics of the CA Party to which this Agreement, or provisions of it, is applied in accordance with paragraph 3 may terminate the application of this Agreement, or provisions of it, by written notification in accordance with paragraph 7. Such termination shall take effect on the first day of the second month following the notification.

5. Where a provision of this Agreement is applied in accordance with paragraph 3, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which those Parties agree to apply that provision in accordance with paragraph 3.

6. For the avoidance of doubt, the Parties for which this Agreement has entered into force in accordance with paragraph 2, or is applied pursuant to paragraph 3, may also use materials originating in the Republics of the CA Party for which this Agreement is not in force or applied.

7. Notifications under this Article shall be sent to the Secretaría General del Sistema de la Integración Centroamericana (SG-SICA), who shall be the depository of this Agreement. Certified copies of the notifications shall be lodged with the Government of the United Kingdom of Great Britain and Northern Ireland.

Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility on the Accession of the UK [MS No.33/2019]

Article 3

This Protocol shall enter into force on the first day of the second month after all Governments stated in the preamble to this Protocol have notified the Government of the Federal Republic of Germany as depositary of the Convention that the national approval process for this Protocol has been completed.

The Governments stated in the preamble to this Protocol agree that from 19 March 2018 onwards the clauses of the Protocol be applied provisionally, it being understood that the entry into force of the Protocol is subject to the fulfilment of appropriate constitutional procedures in each of the Contracting and Signatory States and the entry into force of the Convention of 30 November 2009 concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility.

UK/SACU and Mozambique: Economic Partnership Agreement [MS No.34/2019]

Article 112
Entry into Force[162]

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of each Party.

2. This Agreement shall enter into force on the later date of the following:

(*a*) the date on which the EU-SADC EPA ceases to apply to the UK, and

(*b*) thirty (30) days or such dates as the Parties agree following the deposit of the last instrument of ratification or approval.

3. Pending entry into force of this Agreement, the SACU Member States and Mozambique and the UK agree to provisionally apply the provisions of this Agreement to the extent that internal requirements allow such application ("provisional application"). This may be effected either by provisional application, where possible, or by ratification of this Agreement.

4. This Agreement shall be applied provisionally between the UK and a SACU Member State or Mozambique on the later of the following:

(*a*) the date on which the EU-SADC EPA ceases to apply to the UK; and

(*b*) ten (10) days or such other date as the UK and that SACU Member State or Mozambique agree after the later of either the receipt of notification of provisional application from the UK or of ratification or provisional application from that SACU Member State or Mozambique.

5. Notifications regarding the provisional application or ratification shall be sent to the Executive Secretary of SACU, who shall be the depositary of this Agreement. Certified copies of the notifications shall be lodged with the Government of the UK.

6. If pending the entry into force of this Agreement, the Parties decide to apply it provisionally, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer [MS No.2/2017]

Article V
Provisional application

Any Party may, at any time before this Amendment enters into force for it, declare that it will apply provisionally any of the control measures set out in Article 2J, and the corresponding reporting obligations in Article 7, pending such entry into force.

[162] The Parties to the attached Protocol on Geographical indications and trade in wines and spirits shall implement the undertakings therein.

48. United States of America

Statement made in the Sixth Committee, Sixty-eighth session (2013), 23rd meeting, 4 November 2013:[163]

> In our own practice, we examine our ability under domestic law to implement a given provision or agreement pending entry into force before we agree to apply it provisionally and do so only consistent with our domestic law.

[163] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/us_3.pdf.