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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Annex to the COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Agreement establishing an association between the European Union and its Member States, of the one part, and the Principality of Andorra and the Republic of San Marino, each as a separate Party, of the other part

DECLARATION OF ANDORRA ON THE TOBACCO SECTOR

Andorra has in recent years embarked upon a deep and intensive process of reform aimed at creating more openness and transparency and bringing Andorra closer to the EU.

Those reforms aim to ensure a structured transition of Andorra's economic model and to diversify its economy. The diversification of the Andorran economy, supported by the implementation of this Agreement, should result in the development of new sectors of the economy and the increased competitiveness of certain existing sectors.

Economic transformation must go hand in hand with the steady development of the tax revenues resulting from significant reforms carried out in recent years and of the socio-economic situation, including employment.

In this context, one of Andorra's priorities is to further strengthen and protect responsible trade in tobacco. Andorra is fully committed to a policy to improve public health and tobacco control, in particular by acceding to the World Health Organization's Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products, as well as by adopting the relevant EU legislation.

A key element of Andorra's public health policy is the prevention of and fight against fraud and smuggling in relation to tobacco products. Andorra makes a firm commitment to strengthen its efforts in those areas, in particular by regularly adopting and implementing EU legislation with adequate administrative, judicial and material capacity.

Andorra undertakes to strengthen anti-fraud cooperation, in particular with the EU and with its two neighbouring EU Member States. Andorra will closely monitor changes in the quantities of tobacco products it manufactures locally, imports, markets and exports. Andorra recalls in particular the entry into force of the Agreement between the Government of the French Republic and the Government of the Principality of Andorra on cross-border cooperation in police and customs matters on 1 April 2018, and the signing of the Convention between the Principality of Andorra and the Kingdom of Spain on cooperation in combatting crime and on security on 2 September 2015.

Given the current price differentials, including taxes, for tobacco products between Andorra and, in particular, its two neighbouring EU Member States, Andorra undertakes not to increase the price differentials for tobacco products, including taxes, that exist on the date of signature of this Agreement by the EU and Andorra in relation to the neighbouring EU Member State with the lowest prices.

Andorra will ensure that, during the transitional period referred to in Article 10(1) of the Andorra Protocol, any reduction in revenue resulting from the reduction in customs duties relating to tobacco products is offset simultaneously by other State revenue.

While stressing that taxation does not fall within the scope of this Agreement, Andorra will examine, where appropriate and with a view to securing adequate State revenue, the possibility of drawing inspiration from EU legislation on taxes on tobacco products.

JOINT DECLARATION BY THE EU AND ANDORRA
ON FREE MOVEMENT OF PERSONS

This Agreement, which sets out the conditions for the exercise of the right to free movement of persons by nationals of an EU Member State or of Andorra, and the incorporation by Andorra of Directive 2004/38/EC of the European Parliament and of the Council¹ shall impose no obligation on Andorra to adopt the concept of "Citizenship of the Union" (Articles 20 et seq. TFEU), which has no equivalent in this Agreement.

Articles 18, 21, 46, 50 and 59 TFEU constitute the legal basis of Directive 2004/38/EC.

Directive 2004/38/EC provides for a system of rights of entry, residence, exit and equal treatment. That system is subject to certain limitations and restrictions which, in turn, are subject, inter alia, to procedural guarantees, in particular judicial review.

Directive 2004/38/EC shall be applicable in relations between the EU and Andorra in accordance with the terms and conditions laid down in Annexes VIII and V to the Andorra Protocol.

The case-law of the CJEU provides useful clarification, including as regards the measures available to the host State to maintain law and order and expel foreign criminals.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ EU L 158, 30.4.2004, p. 77).

Andorra's incorporation of Directive 2004/38/EC shall be without prejudice to the evaluation of the relevance of future EU legislation, as well as of future case-law of the CJEU based on the concept of Citizenship of the Union, to this Agreement. This Agreement does not provide a legal basis for political rights of nationals of an EU Member State or of Andorra.

The EU and Andorra agree that immigration policy shall not be covered by this Agreement. The rights of residence of third-country nationals shall not be covered by this Agreement, with the exception of rights conferred on third-country nationals who are family members of a national of an EU Member State or of Andorra exercising his or her right to free movement of persons under this Agreement, as those rights are corollary to the right of free movement of nationals of an EU Member State or of Andorra.

Andorra recognises that it is of importance to nationals of an EU Member State or of Andorra making use of their right of free movement of persons that their family members within the meaning of Directive 2004/38/EC possessing nationality of a third country also enjoy certain derived rights, such as the rights set out in Article 12(2), Article 13(2) and Article 18 of that Directive.

DECLARATION OF ANDORRA
ON THE PARTICULAR SITUATION OF ANDORRA
AND ON SAFEGUARDING SECURITY AND PUBLIC POLICY

The Government of Andorra,

Referring to the Declaration on Article 8 of the Treaty on European Union annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007,

Recalling that Andorra has a very small inhabitable mountainous area with an unusually high percentage of residents and employees who are not nationals of Andorra,

Recalling that safeguarding security and public policy is the primary goal of every State,

Noting that it is of vital interest for Andorra to be able to safeguard the security of the State, of persons and property and of the particular Andorran public policy,

Noting that the Andorran population enjoys a high level of public security which must be maintained as a major asset in terms of reputation, living conditions and social cohesion,

Recalling that security instruments, institutions and infrastructure which are normally available to a larger State are not available to Andorra,

Reaffirming its commitment to ensuring compliance with all the provisions of this Agreement and to applying them in good faith,

Considers it necessary to take due account, in the application of this Agreement, of Andorra's specific geographical situation and demographic and social structure.

Considers that it is for the Andorran courts, on the basis of Articles 27 and 28 of Directive 2004/38/EC of the European Parliament and of the Council¹, to determine the level of protection they consider desirable to give to the fundamental interests of society, in accordance with the case-law of the CJEU, which has clarified that such level of protection must be interpreted strictly.

Considers that the interpretation of the provisions maintaining a connection with the issues of security and public policy contained in this Agreement must take account, while observing the principles of equivalence and effectiveness and the interpretation of the CJEU, of the real impact that individual conduct which constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and a danger to security and public policy according to the case-law of the national courts may have in view of Andorra's geographical, demographic and social specificities.

Considers that the adoption by Andorra of the safeguard measures referred to in Article 97 of the Framework Agreement could be justified, inter alia, where capital inflows from the other Associated Party might threaten the access of the resident population to the real estate market, where there is an extraordinary increase in the number of nationals of EU Member States which risks undermining public systems, or where the total number of jobs generated by the national economy, in relation to the number of residents, leads to a situation of obvious imbalance.

Undertakes to provide for the necessary mechanisms to ensure that the proportion of nationals of EU Member States in its population will not be reduced in the period during which safeguard measures referred to in Article 97 of the Framework Agreement are in place.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ EU L 158, 30.4.2004, p. 77).

JOINT STATEMENT BY THE EU AND ANDORRA
ON AIR TRANSPORT

Within 8 years after the entry into force of this Agreement, the EU and Andorra agree to examine within the Joint Committee whether Annex XIII to the Andorra Protocol could be extended to the air transport sector.
