

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4530 of 20 December, 2018

B. 30/18

EUROPEAN UNION (WITHDRAWAL) BILL 2018

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B. 30/18

BILL

FOR

AN ACT to provide for the repeal of the European Communities Act, to repeal section 23(g) of the Interpretation and General Clauses Act, to provide for the continuing validity of legislation passed or made for the purposes of complying with any obligation arising out of Gibraltar's membership of the European Union, to repeal the European Parliamentary Elections Act; to provide for the continuation and validity of any administrative act or decision made pursuant to an such obligation, and to provide, by way of subsidiary legislation, powers to amend, repeal or replace any enactment which was made, whether primarily or otherwise for or in connection with any such European Union obligations, to make such consequential amendments relating to membership of the European Economic Area; to provide such transitional or other provisions as are deemed necessary, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

General provisions

Short title.

1. This Act may be cited as the European Union (Withdrawal) Act 2018.

Commencement.

2.(1) The following provisions-

- (a) section 1;
- (b) this section;
- (c) sections 3 and 14 (including Schedule 3);

- (d) section 8(6) –
 - (i) for the purposes of making regulations under paragraph 1(2)(b) of Schedule 1; and
 - (ii) insofar as it relates to paragraph 1(3) of Schedule 1, and accordingly paragraph 1(2)(b) of Schedule 1 for the purposes of making regulations and paragraph 1(3) of Schedule 1;
- (e) section 9(7);
- (f) section 13 insofar as it relates to paragraph 2 of Schedule 2 and accordingly paragraph 2 of Schedule 2;
- (g) section 16;
- (h) section 15(3) insofar as it relates to the following paragraphs of Schedule 4-
 - (i) paragraph 11(c);
 - (ii) paragraph 11(b) insofar as it relates to the following definitions-
 - ““exit day” (and related expressions)”;
 - “retained EU law”;
 - “retained direct minor EU legislation”;
 - “retained direct principal EU legislation”;
 - “retained direct EU legislation”;
 - “retained EU obligation”;
- (i) sections 11 and 12; and
- (j) section 15(1), (2) and (4),

come into operation on the day of publication.

(2) The remaining provisions of this Act come into operation on such day as the Chief Minister may appoint by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Interpretation.

3.(1) In this Act, unless the context otherwise requires-

“Charter of Fundamental Rights” means the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007;

“domestic law” means the law of Gibraltar;

“EEA” means the European Economic Area;

“enactment” means an enactment whenever passed or made and includes-

- (a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act;
- (b) an enactment contained in any Order in Council made in exercise of Her Majesty’s Prerogative; and
- (c) except in sections 5 and 10 or where there is otherwise a contrary intention, any retained direct EU legislation;

“European Union” and “EU” mean the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7th February 1992 (as amended by any later Treaty);

“EU decision” means-

- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union; or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union;

“EU directive” means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU entity” means an EU institution or any office, body or agency of the EU;

“EU reference” means-

- (a) any reference to the EU, an EU entity or a member State;
- (b) any reference to an EU directive or any other EU law; or
- (c) any other reference which relates to the EU;

“EU regulation” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

“EU tertiary legislation” means-

- (a) any provision made under-
 - (i) an EU regulation,
 - (ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
 - (iii) an EU directive,by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community; or
- (b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive;

“exit day” means midnight on 29 March 2019 (and see subsections (2) to (5));

“member State” (except in the definitions of “direct EU legislation” and “EU reference”) does not include the United Kingdom or Gibraltar;

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);

“primary legislation” means an Act of Parliament;

“public authority” includes-

- (a) a court or tribunal; and
- (b) any person certain of whose functions are functions of a public nature,

but does not include the Gibraltar Parliament or a person exercising functions in connection with proceedings in Parliament;

“relevant criminal offence” means an offence for which an individual who has reached the age of 18 is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions);

“retained direct EU legislation” means any direct EU legislation which forms part of domestic law by virtue of section 6 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day);

“retrospective provision”, in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made;

“subsidiary legislation” means any proclamation, order, rules, regulations, bye-law or other instrument made under any Act, and (except in section 10 or where there is a contrary intention) includes any proclamation, order, rules, regulations, or other instrument made on or after exit day under any retained direct EU legislation;

“tribunal” means any tribunal in which legal proceedings may be brought;

“withdrawal agreement” means an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU.

(2) In this Act references to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at midnight on 29 March 2019 or (as the case may be) to beginning with midnight on that day.

(3) Subsection (4) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom and Gibraltar in accordance with Article 50(3) of the Treaty on European Union is different from that specified in the definition of “exit day” in subsection (1).

(4) The Chief Minister may by regulations-

- (a) amend the definition of “exit day” in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to Gibraltar; and
- (b) amend subsection (2) in consequence of any such amendment.

(5) In subsections (3) and (4) “the Treaties” means the Treaty on European Union and the Treaty on the Functioning of the European Union.

(6) In this Act a reference to either Gibraltar’s membership of the EU or Gibraltar’s withdrawal from the EU is to be construed in the context of the United Kingdom’s membership of the European Union and Gibraltar’s status as a European territory for whose external relations the United Kingdom is responsible within the meaning of Article 355(3) TFEU and to which the provisions of the EU Treaties apply, subject to the exceptions specified in the 1972 Act of Accession.

(7) In this Act references to anything which continues to be domestic law by virtue of section 5 include references to anything to which subsection (1) of that section applies which continues to be domestic law on or after exit day (whether or not it would have done so irrespective of that section).

(8) In this Act references to anything which is retained EU law by virtue of section 7 include references to any modifications, made by or under this Act

or by domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.

(9) References in this Act to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.

(10) Any other reference in this Act to-

- (a) an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union; or
- (b) Article 10 of Title VII of Protocol 36 to those treaties,

includes a reference to that Article as applied by Article 106a of the Euratom Treaty.

(11) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

Expression	Provision
Anything which continues to be domestic law by virtue of section 5	Section 3(7)
Anything which is retained EU law by virtue of section 7	Section 3(8)
Article (in relation to the Treaty on European Union or the Treaty on the Functioning of the European Union)	Section 3(10)
Charter of Fundamental Rights	Section 3(1)
Direct EU legislation	Section 6(2)
Domestic law	Section 3(1)
The EEA	Section 3(1)
EEA agreement	Interpretation and General

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	Clauses Act
Enactment	Section 3(1)
The EU	Interpretation and General Clauses Act
EU decision	Section 3(1)
EU directive	Section 3(1)
EU entity	Section 3(1)
EU institution	Interpretation and General Clauses Act
EU instrument	Interpretation and General Clauses Act
Euratom Treaty	Interpretation and General Clauses Act
EU reference	Section 3(1)
EU regulation	Section 3(1)
European Court	Interpretation and General Clauses Act
EU tertiary legislation	Section 3(1)
EU Treaties	Interpretation and General Clauses Act
Exit day (and related expressions)	Section 3(1) to (5)
Former Article 34(2)(c) of Treaty on European Union	Section 3(9)
Member State	Section 3(1) and Interpretation and General Clauses Act

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Modify (and related expressions)	Section 3(1)
Operative (in relation to direct EU legislation)	Section 6(3)
Primary legislation	Section 3(1)
Public authority	Section 3(1)
Relevant criminal offence	Section 3(1)
Retained case law	Section 9(7)
Retained direct EU legislation	Section 3(1)
Retained direct minor EU legislation	Section 10(6)
Retained direct principal EU legislation	Section 10(6)
Retained domestic case law	Section 9(7)
Retained EU case law	Section 9(7)
Retained EU law	Section 9(7)
Retained general principles of EU law	Section 9(7)
Retrospective provision	Section 3(1)
Subsidiary legislation	Section 3(1)
Tribunal	Section 3(1)
Withdrawal agreement	Section 3(1)

(12) See paragraph 11 of Schedule 4 for amendments made by this Act to the Interpretation and General Clauses Act.

Repeals

Repeals.

4. The following enactments are repealed on exit day-

- (a) the European Communities Act;
- (b) section 23(g) of the Interpretation and General Clauses Act.

Retention of existing EU law

Saving for EU-derived domestic legislation.

5.(1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.

(2) In this section “EU-derived domestic legislation” means any enactment so far as-

- (a) made under section 4(1) of the European Communities Act;
- (b) passed or made, or operating, for a purpose mentioned in section 4(1)(a) or (b) of that Act;
- (c) made pursuant to section 23(g)(i) or (ii) of the Interpretation and General Clauses Act;
- (d) relating to anything-
 - (i) which falls within paragraph (a), (b) or (c), or
 - (ii) to which section 6(1) or 7(1) applies, or
- (e) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act.

(3) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

Incorporation of direct EU legislation.

6.(1) Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.

(2) In this Act “direct EU legislation” means-

- (a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as
 - (i) it applied to Gibraltar immediately before exit day, and
 - (ii) its effect is not reproduced in an enactment to which section 5(1) applies;
- (b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as
 - (i) it refers to, or contains adaptations of, anything falling within paragraph (a), and
 - (ii) its effect is not reproduced in an enactment to which section 5(1) applies, or
- (c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day.

(3) For the purposes of this Act, any direct EU legislation is operative immediately before exit day if-

- (a) in the case of anything which comes into force at a particular time and is stated to apply from a later time, it is in force and applies immediately before exit day;
- (b) in the case of a decision which specifies to whom it is addressed, it has been notified to that person before exit day; and
- (c) in any other case, it is in force immediately before exit day.

(4) This section-

- (a) brings into domestic law any direct EU legislation only in the form of the English language version of that legislation; and

- (b) does not apply to any such legislation for which there is no such version,

but paragraph (a) does not affect the use of the other language versions of that legislation for the purposes of interpreting it.

(5) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

Saving for rights etc. under section 3(1) of the ECA.

7.(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day-

- (a) are recognised and available in domestic law by virtue of section 3(1) of the European Communities Act; and
- (b) are enforced, allowed and followed accordingly,

continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they-

- (a) form part of domestic law by virtue of section 6; or
- (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court, the Judicial Committee of the Privy Council or any court or tribunal in Gibraltar in a case decided before exit day (whether or not as an essential part of the decision in the case).

(3) This section is subject to section 8 and Schedule 1 (exceptions to savings and incorporation).

Exceptions to savings and incorporation.

8.(1) The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day.

(2) Accordingly, the principle of the supremacy of EU law continues to apply on or after exit day so far as relevant to the interpretation,

disapplication or quashing of any enactment or rule of law passed or made before exit day.

(3) Subsection (1) does not prevent the principle of the supremacy of EU law from applying to a modification made on or after exit day of any enactment or rule of law passed or made before exit day if the application of the principle is consistent with the intention of the modification.

(4) The Charter of Fundamental Rights is not part of domestic law on or after exit day.

(5) Subsection (4) does not affect the retention in domestic law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).

(6) Schedule 1 (which makes further provision about exceptions to savings and incorporation) has effect.

Interpretation of retained EU law.

9.(1) A court or tribunal-

- (a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court; and
- (b) cannot refer any matter to the European Court on or after exit day.

(2) Subject to this and subsections (3) to (6) a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after exit day and so far as they are relevant to it-

- (a) in accordance with any retained case law and any retained general principles of EU law; and

- (b) having regard (among other things) to the limits, immediately before exit day, of EU competences.

(4) But-

- (a) the Judicial Committee of the Privy Council is not bound by any retained EU case law;
- (b) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

(5) In deciding whether to depart from any retained EU case law, the Judicial Committee of the Privy Council must apply the same test as it would apply in deciding whether to depart from its own case law.

(6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after exit day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

(7) In this Act-

“retained case law” means-

- (a) retained domestic case law; and
- (b) retained EU case law;

“retained domestic case law” means any principles laid down by, and any decisions of, a court or tribunal in Gibraltar or the Judicial Committee of the Privy Council, as they have effect immediately before exit day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU case law” means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

“retained EU law” means anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 5, 6 or 7 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);

“retained general principles of EU law” means the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they-

- (a) relate to anything to which section 5, 6 or 7 applies; and
- (b) are not excluded by section 8 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time).

Status of retained EU law.

10.(1) Anything which-

- (a) was, immediately before exit day, primary legislation of a particular kind, subsidiary legislation of a particular kind or another enactment of a particular kind; and
- (b) continues to be domestic law on and after exit day by virtue of section 5,

continues to be domestic law as an enactment of the same kind.

(2) Retained direct principal EU legislation cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;

- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-
 - (i) paragraph 3, 4(3)(a) or (4)(a), 6(3), 8(3)(a) or (4)(a), 9(2)(a) or 10(3) of Schedule 4,
 - (ii) any other provision made by or under this Act, or
 - (iii) any provision made on or after the passing of this Act by or under primary legislation.

(3) Retained direct minor EU legislation cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;
- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-
 - (i) paragraph 3, 4(2) or (4)(a), 6(3), 8(2) or (4)(a) or 10(3) of Schedule 4,
 - (ii) any other provision made by or under this Act, or
 - (iii) any provision made on or after the passing of this Act by or under primary legislation.

(4) Anything which is retained EU law by virtue of section 7 cannot be modified by any primary or subsidiary legislation other than-

- (a) an Act of Parliament;
- (b) any other primary legislation (so far as it has the power to make such a modification); or
- (c) any subsidiary legislation so far as it is made under a power which permits such a modification by virtue of-

- (i) paragraph 3, 4(3)(b) or (4)(b), 6(3), 8(3)(b) or (4)(b), 9(2)(b) or 10(3) of Schedule 4,
 - (ii) any other provision made by or under this Act, or
 - (iii) any provision made on or after the passing of this Act by or under primary legislation.
- (5) For other provisions about the status of retained EU law, see-
- (a) section 8(1) to (3) (status of retained EU law in relation to other enactments or rules of law);
 - (b) section 9 (status of retained case law and retained general principles of EU law);
 - (c) section 13 and Schedule 2 (status of retained EU law for the purposes of the rules of evidence); and
 - (d) paragraph 11(c) of Schedule 4 (status of certain retained direct EU legislation for the purposes of the Interpretation and General Clauses Act).
- (6) In this Act-
- “retained direct minor EU legislation” means any retained direct EU legislation which is not retained direct principal EU legislation;
- “retained direct principal EU legislation” means-
- (a) any EU regulation so far as it-
 - (i) forms part of domestic law on and after exit day by virtue of section 6, and
 - (ii) was not EU tertiary legislation immediately before exit day, or
 - (b) any Annex to the EEA agreement so far as it-
 - (i) forms part of domestic law on and after exit day by virtue of section 6, and

- (ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a),

(as modified by or under this Act or by other domestic law from time to time).

Dealing with deficiencies arising from withdrawal.

11.(1) A Minister may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate-

- (a) any failure of retained EU law to operate effectively; or
- (b) any other deficiency in retained EU law,

arising from the withdrawal of the United Kingdom and Gibraltar from the EU.

(2) Deficiencies in retained EU law are where the Minister considers that retained EU law-

- (a) contains anything which has no practical application in relation to Gibraltar or is otherwise redundant or substantially redundant;
- (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to Gibraltar;
- (c) makes provision for, or in connection with, reciprocal arrangements between-
 - (i) Gibraltar or a public authority in Gibraltar, and
 - (ii) the EU, an EU entity, a member State or a public authority in a member State,

which no longer exist or are no longer appropriate;

- (d) makes provision for, or in connection with, other arrangements which-

- (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
- (ii) are otherwise dependent upon Gibraltar's membership of the EU,

and which no longer exist or are no longer appropriate;

- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties;
- (f) does not contain any functions or restrictions which-
 - (i) were in an EU directive and in force immediately before exit day (including any power to make EU tertiary legislation), and
 - (ii) it is appropriate to retain; or
- (g) contains EU references which are no longer appropriate.

(3) There is also a deficiency in retained EU law where the Minister considers that there is-

- (a) anything in retained EU law which is of a similar kind to any deficiency which falls within subsection (2); or
- (b) a deficiency in retained EU law of a kind described, or provided for, in regulations made by a Minister.

(4) But retained EU law is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into force or only applies on or after exit day.

(5) Regulations under this subsection (1) may make any provision that could be made by an Act of Parliament.

(6) Regulations under subsection (1) may (among other things) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be-

- (a) exercisable instead by a public authority (whether or not established for the purpose) in Gibraltar; or
- (b) replaced, abolished or otherwise modified.

(7) The reference in subsection (1) to a failure or other deficiency arising from Gibraltar's withdrawal from the EU includes a reference to any failure or other deficiency arising from that withdrawal taken together with the operation of any provision, or the interaction between any provisions, made by or under this Act.

Implementing the withdrawal agreement.

12.(1) A Minister may by regulations make such provision as the Minister considers appropriate for the purposes of implementing the withdrawal agreement if the Minister considers that such provision should be in force on or before exit day.

(2) Regulations under this section may make any provision that could be made by an Act of Parliament except that regulations may not amend primary legislation unless the Minister believes it is urgent or necessary in the public interest.

(3) No regulations may be made under this section after exit day.

Rules of evidence.

13. Schedule 2 (which makes provision about rules of evidence) has effect.

Regulations.

14. Schedule 3 (which makes general provision about powers under Act) has effect.

Consequential and transitional provision.

15.(1) A Minister may by regulations make such provision as the Minister considers appropriate in consequence of this Act.

(2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

(3) Parts 1 and 2 of Schedule 4 (which contain consequential provision) have effect.

(4) A Minister may by regulations make such transitional, transitory or saving provision as the Minister considers appropriate in connection with the coming into force of any provision of this Act (including its operation in connection with exit day).

(5) Parts 3 and 4 of Schedule 4 (which contain transitional, transitory and saving provision) have effect.

(6) The European Parliamentary Elections Act 2004 is repealed.

Future interaction with the law and agencies of the EU.

16. Nothing in this Act shall prevent Gibraltar from-

- (a) replicating in domestic law any EU law made on or after exit day; or
- (b) continuing to participate in, or have a formal relationship with, the agencies of the EU after exit day.

SCHEDULE 1

Section 8(6)

FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND INCORPORATION

Challenges to validity of retained EU law.

1.(1) There is no right in domestic law on or after exit day to challenge any retained EU law on the basis that, immediately before exit day, an EU instrument was invalid.

(2) Subparagraph (1) does not apply so far as-

- (a) the European Court has decided before exit day that the instrument is invalid; or
- (b) the challenge is of a kind described, or provided for, in regulations made by a Minister.

(3) Regulations under subparagraph (2)(b) may (among other things) provide for a challenge which would otherwise have been against an EU institution to be against a public authority in Gibraltar.

General principles of EU law.

2. No general principle of EU law is part of domestic law on or after exit day if it was not recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case).

3.(1) There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law.

(2) No court or tribunal or other public authority may, on or after exit day-

- (a) disapply or quash any enactment or other rule of law; or
- (b) quash any conduct or otherwise decide that it is unlawful,

because it is incompatible with any of the general principles of EU law.

Rule in *Francovich*.

4. There is no right in domestic law on or after exit day to damages in accordance with the rule in *Francovich*.

Interpretation.

5.(1) References in section 8 and this Schedule to the principle of the supremacy of EU law, the Charter of Fundamental Rights, any general principle of EU law or the rule in *Francovich* are to be read as references to that principle, Charter or rule so far as it would otherwise continue to be, or form part of, domestic law on or after exit day in accordance with this Act.

(2) Accordingly (among other things) the references to the principle of the supremacy of EU law in section 8(2) and (3) do not include anything which would bring into domestic law any modification of EU law which is adopted or notified, comes into force or only applies on or after exit day.

SCHEDULE 2

Section 13

RULES OF EVIDENCE

Questions as to meaning of EU law.

1.(1) Where it is necessary, for the purpose of interpreting retained EU law in legal proceedings, to decide a question as to-

- (a) the meaning or effect in EU law of any of the EU Treaties or any other treaty relating to the EU; or
- (b) the validity, meaning or effect in EU law of any EU instrument,

the question is to be treated for that purpose as a question of law.

(2) In this paragraph-

“interpreting retained EU law” means deciding any question as to the validity, meaning or effect of any retained EU law;

“treaty” includes-

- (a) any international agreement; and
- (b) any protocol or annex to a treaty or international agreement.

Power to make provision about judicial notice and admissibility.

2.(1) A Minister may by regulations-

- (a) make provision enabling or requiring judicial notice to be taken of a relevant matter; or
- (b) provide for the admissibility in any legal proceedings of specified evidence of-
 - (i) a relevant matter, or

- (ii) instruments or documents issued by or in the custody of an EU entity.

(2) Regulations under subparagraph (1)(b) may provide that evidence is admissible only where specified conditions are met (for example, conditions as to certification of documents).

(3) Regulations under this paragraph may modify any provision made by or under an enactment.

(4) In subparagraph (3) “enactment” does not include primary legislation passed or made after this Act is passed.

(5) For the purposes of this paragraph each of the following is a “relevant matter”-

- (a) retained EU law;
- (b) EU law;
- (c) the EEA agreement; and
- (d) anything which is specified in the regulations and which relates to a matter mentioned in paragraph (a), (b) or (c).

SCHEDULE 3

Section 14

REGULATIONS

Scope and nature of powers: general.

1. Any power to make regulations under this Act—
 - (a) may be exercised so as to—
 - (i) modify retained EU law; or
 - (ii) make different provision for different cases or descriptions of case, different circumstances, or different purposes; and
 - (b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way).
2. The fact that a power to make regulations is conferred by this Act does not affect the extent of any other power to make regulations under this Act.

Scope of consequential and transitional powers.

3.(1) The fact that anything continues to be, or forms part of, domestic law by virtue of any provision of sections 5 to 9 or Schedule 1 does not prevent it from being modified by regulations made under section 15(1) in consequence of any other provision made by or under this Act.

(2) Accordingly, any retained EU law may, for example, be modified by regulations made under section 15(1) in consequence of the repeal of any enactment contained in the European Communities Act or section 23(g) of the Interpretation and General Clauses Act.

(3) The power to make regulations under section 15(4) includes the power to make transitional, transitory or saving provision in connection with—

- (a) the repeal of any enactment contained in the European Communities Act;
- (b) the repeal of section 23(g) of the Interpretation and General Clauses Act; or
- (c) the withdrawal of Gibraltar from the EU,

which is additional to that made by any provision of sections 5 to 9 or Schedule 1 or alters its effect in particular cases or descriptions of case.

(4) The power to make regulations under section 15(1) includes the power to make transitional, transitory or saving provision which-

- (a) is in connection with any repeal or revocation made by any such regulations of an enactment in consequence of-
 - (i) the repeal of any enactment contained in the European Communities Act;
 - (ii) the repeal of section 23(g) of the Interpretation and General Clauses Act;
 - (iii) the withdrawal of Gibraltar from the EU; and
- (b) is additional to that made by any provision of sections 5 to 9 or Schedule 1 or alters its effect in particular cases or descriptions of case.

(5) Provision of the kind mentioned in subparagraph (3) or (4) may (among other things) include further provision treating any provision of that kind as retained EU law for particular purposes or all purposes.

Anticipatory exercise of powers in relation to retained EU law.

4. Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 7 or any other retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day.

Scope of appointed day powers.

5. Any power of a Minister under this Act to appoint a day includes a power to appoint a time on that day if the Minister considers it appropriate to do so.

Effect of certain provisions in Schedule 4 on scope of powers.

6. The modifications made by Part 1 of Schedule 4 and paragraph 11 of that Schedule do not prevent or otherwise limit the making of different provision, in particular cases or descriptions of case, in regulations under section 15(1) or in any other regulations under this Act.

SCHEDULE 4

Section 15(3) and (5)

**CONSEQUENTIAL, TRANSITIONAL, TRANSITORY
AND SAVING PROVISION**

PART 1

GENERAL CONSEQUENTIAL PROVISION

Existing ambulatory references to retained direct EU legislation.

1.(1) Any reference which, immediately before exit day-

- (a) exists in-
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6, or
 - (iii) any document relating to anything falling within subparagraph (i) or (ii); and
- (b) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6,

is to be read, on or after exit day, as a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law by virtue of section 6 and, unless the contrary intention appears, as modified by domestic law from time to time.

(2) Subparagraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subsidiary legislation so far as the power to make the subsidiary legislation continues to be part of domestic law by virtue of section 5.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

Other existing ambulatory references.

2.(1) Any reference which-

- (a) exists, immediately before exit day, in-
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 6, or
 - (iii) any document relating to anything falling within subparagraph (i) or (ii);
- (b) is not a reference to which paragraph 1(1) applies; and
- (c) is, immediately before exit day, a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

is to be read, on or after exit day, as a reference to the EU Treaty, instrument or document as it has effect immediately before exit day.

(2) Subparagraph (1) does not apply to any reference which forms part of a power to make, confirm or approve subsidiary legislation so far as the power to make the subsidiary legislation continues to be part of domestic law by virtue of section 5.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.

Existing powers to make subsidiary legislation etc.

3.(1) Any power to make, confirm or approve subsidiary legislation which-

- (a) was conferred before the day on which this Act is passed; and

- (b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,

is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 7.

(2) Any provision which may be made, confirmed or approved by virtue of subparagraph (1) may be included in the same instrument as any other provision which may be so made, confirmed or approved.

4.(1) This paragraph applies to any power to make, confirm or approve subsidiary legislation-

- (a) which was conferred before the day on which this Act is passed; and
- (b) is not capable of being exercised as mentioned in paragraph 3(1)(b).

(2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) is to be read-

- (a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 7; and
- (b) so far as the context permits or requires,

as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)-

- (a) any retained direct principle EU legislation; or
- (b) anything which is retained EU law by virtue of section 7,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of subparagraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)-

- (a) any retained direct EU legislation; or
- (b) anything which is retained EU law by virtue of section 7.

5. Any power to make, confirm or approve subsidiary legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day without that restriction or any corresponding restriction in relation to compatibility with retained EU law.

6.(1) Paragraphs 3 to 5 and this paragraph-

- (a) do not prevent the conferral of wider powers; and
- (b) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraph 3 and 4-

- (a) a power is conferred whether or not it is in force; and
- (b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.

(3) A power which, by virtue of paragraph 3 or 4 or any Act of Parliament passed before this Act, is capable of being exercised to modify any retained EU law is capable of being exercised before exit day so as to come into force on or after exit day.

Review provisions in existing subsidiary legislation.

7.(1) In carrying out a review of a provision of subsidiary legislation on or after exit day a person is not required, by any pre-exit enactment, to have

regard to how any former EU obligation is implemented elsewhere than in Gibraltar.

(2) In this paragraph-

“former EU obligation” means an obligation by which Gibraltar is, as a result of the United Kingdom’s withdrawal from the EU, no longer bound at the time of the review;

“pre-exit enactment” means an Act passed, or subsidiary legislation made, before exit day.

Future powers to make subsidiary legislation.

8.(1) This paragraph applies to any power to make, confirm or approve subsidiary legislation which is conferred on or after the day on which the Act is passed.

(2) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may-

(a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 7; and

(b) so far as applicable and unless the contrary intention appears,

be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which subparagraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)-

(a) any retained direct principal EU legislation; or

(b) anything which is retained EU law by virtue of section 7,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of subparagraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)-

- (a) any retained direct EU legislation; or
- (b) anything which is retained EU law by virtue of section 7.

9.(1) Subparagraph (2) applies to any power to make, confirm or approve subsidiary legislation which-

- (a) is conferred on or after the day on which this Act is passed; and
- (b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.

(2) The power may, so far as applicable and unless the contrary intention appears, be exercised-

- (a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation; or
- (b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 7.

10.(1) Paragraphs 8 and 9 and this paragraph-

- (a) do not prevent the conferral of wider powers; and
- (b) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraphs 8 and 9-

- (a) a power is conferred whether or not it is in force;
- (b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed; and

- (c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).

(3) A power which, by virtue of paragraph 8 or 9 or any Act passed after this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day.

PART 2

SPECIFIC CONSEQUENTIAL PROVISION

Interpretation and General Clauses Act.

11. The Interpretation and General Clauses Act is amended as follows-

- (a) in section 2 in the definition of “subsidiary legislation” after “legislative effect” insert “or made on or after exit day under any retained direct EU legislation”;
- (b) at the end of section 2 insert the following-

“Definitions relating to the EU and Gibraltar’s withdrawal.

“The Communities” means Euratom, the Economic Community and the Coal and Steel Community, but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU;

“E.C.S.C. Treaty” means the Treaty establishing the European Coal and Steel Community, signed at Paris on 18 April 1951;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or

supplemented from time to time, but does not include any retained direct EU legislation;

“EEA state”, in relation to a time, means-

- (a) a state which at that time is a member State, or
- (b) any other state which at that time is a party to the EEA agreement;

“E.E.C. Treaty” means the Treaty establishing the European Economic Community, signed at Rome on March 1957;

“entry date” means the date on which the United Kingdom became a member of the Communities (which neither includes nor is a reference to the EU);

“the EU” or “the European Union” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty); and includes, so far as the context permits or requires, Euratom;

“EU institution” means any institution of the EU;

“EU instrument” means any instrument issued by an EU institution other than any retained direct EU legislation;

“Euratom”, “Economic Community” and “Coal and Steel Community” mean respectively the European Atomic Energy Community, the European Economic Community and the European Coal and Steel Community (but see the definition of “the Communities” for provision as to the construction of references to those Communities);

“Euratom Treaty” means the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957;

“European Court” means the Court of Justice of the European Union;

“exit day” (and related expressions) have the same meaning as in the European Union (Withdrawal) Act 2018 (see section 3(1) of that Act);

“member”, in the expression “member State”, refers to membership of the EU;

“retained EU law”, “retained direct minor EU legislation”, “retained direct principal EU legislation” and “retained direct EU legislation” have the same meaning as in the European Union (Withdrawal) Act 2018 (see sections 3(1), 9(7) and 10(6) of that Act);

“retained EU obligation” means an obligation that-

- (a) was created or arose by or under the EU Treaties before exit day; and
- (b) forms part of retained EU law, as modified from time to time;

“the Treaties” or “the EU Treaties” means the Treaties or EU Treaties, within the meaning given by section 2(1) of the European Communities Act as that Act had effect immediately before its repeal by section 4 of the European Union (Withdrawal) Act 2018, as at immediately before exit day.”;

(c) after section 2 insert the following section-

“Retained direct EU legislation.

2A.(1) The provisions of this Act (except sections 9, 10, 22 and 29) apply, so far as applicable and unless the contrary intention appears, to any retained direct EU legislation so far as it-

- (a) is amended by an Act or subsidiary legislation; and
- (b) is not subsidiary legislation,

as they apply to an Act passed at the corresponding time.

- (2) In their application by virtue of subsection (1)-
 - (a) section 21 has effect as if the reference to an Act included a reference to the retained direct EU legislation so far as unamended (as well as a reference to that legislation so far as amended);
 - (b) section 33(2) has effect as if the reference to the repealing Act not being passed were a reference to the repeal not having been made; and
 - (c) section 68 has effect as if the reference to the passing of the Act were a reference to the corresponding time.
- (3) In this section “corresponding time” means the time when the amending Act or subsidiary legislation was passed or (as the case may be) made.”;
- (d) delete sections 5 and 5A;
- (e) in section 23(h) after “paragraph (g)(i)” insert “before its repeal by section 4 of the European Union (Withdrawal) Act 2018”;
- (f) after section 23(h) insert the following-
 - “(i) paragraph (h) is subject to any amendments, repeal, revocation or other modification of retained EU law on or after exit day.
 - (j) In paragraph (h)-
 - (i) a reference to the EEA Agreement means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; and
 - (ii) a reference to the date on which the EEA Agreement comes into force is a reference to the date on which (in accordance with the Protocol

signed at Brussels on 17th March 1993) it comes into force otherwise than as regards Liechtenstein.”.

PART 3

GENERAL TRANSITIONAL, TRANSITORY OR SAVING PROVISION

Continuation of existing acts etc.

12.(1) Anything done-

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 5, 6, 7 or 9(3) or (6); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act or section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

if in force or effective immediately before exit day, continues to be in force or effective on and after exit day.

(2) Anything done-

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of section 5, 6, 7 or 9(3) or (6); or
- (b) for a purpose mentioned in section 4(1) of the European Communities Act, section 23(g) of the Interpretation and General Clauses Act or otherwise related to the EU or the EEA,

which, immediately before exit day, is in the process of being done continues to be done on and after exit day.

(3) Subparagraphs (1) and (2) are subject to-

- (a) section 4 and the withdrawal of the United Kingdom and Gibraltar from the EU;

- (b) sections 5 to 9 and Schedule 1,
- (c) any provision made under section 15(4); and
- (d) any other provision made by or under this Act or any other enactment.

(4) References in this paragraph to anything done include references to anything omitted to be done.

PART 4

SPECIFIC TRANSITIONAL, TRANSITORY AND SAVING PROVISION

Retention of existing EU law.

13. Section 7(2)(b) does not apply in relation to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they are of a kind recognised by a court or tribunal in Gibraltar in a case decided on or after exit day but begun before exit day (whether or not as an essential part of the decision in the case).

14.(1) Subject as follows and subject to any provision made by regulations under section 15(4), section 8(4) and paragraphs 1 to 4 of Schedule 1 apply in relation to anything occurring before exit day (as well as anything occurring on or after exit day).

(2) Section 8(4) and paragraphs 1 to 4 of Schedule 1 do not affect any decision of a court or tribunal made before exit day.

(3) Section 8(4) and paragraphs 3 and 4 of Schedule 1 do not apply in relation to any proceedings begun, but not finally decided, before a court or tribunal in Gibraltar before exit day.

(4) Paragraphs 1 to 4 of Schedule 1 do not apply in relation to any conduct which occurred before exit day which gives rise to any criminal liability.

(5) Paragraph 3 of Schedule 1 does not apply in relation to any proceedings begun within the period of 3 years beginning with exit day so far as-

- (a) the proceedings involve a challenge to anything which occurred before exit day; and
- (b) the challenge is not for the disapplication or quashing of-
 - (i) an Act of Parliament or a rule of law which is not an enactment; or
 - (ii) any enactment, or anything else, not falling within subparagraph (i) which, as a result of anything falling within that subparagraph, could not have been different or which gives effect to, or enforces, anything falling within that subparagraph.

(6) Paragraph 3(2) of Schedule 1 does not apply in relation to any decision of a court or tribunal, or other public authority, on or after exit day which is a necessary consequence of any decision of a court or tribunal made before exit day or made on or after that day by virtue of this paragraph.

(7) Paragraph 4 of Schedule 1 does not apply in relation to any proceedings begun within the period of 2 years beginning with exit day so far as the proceedings relate to anything which occurred before exit day.

Main powers in connection with withdrawal.

15. The prohibition on making regulations under section 11 or 12 after a particular time does not affect the continuation in force of regulations made at or before that time (including the exercise after that time of any power conferred by regulations made at or before that time).

Maintenance of modifications to enactments.

Consistent application of law to whole of EEA.

16.(1) Where-

- (a) the operation of any relevant enactment is limited (expressly or by implication) by reference to the European Union or by reference by some connection with the European Union; and
- (b) the enactment relates to a matter to which the EEA Agreement (as it has effect on the date on which it comes into force) relates,

then, unless the context otherwise requires, the enactment shall have effect on or after that date in relation to that matter with the substitution of a corresponding limitation relating to the EEA (or, where appropriate, to both the European Union and the EEA).

(2) Subparagraph (1) shall not be regarded as having an effect which is inconsistent with the operation, by virtue of the EEA Agreement, of section 3(1) of the European Communities Act as at immediately before exit day.

(3) This paragraph is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.

(4) In this paragraph “relevant enactment” means a provision of an Act passed, or of any subsidiary legislation made, before the date on which the EEA Agreement came into force.

General implementation of Agreement.

17.(1) Subject to paragraph 16, where by virtue of the EEA Agreement (as it has effect on the date on which it comes into force), it is necessary for a purpose mentioned in section 4(1) of the European Communities Act that any relevant provision should have effect with modifications which can be ascertained from that Agreement, then on and after that date the provision shall have effect with those modifications.

(2) Subparagraph (1) shall not be regarded as providing for modifications the effect of which is achieved through the operation, by virtue of the EEA Agreement, of section 3(1) of the European Communities Act as at immediately before exit day.

(3) Subparagraph (1) shall not apply so as to require a modification if that modification, or a corresponding modification limited so as to relate only to the European Union-

- (a) could have been made, by Act passed before the date on which the EEA Agreement comes into force, for a purpose mentioned in section 4(1) of the European Communities Act; but
- (b) was not made (by that or other means).

(4) This paragraph is subject to any amendment, repeal, revocation or other modification of retained EU law on or after exit day.

(5) In this paragraph, “relevant provision” means-

- (a) a provision of an Act passed, or of any subsidiary legislation made, before the date on which the EEA Agreement comes into force;
- (b) a provision of any other instrument made before that date by a person as against whom the effect of a directive issued by an EU institution (if such a directive were relevant) might be relied upon in proceedings to which he was a party.

Interpretation.

18. References in paragraphs 16 and 17-

- (a) to the date on which the EEA Agreement comes into force are references to the date on which (in accordance with the Protocol signed at Brussels on 17th March 1993) it comes into force otherwise than as regards Liechtenstein;
- (b) to the European Communities Act are to that Act before its repeal by section 4;
- (c) to the EEA Agreement means, except where the context otherwise requires, the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time.

EXPLANATORY MEMORANDUM

This Bill repeals the European Communities Act on the day that the United Kingdom and Gibraltar leave the European Union. It ends the supremacy of EU law in Gibraltar law, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in Gibraltar to implement EU obligations. It also creates powers to make subsidiary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once Gibraltar leaves the EU so that the domestic legal system continues to function correctly outside the EU.

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