

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

Forty-Third Session
Geneva, November 23 to 26, 2020

REVISED PROPOSAL BY THE DELEGATIONS OF ISRAEL, JAPAN AND THE UNITED
STATES OF AMERICA

Document prepared by the Secretariat

In a communication dated November 13, 2020, the Delegations of Japan and the United States of America transmitted to the International Bureau of the World Intellectual Property Organization (WIPO) the revised proposal contained in the Annex to the present document.

At the forty-third session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from November 23 to 26, 2020, the Delegation of Israel requested to be added as co-sponsor of the proposal.

[Annex follows]

**Proposal by Israel, Japan and the United States of America for the WIPO Standing
Committee on the Law of Trademarks, Industrial Designs and Geographical Indications
Joint Recommendation:
Industrial Design Protection for Designs for Graphical User Interfaces**

Update to the Proposal

The current version of the Joint Recommendation is substantially similar to the version in document SCT/42/6. However, updates have been made to incorporate comments from the discussion on the proposal held at the Forty-Second Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (WIPO SCT). In particular, the proposal has revised the draft recommendations to emphasize the non-obligatory nature of the joint recommendation, to highlight in the footnotes the correlating questions and responses from WIPO SCT questionnaires relating to the particular subject matter (e.g., SCT37/2 REV), and to incorporate some recommendations on drafting language. Additionally, two new recommendations, recommendations number 6 and 7, have been added and the recommendations have been renumbered where appropriate.

I. Introduction

Designs for Graphical User Interfaces (GUIs), including icon designs, represent a multi-billion dollar global industry that has been built upon the rapid growth of the mobile device market. For example, icons are commonly associated with mobile device applications, or “apps”, that are available via internet marketplaces.¹

Consumer design preferences regarding electronic interfaces often define commercial success and drive sales, and competitors are increasingly relying on design protection to gain a competitive edge in the marketplace. For SMEs effective design protection can be a critical component of their intellectual property strategy, which allow SMEs to shoulder into the “copy and paste” space of the e-commerce environment. Also, the creation of these mobile device applications is notably dispersed geographically, with the internet making physical location inconsequential in terms of feasibility to develop and commercialize mobile device applications. Stated more directly, the creators of these new designs are spread across the globe – an app designer can do business virtually any place a power outlet and a laptop can exist.

The recent technological evolution however, is not limited to interfaces and icons for smartphones, tablets or other computing devices. Each day we move closer to breakthroughs that will open up entire new sectors of technologies for which designers will likely desire and seek protection for their designs. GUIs are a critical component in the user experience of products ranging from home appliances and televisions to automobiles and fitness devices. Once futuristic technologies are on the verge of becoming mainstream: driverless cars, holographic projected keyboards, virtual reality displays and similar technologies enter the market each year. Each of these provides a platform for new designs for GUIs and other types of emerging designs.

¹ Examples of internet marketplaces where these apps are available include Amazon.com, Google Play and the Apple App Store (iTunes).

It is notable that jurisdictions around the globe are recognizing the value and importance of these designs in new technologies by affording intellectual property protection. As demonstrated by the analysis presented in document SCT/37/2 REV, intellectual property protection for GUIs and icons is now mainstream, with most jurisdictions around the world granting industrial design registrations/patents for new GUI and icon designs.² However, the unique nature of these design innovations and the short time frame in which jurisdictions have been considering protections for these types of industrial designs can result in variations in the availability and protection provided internationally.

These differences in protection as well as formalities requirements increases the costs to designers in obtaining global protection for their designs, increases the risk of losing protection of the designs in global markets, and weakens motivations for further design creation. In some instances designers realize certain jurisdictions currently are not providing protection for designs in these new technology environments, perhaps because they have not been able to update their law or practice yet or are unsure of how best to update it.

The industrial design community, recognizing these gaps and the opportunity to get ahead of development in these emerging technologies, is actively engaged in this topic through a wide array of legal design expert organizations and conversations. Examples of organizations actively studying this topic include the American Intellectual Property Law Association (AIPLA), the International Association for the Protection of Intellectual Property (AIPPI)³, the International Federation of Intellectual Property Attorneys (FICPI), the Intellectual Property Owners Association (IPO), the International Chamber of Commerce (ICC)⁴, the International Trademark Association (INTA), the Japan Patent Attorneys Association (JPAA), Association of European Trade Mark Owners (MARQUES), and others. Their active engagement in this initiative through their own publications, conferences, and resolutions, demonstrate a global drive for consistent and predictable protections of these vital designs for innovative technologies.

The analysis provided by the work and study of this committee over the last several years, such as in document SCT/37/2 REV, demonstrates that there are several areas now suitable for recommendations regarding successful practices, as jurisdictions are already implementing like-minded approaches to protection.⁵

² Almost all jurisdictions (over 95% or 63 of 66 jurisdictions) that responded to the questionnaire indicated that protection was available for GUI and for icon designs. See SCT 37/2 Rev.

³ On October 17, 2017, AIPPI passed a resolution setting forth agreed recommendations on “Protection of graphical user interfaces” at its 2017 AIPPI World Congress – Sydney. https://aippi.org/wp-content/uploads/2017/10/Resolution-on-Graphical-user-interfaces_English.pdf; See also AIPPI Summary Report – 2017 – Study Question – General, Protection of graphical user interfaces http://aippi.org/wp-content/uploads/2017/08/SummarReport_General_GUIs_15August2017_final.pdf

⁴ See Design Protection for Graphical User Interfaces <https://iccwbo.org/publication/design-protection-graphical-user-interfaces-guis/>

⁵ Summary of the WIPO SCT’s consideration of the topic of graphical user interface (GUI) and icon designs and documentation identifying the coalescence of views and experiences.

1. At the thirty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from April 25 to 27, 2016, the Chair requested the Secretariat to prepare a questionnaire, based on the proposal made by the Delegations of Israel, Japan and the United States of America, entitled “Industrial Design and Emerging Technologies: Similarities and Differences in the Protection of New Technological Designs” (document SCT/35/6). Accordingly, the Secretariat prepared and addressed to all Member States of the World Intellectual Property Organization (WIPO) the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (hereinafter “the questionnaire”).
2. At the thirty-sixth session of the SCT, held in Geneva from October 17 to 19, 2016, the Secretariat presented a Compilation of the Replies to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (document SCT/36/2).

Building on these common themes, on existing regional and national experiences and utilizing the resident technical and legal expertise on industrial design and these new technological designs, the WIPO SCT is well-poised to establish recommendations for the protection of designs for a GUI. Further identification and support for proven practice will aid interested jurisdictions in providing protection for designs in new technologies, fostering the conditions for new and creative design and supporting designers across the globe working to develop this rapidly evolving designs field.

We invite Standing Committee Members and Observers to share comments and consider the draft proposed joint recommendation on industrial design protection of graphical user interface designs.

II. Draft Recommendations

The text of an initial draft joint recommendation follows for consideration by the WIPO Standing Committee on the Law of Trademarks, Industrial Designs, and Geographical Indications.

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3. At the thirty-seventh session of the SCT, held in Geneva from March 27 to 30, 2017, the Secretariat presented document SCT/37/2, analyzing the returns to the questionnaire based on the replies provided by Member States and intergovernmental organizations (IGOs), and taking into account the comments and observations submitted by NGOs. Additionally, the Chair requested the Secretariat to organize an information session addressing (i) the practices of offices and (ii) experience of users, with regard to graphical user interface (GUI), icon and typeface/type font designs.
 4. The Information Session on Graphical User Interface (GUI), Icon, and Typeface/Type Font Designs was held at the thirty-eighth session of the SCT, in Geneva from October 30 to November 2, 2017. Representatives from government organizations presented on Office practices regarding GUIs, icons, typeface/type fonts and Users detailed experiences with GUIs, icons, typeface/type font designs.
 5. At the conclusion of the thirty-eighth session, the Chair requested the Secretariat to invite Member States and accredited NGOs to propose aspects of Graphical User Interface (GUI), icon, typeface/type font designs on which further work would be desirable.
 6. At the thirty-ninth session, after an exchange of views, the Committee decided further work was desirable on certain existing issues identified in documents SCT/39/2 and SCT/39/3, in particular on proposals 1, 3, 9 and 10 in document SCT/39/3, while issues related to novel technological designs could be undertaken in a subsequent phase. The Secretariat was instructed to invite, and did so invite, Members, Intergovernmental Intellectual Property Organizations with observer status and accredited Non-Governmental Organizations (NGOs) to submit further inputs, including detailed questions which they would like to see answered, concerning (1) the requirement for a link between GUIs, Icons, Typeface/Type Font Designs and the article or product and (2) the methods allowed by offices for the representation of animated designs. The Secretariat prepared a draft questionnaire on the basis of the received inputs and questions, for consideration of the SCT at the fortieth session.
 7. At the fortieth session, the Committee consider SCT/40/2 and SCT/40/2 Rev., Graphical User Interface (GUI), Icon, Typeface/Type Font Designs: Draft Questionnaire. The Secretariat was instructed to circulate the questionnaire as contained in SCT/40/2 Rev. to members and the Intergovernmental Intellectual Property Organizations with observer status. The Secretariat was also instructed to compile returns for the questionnaire to be considered at the forty-first session of the SCT.
 8. At the forty-first session, the Committee considered document SCT/41/2 Prov. (Compilation of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Typefont Designs) and agreed to keep the document open until July 31, 2019 for contributions by delegations. SCT members were invited to present proposals for future work.
 9. At the forty-second session, the Committee further considered SCT/41/2 (Compilation of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Typefont Designs) and requested the Secretariat keep the document open for further replies until January 10, 2020, and to prepare a document analyzing all replies at the forty-third session.

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Joint Recommendation

Preamble

Recognizing the rapid development of technology and the Internet and the similarly rapid development of environments and platforms enabling the creation of new industrial designs;

Recognizing the benefits to creators resulting from development of common principles so as to provide for a simplified and reliable framework to protect industrial designs implemented in newly developed technologies;

The following recommendations are intended to facilitate the protection of designs for a graphical user interface (GUI) and to be considered when developing, amending and/or implementing legal, regulatory, and/or practice frameworks concerning the acquisition, maintenance and enforcement of registered industrial design rights, particularly industrial design rights for designs for GUIs.¹

GENERAL

Abbreviated Expressions

For the purposes of these Provisions²:

- (i) “Graphical User Interface (GUI)” broadly refers to any visual interface which allows users to interact with electronic devices through electronic/digital elements;³
- (ii) “Member State” means a State member of the Paris Union for the Protection of Industrial Property and/or the World Intellectual Property Organization;
- (iii) “Hague Agreement” is *The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*;
- (iv) “Paris Convention” is the *Paris Convention for the Protection of Industrial Property*.

PROTECTION AS AN INDUSTRIAL DESIGN

Recommendation 1

Designs for a GUI Protected as Industrial Designs⁴

It is recommended that Member States provide industrial design protection in relation to new or original designs for a graphical user interface (GUI).

Recommendation 2

Industrial Design Protection is Independent of Operational/Temporal Limitations⁵

It is recommended that a design for a GUI be afforded industrial design protection in a Member State without consideration or limitation to the operating status of the underlying electronic device, the amount of time the design is visually available, or how the GUI was installed on a product.⁶

APPLICATION FOR INDUSTRIAL DESIGN PROTECTION

Recommendation 3

Applicant discretion with regard to representations; Format of representation⁷

Provided the representation in an application sufficiently discloses the industrial design claimed, it is recommended that a Member State permit a design for a GUI to be represented using black and white photographs, color photographs, drawings⁸, or other electronic or digital means of visual representation. A Member State may require that a design for a GUI be represented by a single type of format of representation in each application.⁹

Recommendation 4

Entire Product Need Not Be Claimed; Protection in Varied Screen Display Environments^{10 11}

It is recommended that Member States not require as a prerequisite an industrial design application for a design for a GUI to claim an entire underlying or separately saleable product. It is also recommended Member States ensure protection is available for a design for a GUI against use of the design in varied screen display environments without requiring the applicant to file an application for the same design in each environment.

Recommendation 5

*Enabling Accurate and Effective Registration of a Design for a GUI*¹²

It is recommended that Member States provide procedures for filing industrial design applications that facilitate effective and accurate registration of a design for a GUI, including the filing of an application for a design for a GUI that possesses transitional or moving image features or that include a number of views visually related and numbered to give a clear idea of the progression.

Recommendation 6

*Description of Visual Features of a design for a GUI*¹³

Without prejudice to recommendation 5, Member States may require the visual representation of the design be accompanied by descriptive text relating to the visual representation of the design.

Recommendation 7

*Electronic Filing and Electronic Database of Registered Designs for a GUI*¹⁴

It is recommended that Member States provide for electronic filing of a design application for a design for a GUI and shall ensure registered design rights granted from their jurisdiction for these design applications are stored in a publicly accessible electronic database.

EXAMINATION OF THE APPLICATION

Recommendation 8

*Formal and Substantive Examination of a Design for a GUI*¹⁵

It is recommended that an industrial design application for a design for a GUI is examined under the same criteria as to form, and substance where applicable, as other types of industrial design applications.

Recommendation 9

Electronic Priority Document Exchange

It is recommended that Member States provide for exchange of electronic priority documents for industrial design applications including design applications for a GUI, such as exchange via the WIPO Digital Access Service (DAS), to more efficiently enable satisfaction of the requirements for claiming benefit of a foreign priority application under the Paris Convention.

SCOPE AND DURATION OF PROTECTION

Recommendation 10 *Rights granted as industrial designs¹⁶*

It is recommended that the industrial design rights granted by a Member State to a design for a GUI not differ from the industrial design rights granted to designs for other products.

Recommendation 11 *Infringement*

It is recommended that the acts considered by a Member State to infringe industrial design rights for a design for a GUI are the same¹⁷ as those considered to infringe industrial design rights for other products.

Recommendation 12 *Duration of Protection¹⁸*

It is recommended the duration of industrial design protection for a design for a GUI in a Member State is the same as for industrial design rights for other designs, and no shorter than the time period(s) set forth in the Hague Agreement.¹⁹

ENDNOTES

¹ See SCT/37/2 Rev., *Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pgs. 10-11

(“ VI. Conclusions

56. The main trends can be summarized as follows:

- GUIs and icons are almost unanimously protected; typeface/type font designs are also widely protected; in the vast majority of responding jurisdictions, protection is available under several laws;
- In almost all responding jurisdictions, a GUI, icon, typeface/type font design may be represented in black and white or in color photographs; drawings, including technical drawings, are also admitted in many responding jurisdictions; One third of responding jurisdictions provide for additional or special requirements applicable to a GUI and/or icon which is animated. In those jurisdictions, the requirement of series of static images showing a sequence of an animated GUI and/or icon is unanimously accepted;
- In more than two thirds of responding jurisdictions, a GUI/icon can be patented/registered *as such*;
- In most responding jurisdictions, there is no obligation to disclaim letters, numerals, words or symbols contained in a GUI and/or icon. With respect to typefaces/type fonts, they can be registered as a set in the majority of responding jurisdictions;
- Nearly all respondents indicate that the eligibility criteria for GUIs, icons or typefaces/type fonts do not differ from those applied to other industrial designs;
- In the majority of responding jurisdictions, the scope of protection of GUI, icon or typeface/type font designs is not limited by the classification of the industrial design. In more than half of responding jurisdictions, if a GUI and/or icon is protected in relation to one product, it is also protected against its use in relation to another product;
- The duration of protection of GUI, icon or typeface/type font designs is generally the same as the duration of protection of other industrial designs.”)

² The provisions concern only registered industrial design rights and do not cover or otherwise relate to unregistered design rights.

[Endnote continued from previous page]

³ The definition of “Graphical User Interface (GUI)” is based upon the definition set forth in the *AIPPI Summary Report, 2017 - Study Question – General, Protection of graphical user interface*, pg. 1. The term Graphical User Interface (GUI) is intended to be a broad term including but not limited to icons, menus, scroll bars, windows, transitional animations, dialog boxes, etc.

⁴ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 4

(“Question 1 – Does your jurisdiction provide protection for: GUIs, icons, typefaces/type fonts?”)

8. Protection for graphical user interface (GUIs), icon and typeface/type font designs is provided in almost all jurisdictions that responded to the questionnaire (hereinafter referred to as “responding jurisdictions”). Protection is provided for GUIs and icons in 95 per cent of the returns; protection is provided for typefaces/type fonts in 87 per cent of the returns.”)

⁵ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 8

(“Question 10 – Is a GUI and/or icon excluded from protection if it appears only temporarily when a program is loaded?”)

38. More than two-thirds of the respondents do not exclude a GUI and/or icon from protection if it appears only temporarily when a program is loaded (69 per cent of the returns in respect of GUIs and icons).

39. Two NGOs advocate that protection for GUIs and icons should not be excluded if the GUI/icon appears only temporarily when a program is loaded. If the duration of appearance of the GUI or icon is not so short that the eye cannot perceive it consciously, then the criteria of visibility should be met.”)

⁶ For greater clarity, sufficiency of disclosure requirements regarding the visual characteristics of the design itself in the Party still would not be affected.”)

⁷ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 6

(“Question 4 – How may a GUI, icon, typeface/type font be represented in an application for a design patent/industrial design registration in your jurisdiction?”)

21. GUIs, icons and typeface/type fonts may be represented in the vast majority of responding jurisdictions as follows:

- Black and white photographs, admitted in 97 per cent of the returns for GUIs, 95 per cent of the returns for icons, and 92 per cent of the returns for typefaces/type fonts;
- Color photographs, admitted in 95 per cent of the returns for GUIs, 93.75 per cent of the returns for icons, and 90 per cent of the returns for typefaces/type fonts;
- Drawings, including technical drawings, admitted in 65 per cent of the returns for GUIs, in 67 per cent of the returns for icons, and in 61.5 per cent of the returns for typefaces/type fonts. Technical drawings are not accepted in 18 jurisdictions.”)

⁸ “Drawings” broadly includes drawings composed on or using a computer and/or other tools.

⁹ For greater clarity, Member States may require applicants to avoid mixing formats of representation, such as combining color and black and white photographs or combining line drawings and photographs, at their discretion. In some jurisdictions it is believed doing makes it difficult for applicants to accurately provide a proper and full depiction of the visual characteristics of the design.

¹⁰ While industrial designs may be considered to be designs for a product, it is recommended that the applicant be able to claim the design without having to claim the product itself as part of the design. In considering a design for a GUI, issues can arise when applicants are required as a prerequisite for protection to claim the specific or entire product. For example, the scope of the protection can be significantly limited and proper creatorship/inventorship can become an issue if the applicant has not invented/created the underlying device the GUI is claimed with. Additionally, applicants may also be forced to file multiple applications for the exact same design for a GUI in order to acquire effective protection if the design is utilized in a variety of products or environments.

¹¹ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 7

(“Question 7 – Can a GUI and/or icon be patented/registered as such (i.e., independently of the product that incorporates it or in relation to which it is to be used, e.g., smartphone, tablet computer, computer screen)?”)

31. GUIs can be patented/registered as such in 69 per cent of responding jurisdictions. Icons can be patented/registered as such in 67 per cent of responding jurisdictions.

32. One NGO considers that protection for a GUI, icon or font should not be dependent on the product that incorporates it.”)

¹² See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 6

(“Question 5 – Are additional or special requirements applicable to a GUI and/or icon which is animated (moving images design, transformation, transition, change of colors, or any other animation)?”)

[Endnote continued on next page]

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27. There is almost a balance between those responding jurisdictions which have such additional or special requirements (33 per cent of the returns in respect of GUIs and 31.25 per cent of the returns in respect of icons) and those which do not (37.5 per cent of the returns in respect of GUIs and 39 per cent of the returns in respect of icons).

28. One NGO advocates that no additional requirements be applicable for GUIs, icons (or fonts) that are animated.”)

¹³ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 7

(“Question 6 – What are the additional or special requirements applicable to a GUI and/or icon which is animated?)

29. Among those responding jurisdictions requiring additional or special requirements for animated GUIs and/or icons, series of static images showing a sequence of an animated GUI and/or icon are unanimously accepted (100 per cent of the returns). In over one third of the respondents, this is the only additional or special requirement for animated GUIs and/or icons (42 per cent of the returns in respect of GUIs and 43 per cent of the returns in respect of icons).

30. Other additional or special requirements for animated GUIs and/or icons are the following:

– a description (in 48 per cent of the returns in respect of GUIs and 47 per cent of the returns in respect of icons),

– a statement of novelty (in 19 per cent of the returns in respect of GUIs and 20 per cent of the returns in respect of icons).”)

¹⁴ Illustrative examples of online application filing systems would include ARIPO’s online filing

<http://eservice.aripo.org/pmi/PMIMain.do>, EUIPO’s online registration for the European Registered Community Design, the USPTO’s EFSweb <https://www.uspto.gov/patents-application-process/applying-online/about-efs-web> , and the Hague Systems eHague system <https://www.wipo.int/hague/en/e-filing.html>.

Illustrative examples of databases of registered designs includes the WIPO Global Design Database

<https://www.wipo.int/reference/en/designdb/>, the EUIPO’s Designview database <https://www.tmdn.org/tmdsview-web/welcome#/dsview>, the USPTO’s PAIR <https://portal.uspto.gov/pair/PublicPair> and ARIPO’s database search system <http://eservice.aripo.org/pdl/pqs/quickSearchScreen.do>.

¹⁵ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 9

(“Question 14 – Are the eligibility criteria for GUIs, icons or typefaces/type fonts different from those applied to other industrial designs?)

47. Nearly all respondents (97 per cent of the returns in respect of GUIs, 98 per cent of the returns in respect of icons, and 86.5 per cent of the returns in respect of typefaces/type fonts) indicate that the eligibility criteria for GUIs, icons or typefaces/type fonts do not differ from those applied to other industrial designs.”)

¹⁶ See *id.* (See Endnote 14 above)

¹⁷ In considering the same acts, the characteristics of a design for a GUI referred to in Recommendation 2 should be taken into account.

¹⁸ See *SCT/37/2 Rev., Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, pg. 10

(“Question 18 – Is the duration of protection of GUI, icon or typeface/type font designs the same as the duration of protection of other industrial designs?)

54. The vast majority of respondents (92 per cent of the returns in respect of GUIs, 94 per cent of the returns in respect of icons, and 80 per cent of the returns in respect of typeface/type font designs) indicate that the duration of protection of GUI, icon or typeface/type font designs is the same as the duration of protection of other industrial designs.

55. One NGO advocates that the duration of protection for GUI, icon and font designs ought to be the same as for other industrial designs.”)

¹⁹ See Article 17 of the Hague Agreement.

[End of Annex and of document]