



Council of the  
European Union

Brussels, 27 December 2020  
(OR. en)

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Interinstitutional File:  
2020/0381(NLE)

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14335/20  
ADD 3 REV 1

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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 855 final/2
Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information

Delegations will find attached document COM(2020) 855 final/2.

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Encl.: COM(2020) 855 final/2



EUROPEAN  
COMMISSION

Brussels, 26.12.2020  
COM(2020) 855 final/2

ANNEX 3

COM(2020) 855 final of 25.12.2020 downgraded on 26.12.2020

## **ANNEX**

*to the*

### **Proposal for a Council Decision**

**on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information**

## JOINT DECLARATION ON FINANCIAL SERVICES REGULATORY COOPERATION BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM

1. The Union and United Kingdom agree to establish structured regulatory cooperation on financial services, with the aim of establishing a durable and stable relationship between autonomous jurisdictions. Based on a shared commitment to preserve financial stability, market integrity, and the protection of investors and consumers, these arrangements will allow for:

- bilateral exchanges of views and analysis relating to regulatory initiatives and other issues of interest;
- transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions; and
- enhanced cooperation and coordination including in international bodies as appropriate.

2. Both Parties will, by March 2021, agree a Memorandum of Understanding establishing the framework for this cooperation. The Parties will discuss, *inter alia*, how to move forward on both sides with equivalence determinations between the Union and United Kingdom, without prejudice to the unilateral and autonomous decision-making process of each side.

## *JOINT POLITICAL DECLARATION ON COUNTERING HARMFUL TAX REGIMES*

The European Union<sup>1</sup> and the United Kingdom (the 'Participants') endorse the following Joint Political Declaration on Countering Harmful Tax Regimes.

The Participants, reflecting the global principles of fair tax competition, affirm their commitment to countering harmful tax regimes, in particular those that may facilitate base erosion and profit shifting in line with Action 5 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. In this context, the Participants affirm their commitment to applying the principles on countering harmful tax regimes in accordance with this Joint Political Declaration.

Harmful tax regimes cover business taxation regimes that affect or may affect in a significant way the location of business activity, including the location of groups of companies, within the Participants. Tax regimes include both laws or regulations and administrative practices.

If a tax regime meets the gateway criterion of imposing a significantly lower effective level of taxation than those levels which generally apply in the Participants, including zero taxation, it should be considered potentially harmful. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

In this context, and considering the approach set out at the global level, when assessing whether a business taxation regime is harmful, account should be taken of whether one or more of the following key factors apply:

- (a) whether advantages are ring-fenced from the domestic economy so that they do not affect the national tax base or are accorded only to non-residents;
- (b) whether the regime granting the advantages fails to require any substantial economic activity and substantial economic presence within the Participant offering such tax advantages;
- (c) whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, in particular the rules agreed upon within the OECD;
- (d) whether the tax regime lacks transparency, including where legal provisions are relaxed at administrative level in a non-transparent way or where there is no effective exchange of information with respect to the regime.

The Participants should encourage, within the framework of their constitutional arrangements, the application of these principles in the territories for which they have special responsibilities or taxation prerogatives.

The Participants should hold an annual dialogue to discuss issues in relation to the application of these principles.

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<sup>1</sup> For the purposes of the commitments in this Declaration, with respect to the European Union, references to Participants are understood as being to the European Union, its Member States, or the European Union and its Member States, as the case may be.

*JOINT DECLARATION OF THE EUROPEAN UNION AND THE UNITED KINGDOM ON MONETARY  
POLICIES AND SUBSIDY CONTROL*

The Parties confirm their mutual understanding that activities conducted by a central bank in pursuit of monetary policies do not fall within the scope of Chapter 3 [Subsidy control] of Title XI [Level playing field for open and fair competition and sustainable development] of Heading One [Trade] of Part Two of the Trade and Cooperation Agreement between the European Union and the United Kingdom.

## *JOINT DECLARATION ON SUBSIDY CONTROL POLICIES*

The European Union and the United Kingdom (“the Participants”) endorse the following Political Declaration on Subsidy Control Policies.

The guidance in this joint declaration represents the Participants’ shared understanding of the appropriate subsidy policies in the areas set up below.

While it is not binding on the Participants, they may take this guidance into consideration in their respective systems of subsidy control.

The Participants may agree to update this guidance.

### *Subsidies for the development of disadvantaged areas*

1. Subsidies may be granted for the development of disadvantaged or deprived areas or regions. When determining the amount of subsidy, the following may be taken into account:

- the socio-economic situation of the disadvantaged area concerned;
- the size of the beneficiary; and
- the size of the investment project.

2. The beneficiary should provide its own substantial contribution to the investment costs. The subsidy should not have as its main purpose or effect to incentivise the beneficiary to transfer the same or a similar activity from the territory of one Party to the territory of the other Party.

### *Transport*

1. Subsidies to airports for infrastructure investments and operating costs may be granted taking into account the size of the airport in terms of annual passenger volume. In order to receive subsidies to fund operating costs, an airport, other than a small regional airport, should demonstrate its ability to ensure future viability within a period of time which would allow for the subsidy to be progressively phased out.

2. Subsidies to road infrastructure projects may be granted if they are not designed selectively to benefit an individual economic actor or sector, but instead provide benefits to society at large. When granting the subsidy, it should be ensured that open access to infrastructure is available to all users on a non-discriminatory basis<sup>2</sup>.

3. Subsidies to ports may be granted for dredging or for infrastructure projects if they are limited to the minimum amount necessary to commence the project.

### *Research and development*

Subsidies may be granted for research and development activities<sup>3</sup>. This includes fundamental research, industrial research and experimental development, in particular the development of new and highly innovative technology which drives productivity growth and competitiveness, if they are necessary, proportionate, and do not have as their main purpose or effect the transfer or closure of such activities in the territory of the other Party. Subsidies may also be granted in connection with

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<sup>2</sup> For this purpose, discrimination means that comparable situations are treated differently and the differentiation is not objectively justified.

<sup>3</sup> Research and Development as defined in the OECD Frascati Manual

other initiatives, such as for new production processes, relevant infrastructure, innovation clusters and digital hubs. The amount of subsidy should reflect, amongst other factors, the risk and amount of technological innovation involved in the project, how close the project is to the market and the project's contribution to knowledge generation.

*JOINT DECLARATION BY THE UNION AND THE UNITED KINGDOM ON ANNEX ENER-4*

The Parties understand that the objective of maximising the benefits of trade referred to in Annex ENER-4 means that, within the constraints set out in that Annex, the trading arrangements:

- should be as efficient as possible; and
- should, under normal circumstances, result in flows across electricity interconnectors being consistent with the prices in the Parties' day-ahead markets.



*JOINT DECLARATION ON ARTICLE EXC.1 [GENERAL EXCEPTIONS] AND ARTICLE EXC.4 [SECURITY EXCEPTIONS]*

The Parties confirm their common understanding that:

1. Article EXC.1 [General Exceptions] and Article EXC.4 [Security Exceptions] are not mutually exclusive. In particular, it is not excluded that a security interest of a Party qualifies simultaneously as an “essential security interest” for the purposes of Article EXC.4 [Security Exceptions] and as a matter of “public security” or “public order” for the purposes of Article EXC.1 [General Exceptions].
2. Article EXC.1 [General exceptions] and Article EXC.4 [Security Exceptions], including in particular the terms “essential security interests”, “public security”, “public morals” and “public order” are to be interpreted in accordance with the rules of interpretation of the Trade and Cooperation Agreement between the European Union and the United Kingdom, as set out in Article COMPROV.13 [Interpretation] and Article OTH.[4a] [WTO case law].

#### *JOINT POLITICAL DECLARATION ON ROAD HAULIERS*

The Parties note that while the Trade and Cooperation Agreement between the European Union and the United Kingdom does not deal with visa or border arrangements for road hauliers operating in the territory of the other party, the good and efficient management of visa and border arrangements for road hauliers is important for the movement of goods, in particular across the United Kingdom-Union border.

To this end, and without prejudice of the rights of each Party to regulate the entry of natural persons into, or their temporary stay in, its territory, the Parties agree to facilitate appropriately within their respective laws the entry and temporary stay of drivers carrying out the activities permitted under Title I [Transport of goods by road] of Heading Three [Road transport] of Part Two [Trade, transport and fisheries] of this Agreement.

# *JOINT POLITICAL DECLARATION ON ASYLUM AND RETURNS*

While the Trade and Cooperation Agreement between the European Union and the United Kingdom does not include provisions on asylum, returns, family reunion for unaccompanied minors, or illegal migration, the Parties note the importance of good management of migratory flows, and recognise the special circumstances arising from the juxtaposed control arrangements, roll-on roll-off ferry services, the Channel Fixed Link and the Common Travel Area.

To this end, the Parties take note of the United Kingdom's intention to engage in bilateral discussions with the most concerned Member States to discuss suitable practical arrangements on asylum, family reunion for unaccompanied minors or illegal migration, in accordance with the Parties' respective laws and regulations.

*JOINT POLITICAL DECLARATION ON TITLE III [PNR] OF PART THREE [LAW ENFORCEMENT AND  
JUDICIAL COOPERATION IN CRIMINAL MATTERS]*

The Parties acknowledge that the effective use of passenger name record (PNR) data concerning modes of transport other than flights, such as maritime, rail and road carriers, presents operational value for the prevention, detection, investigation and prosecution of terrorism and serious crime, and declare their intention to review and, if necessary, extend the agreement reached in Title III of Part Three of the Trade and Cooperation Agreement between the European Union and the United Kingdom if the Union establishes an internal legal framework for the transfer and processing of PNR data for other modes of transport.

The Agreement does not affect the possibility for the Member States and the United Kingdom to enter into and operate bilateral agreements for a system for collecting and processing PNR data from transportation providers other than those specified in the Agreement, provided that the Member States act in compliance with Union law.

*JOINT POLITICAL DECLARATION ON TITLE VII [SURRENDER] OF PART THREE [LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS]*

Article LAW.SURR.77 [Principle of proportionality] of Title VII [Surrender][ of Part Three [Law enforcement and judicial cooperation in criminal matters] provides that cooperation on surrender must be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person, particularly with a view to avoiding unnecessarily long periods of pre-trial detention.

The principle of proportionality is relevant throughout the process leading to the surrender decision set out in Title VII [Surrender]. Where the executing judicial authority has concerns about the principle of proportionality, it shall request the necessary supplementary information to enable the issuing judicial authority to set out its views on the application of the principle of proportionality.

Both Parties note that Articles LAW.SURR 77 [Principle of proportionality] and 93 [Surrender decision] enable the competent judicial authorities of the States to consider proportionality and the possible duration of pre-trial detention when implementing Title VII [Surrender], and note that this is consistent with their respective domestic laws.

*JOINT POLITICAL DECLARATION ON TITLE IX [EXCHANGE OF CRIMINAL RECORD INFORMATION] OF  
PART THREE [LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS]*

The Parties acknowledge that it is important for employers to have information regarding the existence of criminal convictions and regarding any relevant disqualifications arising from such convictions, in relation to persons they recruit for professional or organised voluntary activities that involve direct and regular contacts with vulnerable adults. The Parties declare their intention to review and, if necessary, extend Title IX [Exchange of criminal record information] of Part Three [Law enforcement and judicial cooperation in criminal matters] if the Union amends its legal framework in this respect.

*JOINT EU-UK DECLARATION ON THE EXCHANGE AND PROTECTION OF CLASSIFIED INFORMATION*

The Parties acknowledge the importance of entering as soon as possible into arrangements that enable the exchange of classified information between the European Union and the United Kingdom. In this regard, the Parties will exert their best endeavours to complete negotiations on the Security of Information Agreement's implementing arrangement, as soon as it is reasonably practicable, to allow the Security of Information Agreement to apply, as required under Article 19(2) of the Agreement. In the meantime, the Parties may exchange classified information, in accordance with their respective laws and regulations.

*JOINT DECLARATION ON PARTICIPATION IN UNION PROGRAMMES AND ACCESS TO PROGRAMME SERVICES*

The Parties recognise the mutual benefit in cooperation in areas of shared interest, such as science, research and innovation, nuclear research and space. To encourage future cooperation in these areas, it is the Parties' intention to establish a formal basis for future cooperation in the form of the participation of the United Kingdom in the corresponding Union programmes under fair and appropriate conditions and, where appropriate, in the form of access to certain services provided under Union programmes.

The Parties acknowledge that the text of Protocol I "Programmes and activities in which the United Kingdom participates" establishing an association of the United Kingdom for participation in certain Union programmes and activities, and Protocol II "on access of the United Kingdom to certain services provided under Union programmes and activities" could not be finalised during the negotiations of the Trade and Cooperation Agreement between the European Union and the United Kingdom, as the Multiannual Financial Framework and corresponding Union legal instruments have not yet been adopted at the time of signature of the Agreement.

The Parties affirm that the draft protocols set out below have been agreed in principle and will be submitted to the Specialised Committee on Participation in Union Programmes for discussion and adoption. The United Kingdom and European Union reserve their right to reconsider participation in the programmes, activities and services listed in Protocols [I and II] before they are adopted since the legal instruments governing the Union programmes and activities may be subject to change. The draft protocols may also need to be amended to ensure their compliance with these instruments as adopted.

It is the Parties' firm intention that the Specialised Committee on Participation in Union Programmes will adopt the Protocols at the earliest opportunity to allow their implementation as soon as possible, in particular with the ambition that United Kingdom entities would be able to participate from the beginning of the programmes and activities identified, ensuring relevant arrangements and agreements are in place, insofar as possible and in accordance with Union legislation.

The Parties also recall their commitment to the PEACE+ programme which will be the subject of a separate financing agreement.



## *DRAFT PROTOCOL I*

### Programmes and activities in which the United Kingdom participates

#### Article 1: Scope of the United Kingdom's participation

1. The United Kingdom shall participate in and contribute [as of 1 January 2021] to the Union programmes and activities, or parts thereof, established by the following basic acts:
  - (a) Regulation XXX of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU<sup>4</sup>, insofar as it concerns the rules applicable to the component referred to in point (c) of Article 3 of that Regulation; [Copernicus]
  - (b) Regulation XXX of the European Parliament and of the Council establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination<sup>5</sup>, insofar as it concerns the rules applicable to the components referred to in paragraph 3(a) and (aa) of Article 1 of that Regulation;
  - (c) Decision XXX of the European Parliament and of the Council on establishing the specific programme implementing Horizon Europe – the Framework Programme for Research and Innovation<sup>6</sup>;
  - (d) Council Regulation XXX establishing the Research and Training Programme of the European Atomic Energy Community, Euratom, for the period 2021-2025 complementing Horizon Europe – the Framework Programme for Research and Innovation<sup>7</sup> (the 'Euratom Programme');
  - (e) Council Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER ('F4E') and the Development of Fusion Energy and conferring advantages upon it ('F4E Council Decision')<sup>8</sup>.

#### Article 2: Duration of the United Kingdom's participation

1. The United Kingdom shall participate in the Union programmes and activities, or parts thereof, referred to in Article 1 [Scope of the United Kingdom's participation] from [1 January 2021] for their duration or for the duration of the multiannual financial framework 2021-2027, whichever is shorter.
2. The United Kingdom or United Kingdom entities shall be eligible under the conditions laid down in Article UNPRO.1.4 [Compliance with programme rules], with regard to Union award procedures, which implement the budgetary commitments of the programmes and activities or parts

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<sup>4</sup> [insert OJ reference]

<sup>5</sup> [insert OJ reference]

<sup>6</sup> [insert OJ reference]

<sup>7</sup> [insert OJ reference]

<sup>8</sup> [insert OJ reference] (as amended)

thereof, referred to in Article 1 [Scope of United Kingdom's participation] within the time limits set out in the first paragraph of this Article.

3. This Protocol shall be extended and apply for the period 2026-2027 under the same terms and conditions to the successor of the Research and Training Programme of the European Atomic Energy Community, Euratom ("Euratom Programme"), unless within 3 months of the publication in the Official Journal of the European Union of that successor programme either Party notifies its decision not to extend this Protocol to that successor programme. In case of such a notification, this Protocol shall not apply as of 1 January 2026 in respect of the successor to the Euratom Programme. This shall be without prejudice to the participation of the United Kingdom in other Union programmes and activities, or parts thereof.

### Article 3: Specific terms and conditions of participation in the Space Programme

1. Subject to the provisions of the Trade and Cooperation Agreement between the European Union and the United Kingdom and in particular of Article UNPRO.1.4 [Compliance with programme rules], the United Kingdom shall participate in the Copernicus component of the Space programme and benefit from Copernicus services and products in the same way as other participating countries<sup>9</sup>.

2. The United Kingdom shall have full access to the Copernicus Emergency Management Service. The modalities of activation and use shall be subject to a specific agreement.

Detailed rules for the access to such services shall be laid down in the respective agreement including in relation to the specific operation of Articles UNPRO.3.1(4), UNPRO.3.2(4) and UNPRO.3.3(5).

3. The United Kingdom shall have access as authorised user to the Copernicus Security Service components to the extent the cooperation between the parties in the relevant policy areas is agreed. The modalities of activation and use shall be subject to specific agreements.

Detailed rules for the access to such services shall be laid down in the respective agreements including in relation to the specific operation of Articles UNPRO.3.1(4), UNPRO.3.2(4) and UNPRO.3.3(5).

4. For the purposes of paragraph 3, negotiations between the United Kingdom or United Kingdom entities and the relevant Union body shall start as soon as possible after the participation of the United Kingdom in Copernicus has been established in this Protocol and in accordance with the provisions governing the access to such services.

Should such an agreement be substantially delayed or prove impossible, the Specialised Committee on Participation on Union Programmes shall examine how to adjust the participation of the United Kingdom in Copernicus and its financing taking into account this situation.

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<sup>9</sup> References to "participating countries" to be finalised in line with terminology of basic acts when adopted

5. Participation by the United Kingdom's representatives in the Security Accreditation Board meetings shall be governed by the rules and procedures for participating in this board taking into account the status of the United Kingdom as a third country.

#### Article 4: Specific terms and conditions of participation in the Horizon Europe Programme

1. Subject to Article 6, the United Kingdom shall participate as an associated country in all parts of the Horizon Europe programme as referred to in Article 4 of Regulation XXX implemented through the specific programme established by Decision XXX on establishing the specific programme implementing Horizon Europe – the Framework Programme for Research and Innovation and through a financial contribution to the European Institute of Innovation and Technology established by Regulation (EC) No 294/2008 of the European Parliament and of the Council of 11 March 2008.

2. Subject to the provisions of the Trade and Cooperation Agreement between the European Union and the United Kingdom and in particular of Article UNPRO.1.4 [Compliance with programme rules], United Kingdom entities may participate in direct actions of the Joint Research Centre (JRC) and in indirect actions under equivalent conditions as those applicable to Union entities.

3. Where the Union adopts measures for the implementation of Articles 185 and 187 of the Treaty on the Functioning of the European Union, the United Kingdom and United Kingdom entities may participate in the legal structures created under those provisions, in conformity with the Union legal acts relating to the establishment of these legal structures.

4. Regulation (EC) No 294/2008 of the European Parliament and of the Council of 11 March 2008 establishing the European Institute of Innovation and Technology<sup>10</sup>, as amended, and Decision XXX on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021-2027: Boosting the Innovation Talent and Capacity of Europe<sup>11</sup>, as amended, shall apply to participation of United Kingdom entities in Knowledge and Innovation Communities in conformity with Article UNPRO.1.4 [Compliance with programme rules].

5. Where United Kingdom entities participate in direct actions of the Joint Research Centre, representatives of the United Kingdom shall have the right to participate as observers in the Board of Governors of the Joint Research Centre, without voting rights. Subject to that condition, such participation shall be governed by the same rules and procedures as those applicable to representatives of Member States, including speaking rights and procedures for receipt of information and documentation in relation to a point that concerns the United Kingdom.

6. For the purposes of calculating the operational contribution pursuant to Article UNPRO.2.1(5) the initial commitment appropriations entered in the Union budget definitively adopted for the applicable year for financing Horizon Europe, including the support expenditure of the programme, shall be increased by the appropriations corresponding to external assigned revenue

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<sup>10</sup> OJ L 97, 9.4.2008.

<sup>11</sup> [OJ L ...]

under [Article XXX] of Council Regulation [XXX] establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic<sup>12</sup>.

7. United Kingdom rights of representation and participation in the European Research Area Committee and its subgroups shall be those applicable to associated countries.

8. The United Kingdom may participate in a European Research Infrastructure Consortium ('ERIC') in accordance with the legal acts establishing that ERIC and taking into account its participation in Horizon 2020 in accordance with the terms which apply to that participation immediately before this Protocol entered into force and its participation in Horizon Europe as established in this Protocol.

Article 5: Modalities on the application of an automatic correction mechanism to the Horizon Europe Programme under Article UNPRO.2.2 [Programmes to which an automatic correction mechanism applies]

1. Article UNPRO.2.2 [Programmes to which an automatic correction mechanism applies] shall apply to the Horizon Europe programme.

2. The following modalities shall apply:

- (a) for the purposes of calculating the automatic correction, 'competitive grants' means grants awarded through calls for proposals where the final beneficiaries can be identified at the time of the calculation of the automatic correction with the exception of financial support to third parties as defined in Article 204 of the Financial Regulation<sup>13</sup> applicable to the general budget of the Union;
- (b) where a legal commitment is signed with a coordinator of a consortium, the amounts used to establish the initial amounts of the legal commitment referred to in the first paragraph of Article UNPRO.2.2 [Programmes to which an automatic correction mechanism applies] shall be the cumulative initial amounts allocated in the legal commitment to members of a consortium that are United Kingdom entities.
- (c) All amounts of legal commitments shall be established using the European Commission electronic system eCorda;

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<sup>12</sup> [OJ L ...; COM(2020) 441]

<sup>13</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ EU L 193, 30.7.2018, p. 1).

- (d) 'Non-intervention costs' means operational programme costs other than competitive grants, including support expenditure, programme-specific administration, other actions<sup>14</sup>;
- (e) amounts allocated to international organisations as legal entities being the final beneficiary<sup>15</sup> shall be considered as non-intervention costs.

3. The mechanism shall be applied as follows:

- (a) Automatic corrections for year N in relation to the execution of commitment appropriations for year N shall be applied based on data on year N and year N+1 from eCorda referred to in point (c) of paragraph 2 in year N+2 after any adjustments pursuant to Article UNPRO.2.1(8) have been applied to the United Kingdom's contribution to Horizon Europe. The amount considered will be the amount of competitive grants for which the data is available.
- (b) The amount of the automatic correction shall be calculated by taking the difference between:
  - (i) the total amount of these competitive grants apportioned to United Kingdom entities as commitments made on budget appropriations of year N; and
  - (ii) the amount of the United Kingdom adjusted contribution for year N multiplied by the ratio between:
    - (A) the amount of competitive grants made on commitment appropriations of year N for this programme, and
    - (B) the total of all the legal commitments made on commitment appropriations of year N, including support expenditure.

Where any adjustment for situations where United Kingdom entities are excluded, is made, pursuant to the application of Article UNPRO.2.1(8), the corresponding competitive grant amounts shall not be included in the calculation.

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<sup>14</sup> "Other actions" might include prizes, financial instruments, provision of technical/scientific services by JRC, Subscriptions (OECD, Eureka, IPEEC, IEA, ...), delegation agreements, Experts (evaluators, monitoring of projects).

<sup>15</sup> International organisations would only be considered as non-intervention costs if they are final beneficiaries. This will not apply where an international organization is a coordinator of a project (distributing funds to other coordinators)

## Article 6: Exclusion from the European Innovation Council Fund

1. The United Kingdom and United Kingdom entities shall not participate in the European Innovation Council (EIC) Fund established under Horizon Europe. The EIC Fund is the financial instrument which is the part of the EIC Accelerator of Horizon Europe that provides investment through equity or other repayable form<sup>16</sup>.
2. As from 2021, and until 2027, each year, the contribution of the United Kingdom to Horizon Europe shall be adjusted by an amount obtained by multiplying the estimated amounts to be allocated to beneficiaries of the EIC Fund established under the programme, excluding the amount stemming from repayments and reflows, by the contribution key as defined in Article UNPRO.2.1(6).
3. Following any year N in which an adjustment has been made under paragraph 2, the United Kingdom's contribution shall in subsequent years be adjusted upwards or downwards, by multiplying the difference between the estimated amount allocated to beneficiaries of the EIC Fund, as referred in Article 6(2), and the amount allocated to beneficiaries of the EIC Fund in year N, by the contribution key, as defined in Article UNPRO 2.1(6).

## Article 7: Specific terms and conditions of participation in the Euratom Programme

1. The United Kingdom shall participate as an associated country in all parts of the Euratom Programme.
2. Subject to the provisions of the Trade and Cooperation Agreement between the European Union and the United Kingdom and in particular of Article UNPRO.1.4 [Compliance with programme rules], United Kingdom entities may participate in all aspects of the Euratom Programme under equivalent conditions as those applicable to Euratom legal entities.
3. United Kingdom entities may participate in direct actions of the JRC in accordance with Article 4(2) of this Protocol.

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<sup>16</sup> This definition shall be replaced by the definition from a legislative act with a reference in a footnote to this legislative act in the final version of the protocol (last definition of the EIC Fund in Horizon 2020 is decision C(2020) 4001 of the Commission amending decision C(2019) 5323). In case there is no definition available in relation with Horizon Europe when the protocol is finalised, the definition might have to be revisited.

Article 8: Specific terms and conditions for participation in activities of the European Joint Undertaking for ITER and the Development of Fusion Energy, the ITER Agreement and the Broader Approach Agreement

1. The United Kingdom shall participate as a member of the Joint Undertaking for ITER and the development of Fusion Energy (F4E) in accordance with the F4E Council Decision, and its Statutes attached to it (the 'F4E Statutes'), as last amended or to be amended in the future, contributing to the future scientific and technological cooperation in the field of controlled nuclear fusion through the United Kingdom's association to the Euratom Programme.
2. Subject to the provisions of the Trade and Cooperation Agreement between the European Union and the United Kingdom and in particular of Article UNPRO.1.4 [Compliance with programme rules], United Kingdom entities may participate in all the activities of F4E under the same conditions as those applicable to Euratom legal entities.
3. Representatives of the United Kingdom shall participate in the meetings of the F4E in accordance with the F4E Statutes.
4. In accordance with Article 7 of the F4E Council Decision, the United Kingdom shall apply the Protocol on the Privileges and Immunities of the European Communities to the Joint Undertaking, its Director and staff in connection with their activities pursuant to the F4E Council Decision. In accordance with Article 8 of the F4E Council Decision, the United Kingdom shall also confer all the advantages provided for in Annex III to the Euratom Treaty on the F4E Joint Undertaking within the scope of its official activities.
5. The Parties agree that:
  - (a) The Agreement on the Establishment of the ITER International Fusion Energy Organization for the joint implementation of the ITER project (ITER-Agreement) shall apply to the territory of the United Kingdom, and for the purposes of the application of this Article, this Protocol shall be considered as a relevant agreement for the purposes of Article 21 of the ITER-Agreement;
  - (b) The Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (Agreement on the Privileges and Immunities) shall apply to the territory of the United Kingdom, and for the purposes of the application of this Article, this Protocol shall be considered as a relevant agreement for the purposes of Article 24 of the Agreement on the Privileges and Immunities; and
  - (c) The Agreement between Euratom and the Government of Japan for the joint implementation of the Broader Approach Activities in the field of fusion energy research (Broader Approach Agreement) shall apply to the territory of the United Kingdom, in particular the privileges and immunities under Articles 13 and 14.5, and for the purposes of the application of this Article, this Protocol shall be considered as a relevant agreement for the purposes of Article 26 of the Broader Approach Agreement.
6. The United Kingdom shall be informed by Euratom if the ITER Agreement, the Broader Approach Agreement or the Agreement on the Privileges and Immunities are to be amended. Any amendment that would affect the United Kingdom's rights or obligations shall in this respect be discussed in the Specialised Committee on Participation in Union Programmes with a view to adjust

the participation of the United Kingdom to the new situation. Any amendment that would affect the United Kingdom's rights and obligations requires the United Kingdom's formal agreement before taking effect in respect of the United Kingdom.

7. Euratom and the United Kingdom may agree in a specific agreement that legal entities established in the Union may be eligible to participate in United Kingdom activities related to the activities carried out by F4E.

#### Article 9: Reciprocity

For the purpose of this article "Union entity" means any type of entity, whether a natural person, legal person or another type of entity, who resides or which is established in the Union.

Eligible Union entities may participate in programmes of the United Kingdom equivalent to those referred in points (b), (c) and (d) of Article 1 [Scope of the United Kingdom's participation] of this Protocol in accordance with United Kingdom law and rules.

#### Article 10: Intellectual property

For the programmes and activities listed in Article 1 [Scope of the United Kingdom's participation] and subject to the provisions of the Trade and Cooperation Agreement between the European Union and the United Kingdom and in particular of Article UNPRO.1.4 [Compliance with programme rules], United Kingdom entities participating in programmes covered by this Protocol shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have equivalent rights and obligations as entities established in the Union participating in the programmes and activities in question. This provision shall not apply to the results obtained from projects started before the application of this Protocol.



## *DRAFT PROTOCOL II*

on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate

### Article:1 Scope of the access

The United Kingdom shall have access to the following services under the terms and conditions established in the Trade and Cooperation Agreement between the European Union and the United Kingdom, the basic acts and any other rules pertaining to the implementation of the relevant Union programmes and activities:

(a) Space Surveillance and Tracking (SST) Services as defined in Article 54 of Regulation XXX<sup>17</sup> [the Space Regulation].

Pending the entry into force of the implementing acts setting the third country conditions to the three publicly available SST services, SST services as referred to in Article 5.1 of Decision 541/2014/EU shall be provided to the United Kingdom and public and private spacecraft owners and operators operating in or from the United Kingdom in accordance with Article 5.2 of this decision (or any legislation replacing it with or without modification).

### Article 2: Duration of the access

The United Kingdom shall have access to the services referred to in Article 1 for their entire duration or for the entire duration of the multiannual financial framework 2021-2027, whichever is shorter.

### Article 3: Specific terms and conditions for access to SST services

Access of the United Kingdom to publicly available SST services referred to in point (a), (b) and (c) of Article 54(1) of that Regulation shall be granted<sup>18</sup> in accordance with Article 8(1) of Regulation XXX ,upon request and subject to conditions applicable to third countries.

Access of the United Kingdom to SST services referred to in point (d) of Article 54(1) of the basic act shall, when available<sup>19</sup>, be subject to conditions applicable to third countries.

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<sup>17</sup> Regulation XXX of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU[COM/2018/447 final] [OJ L ...].

<sup>18</sup> This is subject to the final condition of the basic act and provided that both Parties agree on the condition for the provision of the SST service.

<sup>19</sup> This is subject to the final condition of the basic act and provided that both Parties agree on the condition for the provision of the SST service.

*DECLARATION ON THE ADOPTION OF ADEQUACY DECISIONS WITH RESPECT TO THE UNITED  
KINGDOM*

The Parties take note of the European Commission's intention to promptly launch the procedure for the adoption of adequacy decisions with respect to the UK under the General Data Protection Regulation and the Law Enforcement Directive, and its intention to work closely to that end with the other bodies and institutions involved in the relevant decision-making procedure.