



Council of the European Union
General Secretariat

Brussels, 29 December 2020

CM 5525/20

**UK
PROCED**

COMMUNICATION

WRITTEN PROCEDURE

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Subject: 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

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

Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information

Declarations and Notification referred to in the Council Decision on the signing, on behalf of the Union, and on a provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information

Statement by the Council

– End of written procedure

Delegations are informed that the written procedure, opened by CM 5523/20 on 28 December 2020, was successfully completed at 15.00 on 29 December 2020.

All delegations:

- voted in favour of the adoption of the 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, as set out in document ST 13904/20. The required unanimity has been reached.
- agreed to the approval of the following:
 - i) the Trade and Cooperation Agreement, as set out in document ST 14335/20 ADD 1 REV 2, subject to final legal-linguistic revision;
 - ii) the Agreement concerning security procedures for exchanging and protecting classified information, as set out in document ST 14335/20 ADD 2 REV 1, subject to final legal-linguistic revision;
 - iii) the declarations in relation to the Trade and Cooperation Agreement and the Agreement concerning security procedures for exchanging and protecting classified information, as set out in document ST 14368/20;
 - iv) the notification by the European Union under the Trade and Cooperation Agreement, as set out in document ST 14367/20;
 - v) the statement by the Council, to be recorded in its minutes, as set out in document ST 14339/20.

Therefore,

- the abovementioned Council Decision is adopted;
- the above mentioned Trade and Cooperation Agreement is approved;
- the abovementioned Agreement concerning security procedures for exchanging and protecting classified information is approved;
- the abovementioned declarations are approved;
- the abovementioned notification is approved;
- the statement by the Council is approved and will be recorded in its minutes.

The European Parliament will be informed in accordance with Article 218(10) TFEU.

The statements for the minutes of the Council by Austria, Cyprus, the Netherlands, and the Commission are reproduced in the Annex to this CM. The statements by Portugal and Spain, and by the Commission are reproduced in Addendum to this CM (CM 5525/20 ADD 1).

The abovementioned statements will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

The Council Secretariat takes this opportunity to thank Delegations for their kind cooperation.

Statements for the minutes of the Council

– Statement by Austria:

"Concluding social security agreements with third countries lies within Member States' competence, which have to respect the obligations under the TFEU when doing so (e.g. case C-55/00, Gottardo). Nevertheless, the Trade and Cooperation Agreement contains also provisions concerning the coordination of the respective social security systems, taking into account the unique situation of the relation between the EU and the UK.

These provisions cannot put in question the competence of Member States to conclude bilateral agreements with other third countries in the future and cannot have an impact on the content of such agreements. Also in relation to the UK the competence exercised by the EU in the Trade and Cooperation Agreement must remain limited to the absolutely necessary issues. Therefore, the term "subject matters covered by the Protocol on Social Security" must be interpreted as exemption from the principle of autonomy of Member States in this field and must be interpreted restrictively. Member States must be free to agree with the UK on principles or provisions not contained in the Protocol on Social Security Coordination as long as they correspond e.g. to the provisions of Regulations (EC) No. 883/2004 and 987/2009. The procedures provided in Article 7 of the 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] cannot hinder the exercise of these rights of the Member States.]"

– Statement by the Kingdom of the Netherlands:

"The Netherlands notes that, by agreeing as a member of the Council to the Council Decision on the signing on behalf of the Union, and on the provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information, it agrees to the provisional application of both agreements in their entirety. This will include the provisional application of both exclusive competences of the Union and, in this particular case, non-exclusive competences of the Union exercised by the Union.

The Netherlands notes that this provisional application is without prejudice to the allocation of competences between the Union and its Member States in accordance with the Treaties. The application of the agreements on a provisional basis, pending the completion of the procedures necessary for their entry into force, allows the European Parliament and the Council to appropriately scrutinize the envisaged decision on the conclusion of the Agreements, which is to be taken by unanimity in the Council, and the text of the Agreements. It will also allow the Dutch parliament to further scrutinise the agreements and exercise its role prior to the adoption of the Council decision on the conclusion of the Agreements."

– Statement by Cyprus on the Decision on signing:

"The division of competences between the EU and its 1 member states, in relation to air transport, is explicitly governed by the Treaties and the Court's jurisprudence. The exercise of the Union's competence through the Trade and Cooperation Agreement, in the area of air services, shall be without prejudice to the competence of member states concerning air traffic rights, in any ongoing or future negotiations, signature or conclusion of international agreements with any third country, in the area of air services and shall not constitute a precedent to this effect."

– Statement by the Commission on art. 4 of the Decision on signing:

"In relation to Article 4 of the Council Decision for the signature and 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, which empowers the Commission to approve on the Union's behalf some suspension and implementation of the agreement. The Commission recalls that Provisional Application is a temporary anticipation of the application of an international agreement pending its conclusion and as such is subject to the strict requirements under the Treaty, the Commission recalls that Provisional Application is a temporary anticipation of the application of an international agreement pending its conclusion and as such is subject to the strict requirements under the Treaty. The Commission also notes that Article 218(7) TFEU is a derogation to the ordinary procedures under paragraphs 5, 6 and 9 of the same Article and for that reason it shall be of strict interpretation as the ECJ has consistently held and that can be provided for only "when concluding an agreement".

The Commission considers that the concrete use of such empowerment will be limited to situations that requires urgent actions that cannot be delayed, and it plans in any event to associate the European Parliament in the appropriate form."

– Statement by the Commission on the amendments to the Euratom recommendation:

"The Commission takes note that the Council approves the conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and 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, only subject to the condition that those agreements be signed and be applied on a provisional basis as from 1 January 2021. The Commission recalls that the power to conclude international agreements is vested in the Commission under Article 101 of the Treaty. It follows that pursuant to the Euratom Treaty, it is for the Commission to decide on the signature and to ensure the provisional application of such agreements in accordance with the approval given by Council."

– Statement by the Commission on competences:

"The Commission recalls that the division of competences as between the Union and the Member States is exhaustively dealt with in the Treaties. In accordance with the jurisprudence of the Court of justice, the legislator has no power to alter that division.

Against this background, the Commission considers that the exercise of Union competence through the Trade and Cooperation Agreement is in accordance with the respective competences of the Union and of the Member States. This is without prejudice to any ongoing or future negotiations for, or signature or conclusion of, international agreements with any other third country."

– Statement by the Commission on Gibraltar:

"Following the Joint Declaration of the European Council and of the European Commission on the territorial scope of agreements to be concluded between the Union and the United Kingdom of 25 November 2018, the agreement to be signed between the Union and the United Kingdom on 30 December 2020 does not include Gibraltar.

This does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar. The Commission stands ready to examine any request from Spain, in agreement with the United Kingdom, to initiate the procedure for the negotiation of such separate agreements should they be compatible with Union law and the Union interests."
