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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 351 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in working groups established by, or subsequently established under, 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, as regards the adoption of their rules of procedure

Delegations will find attached document COM(2023) 351 final.

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2023/0203 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in working groups established by, or subsequently established under, 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, as regards the adoption of their rules of procedure

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be taken on behalf of the European Union in working groups established by, or subsequently established under, 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 (the Trade and Cooperation Agreement), as regards the adoption of their rules of procedure.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade and Cooperation Agreement

The Trade and Cooperation Agreement establishes the basis for a broad relationship between the European Union and the United Kingdom. It entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.

2.2. Working groups

The Trade and Cooperation Agreement establishes an institutional framework, including, *inter alia,* a Partnership Council (Article 7), 19 Committees (Article 8) and four working groups (Article 9).

Article 9(1) establishes the Working Group on Organic Products, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; the Working Group on Motor Vehicles and Parts, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; the Working Group on Medicinal Products, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; and the Working Group on Social Security Coordination, under the supervision of the Specialised Committee on Social Security Coordination.

Article 8(2)(h) provides that the Trade Partnership Committee shall have the power to establish, supervise, coordinate and dissolve working groups, or delegate their supervision to a Trade Specialised Committee. Similarly, Article 8(4)(f) provides that Specialised Committees shall have the power to establish, supervise, coordinate and dissolve working groups.[1]

Article 9(2) establishes that working groups shall, under the supervision of Committees, assist Committees in the performance of their tasks and, in particular, prepare the work of Committees and carry out any task assigned to them by the latter. Article 9(3) provides that working groups shall comprise representatives of the Union and of the United Kingdom and shall be co-chaired by a representative of the Union and a representative of the United Kingdom. Article 9(4) provides that working groups shall set their own rules of procedure, meeting schedule and agenda by mutual consent.

[1] For a planned working group, see Council Decision (EU) 2021/2111 of 25 November 2021 on the position to be taken on behalf of the European Union, under 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, as regards the establishment of a Working Group on Fisheries and the adoption of its rules of procedure, OJ L 429, 1.1.2021, p. 146

2.3. The envisaged decision of the working groups

Pursuant to Article 9(4) of the Trade and Cooperation Agreement, working groups shall set their own rules of procedure by mutual consent.

The purpose of the envisaged decision for which the Union's position should be established is to allow the working groups to adopt their rules of procedure by reference to model rules of procedure set out in annex to the envisaged decision.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The proper functioning of the working groups requires rules of procedure covering, *inter alia*, the designation of the co-chairs, the composition of the secretariat, the exchange of information regarding the composition of the delegations, the place where the meeting should take place, the handling of documents and correspondence, the drawing up of the agenda and the minutes, the confidentiality and the working language of the meeting, as well as the expenses to be borne by the delegations.

In view of the purpose and composition of the working groups and their role in relation to the implementation of the Trade and Cooperation Agreement, these rules should be based, to the extent possible, on the rules of procedure provided for in Annex 1 of the Trade and Cooperation Agreement that govern the work of the Partnership Council and Committees established under respectively Articles 7 and 8 of the Trade and Cooperation Agreement. The model rules should take into account the purpose of working groups, notably the fact that they prepare the work of committees under whose supervision they operate and do not adopt decisions or recommendations under the Trade and Cooperation Agreement.

The position of the Union should therefore be to support the adoption of rules of procedure by the working groups pursuant to Article 9(4) of the Trade and Cooperation Agreement to govern their work, in line with the rules of procedure attached in Annex I to this proposal.

Should a working group wish to adapt the rules of procedures attached to this proposal, these specifications should be endorsed by the Council on the basis of position papers to be submitted by the Commission. The procedure for doing so is outlined in Annex II to this proposal.[2]

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

[2] See in this regard, Annex II of Council Decision (EU) 2021/2111 of 25 November 2021 on the position to be taken on behalf of the European Union, under 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, as regards the establishment of a Working Group on Fisheries and the adoption of its rules of procedure, OJ L 429, 1.1.2021, p. 146.

not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'.[3]

4.1.2. Application to the present case

Working groups are bodies set up by an agreement, namely the Trade and Cooperation Agreement, or subsequently established by the Committees under the Trade and Cooperation Agreement, in line with Articles 8(2)(h) and 8(4)(f) of the Trade and Cooperation Agreement.

Article 9(4) provides that working groups shall set their own rules of procedure, meeting schedule and agenda by mutual consent.

Working groups are not intended to adopt acts or measures having legal effects, with the exception of the adoption of their rules of procedure.

The envisaged act does not supplement or amend the institutional framework of the Trade and Cooperation Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) of the TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) of the TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act is of an organisational nature, the substantive legal basis for the decision under Article 218(9) of the TFEU should normally be the substantive legal basis of the Council decision concluding the agreement by which the body was set up.

4.2.2. Application to the present case

Article 9 of the Trade and Cooperation establishes four working groups. Pursuant to Article 8 of the Trade and Cooperation Agreement, further workings groups can be established by the Trade Partnership Committee and any of the Specialised Committees. Working groups assist Committees in the performance of their tasks and work under their supervision. The adoption of rules of procedure for working groups established under the Trade and Cooperation Agreement is of an organisational nature. The Committees were established by the Trade and Cooperation Agreement that was concluded on the basis of Article 217 of the TFEU.

Therefore, the substantive legal basis of the proposed decision is Article 217 of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 217, in conjunction with Article 218(9) of the TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As working groups established by the Trade and Cooperation Agreement shall set their own rules of procedure by reference to the model rules of procedure set out in the annex to the envisaged decision, it is appropriate to publish them in the Official Journal of the European Union after adoption of the envisaged decision.

[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) 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[4] ('the Trade and Cooperation Agreement'), was concluded by the Union by Council Decision (EU) 2021/689[5] of 29 April 2021 and entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.

(2) The Trade and Cooperation Agreement establishes an institutional framework, including, *inter alia,* a Partnership Council, 19 Committees and four working groups.

(3) Article 9(1) of the Trade and Cooperation Agreement establishes the Working Group on Organic Products, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; the Working Group on Motor Vehicles and Parts, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; the Working Group on Medicinal Products, under the supervision of the Trade Specialised Committee on Technical Barriers to Trade; and the Working Group on Social Security Coordination, under the supervision of the Specialised Committee on Social Security Coordination.

(4) Article 8(2)(h) of the Trade and Cooperation Agreement provides that the Trade Partnership Committee shall have the power, with respect to issues related to Titles I to VII, Chapter 4 of Title VIII, Titles IX to XII of Heading One of Part Two, Heading Six of Part Two and Annex 27, to establish, supervise, coordinate and dissolve working groups, or delegate their supervision to a Trade Specialised Committee. Similarly, Article 8(4)(f) of that agreement provides that Specialised Committees shall have the power, with respect to issues related to their area of competence, to establish, supervise, coordinate and dissolve working groups.

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4 OJ L 149, 30.4.2021, p. 10.

5 OJ L 149, 30.4.2021, p. 2.

(5) In accordance with Article 9(2) of the Trade and Cooperation Agreement working groups shall, under the supervision of Committees, assist Committees in the performance of their tasks and, in particular, prepare the work of Committees and carry out any task assigned to them by the latter.

(6) Article 9(3) of the Trade and Cooperation Agreement provides that working groups shall comprise representatives of the Union and of the United Kingdom and shall be co-chaired by a representative of the Union and a representative of the United Kingdom.

(7) Pursuant to Article 9(4) of the Trade and Cooperation Agreement working groups shall set their own rules of procedure by mutual consent.

(8) The proper functioning of the working groups requires rules of procedure covering their operation and should be based on the rules of procedure set out in Annex 1 of the Trade and Cooperation Agreement, with adaptations to the purpose and functioning of working groups.

(9) A working group may adopt further adaptations, regarding non-essential elements, of these rules of procedure where such adaptations are required by the purpose and function of that specific working group.

(10) It is therefore appropriate to establish the position to be adopted on the Union's behalf as regards the adoption of rules of procedure for working groups.

(11) In order to allow for the timely adoption of the rules of procedure by working groups, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on the Union's behalf as regards the adoption of the rules of procedure for working groups shall be based on the rules of procedure set out in Annex I to this Decision.

2. The position to be adopted on the Union’s behalf with regard to adaptations, regarding non-essential elements, of the rules of procedure set out in Annex I to this Decision for a specific working group, where such adaptations are required by the purpose and functioning of that working group, shall be established in accordance with Annex II to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President