



Brussels, 27 December 2020
(OR. en)

14359/20

LIMITE

UK 141

NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

Subject: EU-UK Agreements

- Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information
- Declarations and Notification referred to in the Council Decision on signing
- Council Decision approving the conclusion, by the European Commission, of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy
- Exchange of letters regarding the provisional application of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy
- Approval
- Decision to use the written procedure
- Decision to publish in the Official Journal the Declarations and the Notification referred to in the Council Decision on signing

1. Following agreement at negotiators' level on 24 December, the Commission submitted on 25 December 2020 to the Council:

- a proposal (ST 14335/20) for a Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement ("TCA") and of the Agreement concerning security procedures for exchanging and protecting classified information ("Security of Information Agreement"), together with:
 - the text of the Trade and Cooperation Agreement, as addendum 1,
 - the text of the Security of Information Agreement, as addendum 2,
 - the text of the declarations in relation to the TCA and the Security of Information Agreement, as addendum 3, and
 - the text of the notification by the European Union under the TCA, as addendum 4.
 - a proposal (ST 14336/20) for a Council Decision on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information,
 - a recommendation (ST 14337/20) for a Council Decision approving the conclusion, by the Commission, of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy ("Nuclear Energy Agreement") and the conclusion, by the Commission, on behalf of the European Atomic Energy Community, of the Trade and Cooperation Agreement, together with:
 - the text of the Trade and Cooperation Agreement, as addendum 1, and
 - the text of the Nuclear Energy Agreement, as addendum 2.
2. Given, on the one hand, the very late date (24 December) on which the negotiations were completed and, as a consequence, the very late date (25 December) on which these proposals and recommendation could be submitted by the Commission to the Council and, on the other hand, the need to avoid, should the TCA not be applied, significant disruptions due to the end of the transition period on 31 December 2020, provisional application appears to be the only feasible alternative at this late stage.

The European Parliament has been informed accordingly by the Council by a letter approved by Coreper on 25 December 2020.

It is proposed to address the further handling of the provisional application in the context of the implementation of the TCA as outlined in the Council statement set out at Annex A.

3. The draft Council Decision on the conclusion of the TCA and the Security of Information Agreement should be examined as soon as possible in order for the Council to be in a position to request in early January 2021 the consent of the European Parliament on that Decision in accordance with Article 218(6)(a) TFEU.
4. In light of the above and also to address delegations' concerns regarding *inter alia* the extent and modalities for the involvement of Member States in the various bodies established under the TCA, the exercise of Union competences and its connection with the issue of future arrangements or agreements and the activation of remedial measures, the possible content of a Decision on signature was discussed by the WPUK on 22 and 23 December and the Commission proposal was examined by the WPUK on 26 and 27 December, resulting in broad agreement. Following such discussion and examination, the amended text of the draft Decision on signing is set out in doc. ST 14365/20. This text will, following revision by lawyer-linguists, and due to extraordinary circumstances and the urgency, be submitted to the Council for adoption by written procedure.

Regarding the exercise of Union competences, a statement from the Commission is set out at Annex B.

Regarding the territorial scope of the Agreements, a statement from the Commission with respect to Gibraltar is set out at Annex B.

5. The WPUK also examined, on 26 and 27 December, the draft Council Decision approving the conclusion by the Commission of the Nuclear Energy Agreement, in accordance with the specific procedure provided for in Article 101, second paragraph, of the Euratom Treaty and reached broad agreement. The text of the draft Decision approving the conclusion is set out in doc. ST 14366/20. It will, following revision by lawyer-linguists, and due to extraordinary circumstances and the urgency, be submitted to the Council for adoption by written procedure.
6. In order to address concerns raised by the very tight timetable envisaged for the different notifications to be made by the Union under the TCA, flexibility has been built in the notification process: this is reflected in the Notification to be made by the Union as set out in doc. ST 14367/20.
7. It should be noted that, due to the very late completion of the negotiations and transmission by the Commission of the language versions of the Agreements (expected on 27 December), it has not been possible to proceed to the final legal-linguistic revision of the texts of the various Agreements in all languages. Recital 19 and Article 11(3) of the draft Council Decision on signing the TCA and the Security of Information Agreement addresses this situation. This matter of proceeding to the final legal-linguistic revision of the texts of the Agreements is also addressed in the relevant final provisions of the Agreements (i.e. Article FINPROV.9, of the TCA, Article 21 of the Security of Information Agreement and Article 25 of the Nuclear Energy Agreement).
8. Coreper is therefore invited to:
 - a) confirm its agreement on the text of:
 - i) the Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information, as set out in doc. ST 14365/20, subject to its revision by lawyers-linguists;

- ii) the declarations in relation to the TCA and the Security of Information Agreement, as set out in doc. ST 14368/20;
 - iii) the notification by the European Union under the TCA, as set out in doc. ST 14367/20;
 - iv) the Trade and Cooperation Agreement, as set out in doc. ST 14335/20 ADD 1 REV 2, subject to final legal-linguistic revision;
 - v) the Agreement concerning security procedures for exchanging and protecting classified information, as set out in doc. ST 14335/20 ADD 2 REV 1, subject to final legal-linguistic revision;
 - vi) the Council Decision approving the conclusion, by the European Commission, of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, of the Trade and Cooperation Agreement, as set out in doc. ST 14366/20, subject to its revision by lawyers linguists;
 - vii) the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, as set out in doc. ST 14337/20 ADD 2 REV 1, subject to final legal-linguistic revision;
 - viii) the statement by the Council, as set out at Annex A;
 - ix) the exchange of letters regarding the provisional application of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, as set out in doc. 14358/20.
- b) decide to publish the declarations and notification referred to in points ii) and iii) of point a) in the Official Journal of the European Union;
 - c) decide, in accordance with the first subparagraph of Article 12(1) of Council's Rules of Procedure and Article 1 of Council Decision (EU) 2020/430, that the Council uses the written procedure for the adoption of the text of:

- i) the Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information, as referred to in point i) of point a);
 - ii) the Council Decision approving the conclusion, by the European Commission, of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, of the Trade and Cooperation Agreement, as referred to in point vi) of point a).
- d) decide, in accordance with the first subparagraph of Article 12(1) of Council's Rules of Procedure and Article 1 of Council Decision (EU) 2020/430, that the Council uses the written procedure for the approval of the text of:
- i) the Trade and Cooperation Agreement, as set out in doc. 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 doc. 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 doc. ST 14368/20;
 - iv) the notification by the European Union under the Trade and Cooperation Agreement, as set out in the doc referred to in point iii) of point a);
 - v) the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, as set out in doc. ST 14337/20 ADD 2 REV 1, subject to final legal-linguistic revision;

- vi) the statement by the Council, to be recorded in its minutes, as set out at Annex A;
 - vii) the exchange of letters regarding the provisional application of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, as set out in doc. 14358/20.
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Statement by the Council for the minutes

"It is noted that the Council has decided that the Trade and Cooperation Agreement and the Security of Information Agreement (the 'Agreements') shall be applied on a provisional basis as from 1 January 2021.

The Council will therefore exercise its powers under Article 218 TFEU to conduct the scrutiny and complete the conclusion process of those Agreements as diligently and smoothly as possible. During this process, the Commission is requested, in accordance with Article 241 TFEU, to submit appropriate proposals to ensure that the Partnership Council allows for the Agreements to be provisionally applied until the completion by the Union of the procedures necessary for their entry into force, including the final legal-linguistic revision of all their language versions and the establishment of such finally revised language versions as authentic and definitive by the Parties."

Statement by the Commission for the minutes of the Council

– 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."

– 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."
