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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2022) 89 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules for the exercise of the Union's rights in the implementation and enforcement of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 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 - Confirmation of the final compromise text with a view to agreement

1. On 11 March 2022 the Commission presented two connected proposals: first, a proposal for a Regulation of the European Parliament and of the Council laying down rules for the exercise of the Union's rights in the implementation and enforcement of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 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 (hereafter “Regulation on autonomous measures”), contained in document ST 7158/22. Secondly, a proposal for a Council Regulation laying down rules for the exercise of the Community's rights in the implementation 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 (hereinafter “Regulation on autonomous measures (EURATOM)”), contained in document ST 7159/22.

2. The aim of both Regulations is to establish specific rules for the adoption of unilateral measures that the Union is entitled to take in case of non-compliance by the United Kingdom with the obligations laid down in the Trade and Cooperation Agreement (the “TCA”) or in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereafter "the Withdrawal Agreement") or in case of divergences that affect trade and investment. The cases in which autonomous measures may be taken are enumerated in Article 1(2) of the proposed Regulation on autonomous measures, which refers to the relevant Articles of the TCA and the Withdrawal Agreement and the conditions laid down therein.
3. The endorsement of the outcome of trilogue negotiations sought with this note concerns only the Regulation on autonomous measures, which falls under the ordinary legislative procedure. Work on the Regulation on autonomous measures (EURATOM) will commence shortly following the finalisation of this Regulation and will mirror the outcome found on the Regulation on autonomous measures.
4. The Regulation on autonomous measures will replace the framework for the decision-making regarding autonomous measures that was laid down in Article 3 of Council Decision No. 2021/689¹.
5. The Council adopted a General approach on the Regulation on autonomous measures on 21 June 2022, which is laid down in document ST 9444/2022.
6. The Council’s modifications concerned, firstly, some technical corrections of the legal bases, alignment to the provisions of the TCA and of the provisions regarding the suspension of access to Union waters for fisheries. Secondly and more importantly the Council voted to simplify the criteria under which the Commission is empowered to adopt autonomous measures, by removing specific criteria laid down in Article 2(2), maintaining

¹ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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 (OJ L 149, 30.4.2021, p. 2).

the core criteria of (i) proportionality and (ii) effectiveness to induce compliance of the United Kingdom with its obligations. This simplification was considered appropriate, as the TCA and the Withdrawal Agreement already contain specific conditions that need to be fulfilled before autonomous measures may be taken. Thirdly, the Council's General Approach strengthened the information rights of the Council upstream of any decision-making by the Commission on autonomous measures to ensure that Member State and the Council are aware of any relevant developments. Finally, the specific situation of Gibraltar is recognised in a recital making reference to Article 774(3) TCA.

7. The European Parliament established a Joint committee consisting of the Committees on Foreign Affairs, International Trade and Constitutional Affairs. The rapporteurs are Seán Kelly, Andreas Schieder and Danuta Maria Hübner. The Joint Committee adopted a draft report on 5 August and a second draft report on further amendments on 12 September. On 10 October the Joint Committee voted on the final draft report. As a result, the European Parliament also reduced the criteria to be considered by the Commission before taking autonomous measures, albeit less so than the Council. Most voted amendments concerned the role of the European Parliament in the decision-making process.
8. Trilogue negotiations with the European Parliament took place on 16 and 30 November 2022 with two technical meetings between those two dates.
9. The second trilogue was conclusive and led to a compromise on the criteria for adoption of autonomous measures as well as on the respective roles and rights of the European Parliament and the Council in the process, whilst fully respecting the limitations of those powers as laid down in the Treaties.
10. In its meeting on 6 December the Working Party on United Kingdom expressed its support on the negotiated text.
11. On that basis the Permanent Representatives Committee is invited:
 - to confirm its agreement to the final compromise text, as set out in document ST 15992/2022.
 - to authorise the Presidency to send a letter to the Chairs of the European Parliament's Joint Committee on International Trade (INTA), Foreign Affairs (AFET) and Constitutional Affairs (AFCO) confirming that, should the European

Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty on the Functioning of the European Union (TFEU), in the form set out in the final compromise text, subject to revision by the legal linguists, annexed to that letter, the Council would, in accordance with Article 294 paragraph 4 of the TFEU, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.