



Council of the
European Union

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REV 3

LIMITE

UK 1

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION 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

COUNCIL DECISION (EU) 2021/...

of ...

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

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(6) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,¹

¹ Consent of 27 April 2021 (not yet published in the Official Journal).

Whereas:

- (1) On 29 December 2020, the Council adopted Decision (EU) 2020/2252¹ 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 (the ‘Trade and Cooperation Agreement’) 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 (the ‘Security of Information Agreement’). The Trade and Cooperation Agreement and the Security of Information Agreement (the ‘Agreements’) were signed on 30 December 2020, subject to their conclusion at a later date.

¹ Council Decision (EU) 2020/2252 of 29 December 2020 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 (OJ L 444, 31.12.2020, p. 2).

- (2) The Trade and Cooperation Agreement establishes the basis for a broad relationship between the Union and the United Kingdom involving reciprocal rights and obligations, common actions and special procedures. The Security of Information Agreement is a supplementing agreement to the Trade and Cooperation Agreement, intrinsically linked to the latter in particular with regard to the dates of entry into application and termination. The decision on the conclusion of the Agreements should therefore be based on the legal basis providing for the establishment of an association allowing the Union to enter into commitments in all areas covered by the Treaties.
- (3) In view of the exceptional and unique character of the Trade and Cooperation Agreement, which is a comprehensive agreement with a country that has withdrawn from the Union, the Council is hereby deciding to make use of the possibility for the Union to exercise its external competence with regard to the United Kingdom.

- (4) It is appropriate to define the arrangements for the Union's representation in the Partnership Council and the Committees established by the Trade and Cooperation Agreement. The Commission, as provided for in Article 17(1) of the Treaty on European Union (TEU), is to represent the Union and to express the Union's positions as established by the Council in accordance with the Treaties. The Council is to exercise its policy-making and coordinating functions as provided for in Article 16(1) TEU by establishing the positions to be taken on the Union's behalf in the Partnership Council and the Committees established by the Trade and Cooperation Agreement. Furthermore, where the Partnership Council or the Committees established by the Trade and Cooperation Agreement are called upon to adopt acts having legal effects, the positions to be taken on the Union's behalf in those bodies are to be established in accordance with the procedure set out in Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). Similarly, where the Commission carries out annual consultations related to fisheries, it should do so on the basis of positions to be taken on the Union's behalf, which are to be established by the Council in accordance with the relevant Treaty provisions.
- (5) Each Member State should be allowed to send one representative to accompany the Commission representative, as part of the Union delegation, in meetings of the Partnership Council and of other joint bodies established under the Trade and Cooperation Agreement.
- (6) The European Parliament is to be immediately and fully informed, as provided for in Article 218(10) TFEU, in order to allow it to exercise fully its prerogatives in accordance with the Treaties.

- (7) With a view to enabling the Union to take rapid and effective action to protect its interests in accordance with the Trade and Cooperation Agreement, and until a specific legislative act regulating the adoption of remedial measures under the Trade and Cooperation Agreement is adopted and enters into force in the Union, the Commission should be empowered to take remedial measures, such as the suspension of obligations under the Trade and Cooperation Agreement or any supplementing agreement, in cases of breaches of certain provisions of the Trade and Cooperation Agreement or non-fulfilment of certain conditions, in particular with regard to trade in goods, the level playing field, road transport, aviation safety, fisheries and Union programmes, as specified in the Trade and Cooperation Agreement, as well as to take remedial measures, rebalancing measures and countermeasures. The Commission should fully inform the Council in a timely manner of its intention to adopt such measures with a view to allowing a meaningful exchange of views in the Council. The Commission should take the utmost account of the views expressed. One or more Member States may request the Commission to adopt such measures. If the Commission does not respond positively to such a request, it should inform the Council in a timely manner of its reasons.

- (8) In order to allow the Union to react in a timely manner where relevant conditions are no longer met, the Commission should be empowered to take certain decisions suspending benefits granted to the United Kingdom under the Annex on Organic Products and the Annex on Medicinal Products to the Trade and Cooperation Agreement. The Commission should fully inform the Council in a timely manner of its intention to adopt such measures with a view to allowing a meaningful exchange of views in the Council. The Commission should take the utmost account of the views expressed. One or more Member States may request the Commission to adopt such measures. If the Commission does not respond positively to such a request, it should inform the Council in a timely manner of its reasons.
- (9) Whenever the Union is required to act in order to comply with the Agreements, such action is to be taken in accordance with the Treaties, while respecting the limits of the powers conferred upon each Union institution. It is therefore for the Commission to provide the United Kingdom with the information or notifications required in the Agreements, except where the Agreements refer to other specific institutions, bodies, offices and agencies of the Union and to consult the United Kingdom on specific matters. It is also for the Commission to represent the Union before the arbitration tribunal where a dispute has been submitted to arbitration in accordance with the Trade and Cooperation Agreement. In compliance with the duty of sincere cooperation referred to in Article 4(3) TEU, the Commission is to consult the Council beforehand, for example by submitting to it the main points of the intended Union submissions to the arbitration tribunal and taking the utmost account of comments made by the Council.

- (10) The Trade and Cooperation Agreement does not exclude the possibility for Member States to enter into bilateral arrangements or agreements with the United Kingdom concerning specific matters covered by the Trade and Cooperation Agreement in the areas of air transport, administrative cooperation in the field of customs and VAT and social security under certain conditions.
- (11) It is therefore necessary to set out a framework to be followed by the Member States where they decide to enter into bilateral arrangements or agreements with the United Kingdom in the areas of air transport, administrative cooperation in the field of customs and VAT and social security, including the conditions and procedure for Member States to negotiate and conclude such bilateral arrangements or agreements, in such a way as to ensure that they are compatible with the purpose of the Trade and Cooperation Agreement and with Union law and take into account the internal market and broader Union interests. In addition, Member States which intend to negotiate and conclude bilateral agreements with the United Kingdom in areas not covered by the Trade and Cooperation Agreement should, in full respect of the principle of sincere cooperation, inform the Commission of their intentions and of the progress of the negotiations.

- (12) It is recalled that, in accordance with Article 774(3) of the Trade and Cooperation Agreement, and in line with the declaration of the European Council and of the European Commission on the territorial scope of future agreements included in the minutes of the European Council meeting of 25 November 2018, the Trade and Cooperation Agreement neither applies to Gibraltar nor has any effects in that territory. As foreseen in that declaration, ‘this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar’ and, ‘without prejudice to the competences of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain’.
- (13) The exercise of Union competence through the Trade and Cooperation Agreement is without prejudice to the respective competences of the Union and of the Member States in relation to any ongoing or future negotiations for, or signature or conclusion of, international agreements with any other third country, or in relation to any future negotiations for, or signature or conclusion of, any supplementing agreements referred to in Article 2 of the Trade and Cooperation Agreement.

- (14) Due to the very late completion of the negotiations of the Agreements, it was not possible to proceed to the final legal-linguistic revision of the texts of the Agreements before their signature. Therefore, immediately after the signature of the Agreements, the Parties started the final legal-linguistic revision of the texts of the Agreements in all 24 authentic languages. By exchange of diplomatic notes, the Parties established those revised texts of the Agreements in all such languages as authentic and definitive. Those authentic and definitive texts replaced *ab initio* the signed versions of the Agreements and are attached to this Decision.
- (15) The conclusion of the Trade and Cooperation Agreement as regards matters falling under the Treaty establishing the European Atomic Energy Community (the ‘Euratom Treaty’) is subject to a separate procedure.
- (16) The Agreements should be approved,

HAS ADOPTED THIS DECISION:

Article 1

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, is hereby approved on behalf of the Union as regards matters other than those falling under the Euratom Treaty.¹⁺
2. 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 is hereby approved on behalf of the Union.²⁺⁺
3. The authentic and definitive texts of the Agreements that replaced *ab initio* the signed versions of the Agreements are attached to this Decision.

Article 2

1. The Commission shall represent the Union within the Partnership Council, Trade Partnership Committee, Trade Specialised Committees and Specialised Committees set up pursuant to Articles 7 and 8 of the Trade and Cooperation Agreement, as well as in any additional Trade Specialised Committee or Specialised Committee that is established in accordance with point (g) of Article 7(4) or point (g) of Article 8(2) of the Trade and Cooperation Agreement.

¹ The text of the Agreement is published in OJ

⁺ OJ: Please insert in the footnote the OJ reference for the publication of the Agreement contained in ST 5198/21.

² The text of the Agreement is published in OJ

⁺⁺ OJ: Please insert in the footnote the OJ reference for the publication of the Agreement contained in ST 5203/21.

Each Member State shall be allowed to send one representative to accompany the Commission representative, as part of the Union delegation, in meetings of the Partnership Council and of other joint bodies established under the Trade and Cooperation Agreement.

2. In order for the Council to be in a position to exercise fully its policy-making, coordinating and decision-making functions in accordance with the Treaties, in particular by establishing the positions to be taken on behalf of the Union within the Partnership Council, Trade Partnership Committee, Trade Specialised Committees and Specialised Committees, the Commission shall ensure that the Council receives all the information and documents related to any meeting of those joint bodies or to any acts to be adopted by written procedure sufficiently in advance of that meeting or that usage of written procedure, and in any case not later than eight working days prior to that meeting or that usage of written procedure.

The Council shall also be informed in a timely manner about the discussions and the outcome of the meetings of the Partnership Council, Trade Partnership Committee, Trade Specialised Committees and Specialised Committees and the usage of written procedure, and shall receive draft minutes and all documents relating to such meetings or usage of procedure.

3. The European Parliament shall be put in a position to exercise fully its institutional prerogatives throughout the process in accordance with the Treaties.
4. For a period of five years from 1 January 2021, the Commission shall report annually to the European Parliament and to the Council on the implementation and application of the Trade and Cooperation Agreement. That annual report shall mention as appropriate any relevant evolution in the law of the United Kingdom relating to the areas of subsidy control and taxation covered by Title XI of Heading One of Part Two of the Trade and Cooperation Agreement, as well as any relevant evolution in the levels of protection of labour and social standards, environment and climate covered by that Title. After that initial period of five years, the Commission shall report regularly, and at least every two years, to the European Parliament and to the Council.

Article 3

1. Until a specific legislative act regulating the adoption of the measures listed in points (a) to (k) of this paragraph enters into force in the Union, any decision by the Union to take such measures shall be taken by the Commission, in accordance with the conditions set out in the corresponding provisions of the Trade and Cooperation Agreement, as regards:
 - (a) the suspension of the relevant preferential treatment of the product(s) concerned as set out in Article 34 of the Trade and Cooperation Agreement;

- (b) the application of remedial measures and the suspension of obligations as set out in Article 374 of the Trade and Cooperation Agreement;
- (c) the application of rebalancing measures and countermeasures as set out in Article 411 of the Trade and Cooperation Agreement;
- (d) the application of remedial measures as set out in Article 469 of the Trade and Cooperation Agreement;
- (e) compensatory measures and the suspension of obligations as set out in Article 501 of the Trade and Cooperation Agreement;
- (f) the application of remedial measures and the suspension of obligations as set out in Article 506 of the Trade and Cooperation Agreement;
- (g) the suspension or termination of the participation of the United Kingdom in Union programmes as set out in Articles 718 and 719 of the Trade and Cooperation Agreement;

- (h) an offer or acceptance of temporary compensation or the suspension of obligations in the context of compliance following an arbitration or panel of experts procedure under Article 749 of the Trade and Cooperation Agreement, except as provided in Regulation (EU) No 654/2014 of the European Parliament and of the Council;¹
- (i) the safeguard measures and rebalancing measures as set out in Article 773 of the Trade and Cooperation Agreement;
- (j) the safeguard measures as set out in Article 448 of the Trade and Cooperation Agreement;
- (k) the suspension of acceptance obligations as set out in Article 457 of the Trade and Cooperation Agreement.

2. The Commission shall fully inform the Council in a timely manner of its intention to adopt measures referred to in paragraph 1 with a view to allowing a meaningful exchange of views in the Council. The Commission shall take the utmost account of the views expressed. The Commission shall also inform the European Parliament, as appropriate.

¹ Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ L 189, 27.6.2014, p. 50).

3. Where there is a particular concern of one or more Member States, that or those Member States may request the Commission to adopt measures referred to in paragraph 1. If the Commission does not respond positively to such a request, it shall inform the Council in a timely manner of its reasons.
4. The Commission may also adopt measures reinstating the rights and obligations under the Trade and Cooperation Agreement as they existed prior to the adoption of measures referred to in paragraph 1. Paragraphs 2 and 3 shall apply *mutatis mutandis*.
5. If, due to persisting significant divergences, rebalancing measures as referred to in point (c) of paragraph 1 last for more than a year, one or more Member States may request the Commission to activate the review clause provided for in Article 411 of the Trade and Cooperation Agreement. The Commission shall examine this request in a timely manner and shall consider seizing as appropriate the Partnership Council of that matter, in accordance with the provisions set out in the Trade and Cooperation Agreement. If the Commission does not respond positively to such a request, it shall inform the Council in a timely manner of its reasons.
6. Before a specific legislative act regulating the adoption of the measures referred to in paragraph 1 is adopted, and in any case no later than 1 January 2022, the Council shall conduct a review of the arrangements set out in this Article.

Article 4

Where one or more Member States raise a substantial difficulty resulting from the implementation of the Trade and Cooperation Agreement, in particular with regard to fisheries, the Commission shall examine the request as a matter of priority and shall seize as appropriate the Partnership Council of that matter, in accordance with the provisions set out in the Trade and Cooperation Agreement. Where no satisfactory solution has been found, that matter shall be addressed within the earliest possible timeframe, in the context of the reviews provided for in the Trade and Cooperation Agreement. Where that difficulty persists, the necessary steps shall be taken with a view to negotiating and concluding an agreement making the necessary amendments to the Trade and Cooperation Agreement.

Article 5

1. The Commission shall be authorised to take, on behalf of the Union, any decision to:
 - (a) confirm or suspend the recognition of equivalence following the reassessment of equivalence to be carried out by 31 December 2023 in accordance with Article 3(3) of Annex 14 to the Trade and Cooperation Agreement;

- (b) suspend the recognition of equivalence in accordance with Article 3(5) and (6) of Annex 14 to the Trade and Cooperation Agreement;
- (c) accept official Good Manufacturing Practice documents issued by an authority of the United Kingdom for manufacturing facilities located outside the territory of the issuing authority and to determine the terms and conditions under which the Union accepts those official Good Manufacturing Practice documents in accordance with Article 5(3) and (4) of Annex 12 to the Trade and Cooperation Agreement;
- (d) adopt any necessary implementing arrangements for the exchange of official Good Manufacturing Practice documents with an authority of the United Kingdom under Article 6 of Annex 12 to the Trade and Cooperation Agreement and for the exchange of information with an authority of the United Kingdom regarding inspections of manufacturing facilities under Article 7 of that Annex;

- (e) suspend recognition of inspections or acceptance of official Good Manufacturing Practice documents issued by the United Kingdom and notify the United Kingdom of its intention to apply Article 9 of Annex 12 to the Trade and Cooperation Agreement and enter into consultations with the United Kingdom in accordance with Article 8(3) of that Annex;
- (f) suspend totally or partially, for all or some of the products listed in Appendix C to Annex 12 to the Trade and Cooperation Agreement, the recognition of inspections or acceptance of official Good Manufacturing Practice documents of the other Party in accordance with Article 9(1) of that Annex.

2. Paragraphs 2, 3 and 4 of Article 3 shall apply.

Article 6

1. The Member States are empowered to negotiate, sign and conclude the arrangements referred to in Article 419(4) of the Trade and Cooperation Agreement, subject to the following conditions:
 - (a) those arrangements shall be entered into solely for the purpose laid down in Article 419(4) of the Trade and Cooperation Agreement and in accordance with its terms, and shall not govern any other matters whether or not such matters fall within the scope of Title I of Heading Two of Part Two of the Trade and Cooperation Agreement;
 - (b) those arrangements shall not discriminate between Union air carriers.

The procedure set out in Article 8 of this Decision shall apply.

2. The Member States are empowered to grant the authorisations referred to in Article 419(9) of the Trade and Cooperation Agreement subject to its terms and in accordance with the applicable provisions of Union and national law. In granting those authorisations, the Member States shall not discriminate between Union air carriers.

3. The Member States are empowered to negotiate, sign and conclude the arrangements referred to in Article 419(9) of the Trade and Cooperation Agreement, subject to the following conditions:

- (a) those arrangements shall be entered into solely for the purpose laid down in Article 419(9) of the Trade and Cooperation Agreement and in accordance with its terms, and shall not govern any other matters whether or not such matters fall within the scope of Title I of Heading Two of Part Two of the Trade and Cooperation Agreement;
- (b) those arrangements shall not discriminate between Union air carriers.

The procedure set out in Article 8 of this Decision shall apply.

Article 7

The Member States are empowered to negotiate, sign and conclude bilateral agreements with the United Kingdom in accordance with Article 41 of the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties or in the area of social security coordination as regards subject matters not covered by the Protocol on Social Security Coordination, subject to the following conditions:

- (a) the envisaged agreement shall be compatible with, and shall not undermine, the functioning of the Trade and Cooperation Agreement or of the internal market;
- (b) the envisaged agreement shall be compatible with Union law, and shall not put at risk the attainment of an objective of the Union's external action in the area concerned or otherwise be prejudicial to the Union's interests;
- (c) the envisaged agreement shall comply with the principle of non-discrimination on grounds of nationality enshrined in the TFEU.

The procedure set out in Article 8 of this Decision shall apply.

Article 8

1. Each Member State that intends to negotiate a bilateral arrangement as referred to in Article 6(1) and (3) or a bilateral agreement as referred to in Article 7 shall keep the Commission informed of the negotiations with the United Kingdom on such arrangements or agreements and, where appropriate, invite the Commission to participate in the negotiations as an observer.
2. Upon completion of the negotiations, the Member State concerned shall submit the resulting draft arrangement or agreement to the Commission. The Commission shall inform the European Parliament and the Council thereof without delay.
3. No later than three months from the receipt of the draft arrangement or agreement, the Commission shall take a decision as to whether the conditions set out in the first subparagraph of, respectively, Article 6(1) or (3) or Article 7 are fulfilled. If the Commission decides that those conditions are fulfilled, the Member State concerned may sign and conclude the arrangement or agreement in question.
4. The Member State concerned shall provide the Commission with a copy of the arrangement or agreement within one month of its entry into force or, where the arrangement or agreement is to be applied provisionally, within one month of the start of its provisional application.

Article 9

The Member States which intend to negotiate and conclude bilateral agreements with the United Kingdom in areas not covered by the Trade and Cooperation Agreement shall, in full respect of the principle of sincere cooperation, inform the Commission in due time of their intentions and of the progress of the negotiations.

Article 10

The exercise of Union competence through the Trade and Cooperation Agreement shall be without prejudice to the respective competences of the Union and of the Member States in any ongoing or future negotiations for, or signature or conclusion of, international agreements with any other third country, or in relation to any future negotiations for, or signature or conclusion of, any supplementing agreements referred to in Article 2 of the Trade and Cooperation Agreement.

Article 11

The President of the Council, on behalf of the Union, shall give the notification(s) provided for in the Trade and Cooperation Agreement, including the notification on the completion of internal requirements and procedures for establishing the consent to be bound, and in Article 19(1) of the Security of Information Agreement.

Article 12

The Declarations attached to this Decision shall be approved on behalf of the Union.

Article 13

This Decision shall enter into force on the date of its adoption.

Done at ..., ...

For the Council

The President
