Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	10 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 64 final/2
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Partnership Council established by 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 date on which provisional application of the Trade and Cooperation Agreement shall cease

Delegations will find attached document COM(2021) 64 final/2.

Encl.: COM(2021) 64 final/2

EUROPEAN
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Brussels, 10.2.2021
COM(2021) 64 final/2

2021/0034 (NLE)

COM(2021) 64 final of 9.2.2021 downgraded on 10.2.2021

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Partnership Council established by 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 date on which provisional application of the Trade and Cooperation Agreement shall cease

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be taken on the Union's behalf in the Partnership Council established by 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 date on which provisional application of the Trade and Cooperation Agreement shall cease.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade and Cooperation Agreement

On 29 December 2020, the Council adopted Decision (EU) No 2020/2252[1] on the signing, on behalf of the Union and on provisonal 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.

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.

Pursuant to Article 12(1) of Council Decision (EU) No 2020/2252, as agreed by the Parties in Article FINPROV.11(2) of the Trade and Cooperation Agreement, the Agreements apply on a provisional basis as from 1 January 2021, pending the completion of the procedures necessary for their entry into force.

2.2. The envisaged decision of the Partnership Council

Pursuant to Article FINPROV.11(2) of the Trade and Cooperation Agreement, provisional application shall cease on one of the following dates, whichever is the earliest:

(a) 28 February 2021 or another date as decided by the Partnership Council established under Article INST.1 of the Agreement; or

(b) on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

[1] OJ L 444, 31.12.2020, p. 2.

Due to the time needed for the European Parliament and the Council to appropriately scrutinise the Agreements in all 24 authentic languages, the Union will not be able to conclude the Trade and Cooperation Agreement before 28 February 2021.

Therefore, the Partnership Council should set a date later than 28 February 2021 for the end of the provisional application, taking into account the time needed for the completion of the legal-linguistic revision and authentication of all language versions of the Agreement.

The purpose of the envisaged Partnership Council decision for which the Union's position should be established, is to set such a date.

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

In view of the envisaged date of availability of the Agreements in all 24 authentic languages, the date should be 30 April 2021.

The position of the Union should therefore be to support the adoption of a decision by the Partnership Council pursuant to point (a) of Article FINPROV.11(2) of the Trade and Cooperation Agreement setting a new end date for the provisional application on 30 April 2021, in line with the draft decision attached to this proposal.

4. LEGAL BASIS

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for Council 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 decision, which the Partnership Council is called upon to adopt, constitutes an act having legal effects.

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) TFEU.

The sole objective and content of the envisaged act relates to establishing the Union's position on the date on which provisional application shall cease. The signing of the Trade and Cooperation Agreement was based on Article 217 TFEU.

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

5. PUBLICATION OF THE ENVISAGED ACT

As the purpose of the decision of the Partnership Council is to postpone the date on which provisional application shall cease, it is appropriate to publish the decision of the Partnership Council in the Official Journal of the European Union after its adoption.

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COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Partnership Council established by 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 date on which provisional application of the Trade and Cooperation Agreement shall cease

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) On 29 December 2020, the Council adopted Decision (EU) No 2020/2252[2] on the signing, on behalf of the Union and on provisonal 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") (referred to jointly as the "Agreements").

(2) 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.

(3) Pursuant to Article 12(1) of Decision (EU) No 2020/2252, as agreed by the Parties in Article FINPROV.11(2) of the Trade and Cooperation Agreement, the Agreements apply on a provisional basis as from 1 January 2021, pending the completion of the procedures necessary for their entry into force.

(4) Pursuant to Article FINPROV.11(2) of the Trade and Cooperation Agreement, provisional application shall cease on one of the following dates, whichever is the

[2] 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).

earliest: (a) 28 February 2021 or another date as decided by the Partnership Council established by Article INST.1 of the Trade and Cooperation Agreement; or (b) on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

(5) Due to the time needed for the European Parliament and the Council to appropriately scrutinise the Agreements in all 24 authentic languages, the Union will not be able to conclude the Trade and Cooperation Agreement before 28 February 2021.

(6) Therefore, the Partnership Council should set a later date for the provisional application to cease taking into account the time where all language versions will have been revised and authenticated. In view of the envisaged date of availability of the Agreements in all 24 authentic languages, the Partnership Council should set 30 April 2021 as this date.

(7) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Partnership Council.

(8) In order to allow for the prompt application of the measures provided for in this Decision, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the Partnership Council established by Article INST.1 of the Trade and Cooperation Agreement, on a decision to be taken in accordance with point (a) of Article FINPROV.11(2) thereof, shall be based on the draft decision of the Partnership Council attached to this Decision.

Article 2

The decision of the Partnership Council shall be published in the *Official Journal of the European Union*.

Article 3

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

Done at Brussels,

For the Council
The President