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European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 7159/22 INIT
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Subject:	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 - Presidency compromise proposal

Delegations will find attached a revised Presidency proposal with changes marked as **bold** **underline** and ~~striketrough~~ as compared to the original Commission proposal set out in document ST 7159/22 INIT, and **yellow** compared to the Presidency compromise proposal 9486/23 INIT.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 7, 47 **subparagraph 4 (b)** and 48 ~~in conjunction with Article 106a~~ thereof,

Having regard to the proposal from the European Commission,

After consulting the Scientific and Technical Committee,

- (1) On 29 December 2020, the Commission concluded, on behalf of the European Atomic Energy Community (“the Community”), 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 part¹ (the ‘Trade and Cooperation Agreement’). The Trade and Cooperation Agreement was applied provisionally as of 1 January 2021 and entered into force on 1 May 2021. The Trade and Cooperation Agreement covers matters falling under competences of the Community, namely the association with the Research and Training programme of Euratom and with the European Joint Undertaking for **the International Thermonuclear Experimental Reactor (ITER)** and the Development of Fusion Energy governed by Part Five of the Trade and Cooperation Agreement (Participation in Union programmes, sound financial management and financial provisions).
- (2) The Trade and Cooperation Agreement provides that the Parties may adopt unilateral measures, in particular as regards the suspension of certain obligations under the Agreement, in the specific cases and subject to the conditions and procedures laid down therein. As regards matters falling under the Euratom Treaty, unilateral measures may be adopted by the Community in the cases and under the conditions laid down in Articles 718 and 719 of the Trade and Cooperation Agreement. The unilateral measures in question concern the partial or total suspension of the participation of the United Kingdom in the Union programmes as well as its partial or total termination.

¹ OJ L 149, 30.4.2021, p. 10.

- (3) Should the need arise to protect its interests in the implementation of the Trade and Cooperation Agreement, the Community should be in a position to make appropriate use of the instruments available to it swiftly and in a proportionate, effective and flexible manner, while fully involving Member States. It is therefore necessary to lay down rules and procedures governing the adoption of unilateral measures in the exercise of the Community's rights under the Trade and Cooperation Agreement.
- (4) Unilateral measures should be limited to what is strictly necessary to achieve their purpose, having regard to the actual or potential damage to Community interests arising from the case. They should meet the conditions laid down in Articles 718 and 719 of the Trade and Cooperation Agreement.
- (5) The rules and procedures laid down in this Regulation should **take precedence over** ~~be a *lex specialis* with regard to~~ any provisions of Community law governing the same subject matter.
- (6) In order to ensure that this Regulation remains fit for purpose, the Commission should undertake, within ~~five~~ **three** years of its entry into force, a review of its scope and implementation and report its findings to the Council and to the European Parliament. **That review should, where appropriate, be accompanied by relevant legislative proposals.**

(6a) It is recalled that the procedure for adopting autonomous measures in accordance with Regulation (EU) No 182/2011¹ of the European Parliament and of the Council pursuant to this Regulation is without prejudice to the continued and permanent exercise by the Council of its policymaking, coordination and decision-making functions conferred by the Treaties insofar as the implementation of the Trade and Cooperation Agreement between the European Union and the United Kingdom is concerned.

¹ **Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).**

(6b) To give effect to the powers laid down in Article 16(1) of the Treaty on European Union (TEU) and Article 101 of Treaty establishing the European Atomic Energy Community (EURATOM) , the internal decision making in relation to the implementation of the Withdrawal Agreement and of the Trade and Cooperation Agreement is reflected in Council Decisions (EU) 2020/135¹ and (EU) 2021/689². In order for the Council to be in a position to exercise fully its policymaking, coordination and decision-making functions in that regard, the Council should be kept continuously informed on a permanent and regular basis of the implementation of those Agreements, including about all difficulties that might arise, in particular possible breaches of those Agreements and other situations that may give rise to measures taken pursuant to this Regulation. In that regard, the Council should be duly informed in a timely manner of possible responses at the disposal of the Community to ensure a full and proper implementation of those Agreements, as well as of the follow-up to any measures taken.

¹ **Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion 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 (OJ L 29, 31.1.2020, p. 1).**

² **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).**

- (7) In order to ensure uniform conditions for the implementation of this Regulation, and in particular in order to ensure the swift, effective and flexible exercise of the corresponding Community's rights under the Trade and Cooperation Agreement, implementing powers should be conferred on the Commission to adopt unilateral measures and to give effect to those measures as necessary in the internal legal order of the Community. Those powers should also extend to the modification, suspension or repeal of the adopted measures. They should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. Given that the envisaged measures entail the adoption of acts of general scope, the examination procedure should be used for the adoption of those measures. The Commission should adopt immediately applicable implementing acts where, in duly justified cases, imperative grounds of urgency so require for the appropriate protection of the Community's interests.
- ~~(8) The European Parliament has been consulted on a voluntary basis and has delivered an opinion²;~~

¹ ~~Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).~~

² [...]

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down rules and procedures to ensure an effective and timely exercise of the Community's rights in implementing 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').
2. This Regulation applies to the following measures adopted by the Community on the basis of Articles 718 and 719 of the Trade and Cooperation Agreement:
 - (a) the suspension of the application of Protocol I to the Trade and Cooperation Agreement, in relation to one or more Community programmes, activities, or ~~exceptionally~~ parts thereof;
 - (b) the termination of the application of Protocol I to the Trade and Cooperation Agreement, in relation to one or more Community programmes, activities, or ~~exceptionally~~ parts thereof.

Article 2

Exercise of the Community's rights

1. Notwithstanding any provisions of Community law adopted pursuant to Articles 7, 47 and 48 of the Euratom Treaty, the Commission shall be empowered to adopt the measures referred to in Article 1(2) of this Regulation, and to give effect to those measures, by means of implementing acts.
 - 1a. **Measures adopted pursuant to this Regulation shall be proportionate to the objectives pursued and effective in maintaining the balance of rights and obligations underlying the United Kingdom's participation in Union programmes as foreseen in the Trade and Cooperation Agreement. They shall comply with the specific criteria established in that Agreement.**
2. The Commission shall be empowered to amend, **suspend** or repeal the measures referred to in Article 1(2), point (a), by means of implementing acts. **Where appropriate, those implementing acts shall specify the duration of the suspension.**
3. Where there is a particular concern of one or more Member States **as regards a significant change to the conditions referred to in Article 718(1), points (a) to (c), of the Trade and Cooperation Agreement**, that or those Member States may request the Commission to suspend the participation of the United Kingdom in the Community programme or programmes concerned in accordance with paragraph 1 of this Article. 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 implementing acts referred to in paragraphs 1 and 2 of this Article shall be adopted in accordance with the examination procedure referred to in Article 3(2).
5. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 3(3).

Article 3
Committee procedure

1. The Commission shall be assisted by the UK Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 4
Review

By [Publications Office: Please insert the date ~~five~~ **three** years after the entry into force of this Regulation], the Commission shall present a report to the Council and to the European Parliament on the application of this Regulation, **accompanied, where appropriate, by relevant proposals**.

Article 5

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President
