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Proposal for a

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 29 March 2017, the United Kingdom notified the European Council pursuant to Article 50 of the Treaty on European Union ('TEU') of its intention to withdraw from the European Union and from the European Atomic Energy Community.

On 30 January 2020, following the consent of the European Parliament, the Council adopted Decision (EU) 2020/135 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 (the 'Withdrawal Agreement').[1] The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that agreement. That period will end on 31 December 2020.

In its guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.

The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom[2] ('Political Declaration'). It establishes the parameters of 'an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.'

Article 184 of the Withdrawal Agreement provides that the Union and the United Kingdom are to use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.

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[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] Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom (OJ C 34, 31.1.2020, p. 1).

On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266[3] authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement. The Commission was appointed as the Union negotiator. The Council Decision also included an addendum with the directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland ('negotiating directives').

On 24 December 2020, the negotiations were completed and the Parties agreed at the level of the Chief Negotiators on the Trade and Cooperation Agreement and on the Agreement on security procedures for exchanging and protecting classified information (the 'Security of Information Agreement').

The Security of Information Agreement is a supplementing agreement to the Trade and Cooperation Agreement and, in accordance with Article COMPROV.2 of the Trade and Cooperation Agreement, constitutes an integral part of the overall bilateral relations between the Union and the United Kingdom as governed by the Trade and Cooperation Agreement and forms part of the overall framework. The Security of Information Agreement is linked to the Trade and Cooperation Agreement by the same date of entry into application and the same termination provision.

In parallel to the Trade and Cooperation Agreement and the Security of Information Agreement, the Commission has negotiated the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy. The Recommendation for a Council decision on the approval of that agreement is submitted together with this proposal under a separate procedure. In addition to the conclusion of the Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, that procedure also covers the conclusion of the Trade and Cooperation Agreement as regards matters falling under the competence of the European Atomic Energy Community (in particular, the participation of the United Kingdom as a third country in the Euratom Research Programme and in the European fusion activities, including ITER activities, through its membership, as a third country, in the European Joint Undertaking for ITER and the Development of Fusion Energy – Fusion for Energy).

- **Consistency with existing policy provisions in the policy area**

  Both the European Council guidelines of 23 March 2018 and the Political Declaration called for a close partnership between the Union and the United Kingdom.

  The negotiations of the Trade and Cooperation Agreement and the Security of Information Agreement were preceded by the conclusion of the Withdrawal Agreement, which entered into force on 1 February 2020. The Withdrawal Agreement provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that agreement. The transition

[3] Council Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement (OJ L 58, 27.2.2020, p. 53).

period will end on 31 December 2020. The Trade and Cooperation Agreement and the Security of Information Agreement aim to regulate the new relationship between the Union and the United Kingdom, and hence to prevent significant disruptions which could otherwise arise in that relationship following the end of the transition period.

The Trade and Cooperation Agreement sets a solid basis for a mutually beneficial and balanced partnership between the Union and the United Kingdom. It also reflects the fact that, as a non-member of the Union, the United Kingdom does not have the same rights nor enjoy the same benefits as a member country.

- **Consistency with other Union policies**

  The Trade and Cooperation Agreement and the Security of Information Agreement fully respect the Treaties and preserve the integrity and the autonomy of the Union legal order. These agreements will not require the Union to amend its rules, regulations or standards in any regulated area. They promote the values, objectives, and interests of the Union, and ensure the consistency, effectiveness and continuity of its policies and actions.

  All imports from the United Kingdom will have to satisfy Union rules and regulations (e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, environmental protection, consumer protection).

  The Trade and Cooperation Agreement includes specific titles on Trade and Level playing field standards in the areas of labour, environment, fight against climate change and sustainable development, which link the economic part of the Trade and Cooperation Agreement to the Union's overall objectives in sustainable development and specific objectives in the area of labour, environment, and climate change.

  Participation of the United Kingdom in Union programmes will fully respect the basic acts defining the programmes and the existing Union regulations related to financial management such as the Financial Regulation.

2. LEGAL BASIS

The substantive legal basis for the proposed Council Decision on conclusion is Article 217 TFEU. This legal basis is the most appropriate given the broad scope of the envisaged partnership.

The procedural legal basis is Articles 218(6) TFEU, Article 218(7) TFEU and the second subparagraph of Article 218(8) TFEU. Article 218(6) TFEU provides for a conclusion pursuant to a decision of the Council, following the European Parliament's consent. The second subparagraph of Article 218(8) TFEU provides for unanimity voting in the Council. In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve on the Union's behalf certain modifications to the Trade and Cooperation Agreement that are to be adopted by a simplified procedure or by a body set up by the Trade and Cooperation Agreement.

Thus, the legal basis for the proposed Council Decision is Article 217 TFEU, read in conjunction with Articles 218(6) TFEU, Article 218(7) TFEU and the second subparagraph of Article 218(8) TFEU.

3. OTHER ELEMENTS

- **Implementation by bodies established under the Trade and Cooperation Agreement**

  Title III of Part One of the Trade and Cooperation Agreement establishes a Partnership Council that will oversee the attainment of the objectives of that agreement and of any supplementing agreement. The Partnership Council is comprised of representatives of the Union and of the United Kingdom at ministerial level who will meet at least once a year and will supervise and facilitate the implementation and application of the Trade and Cooperation Agreement and of any supplementing agreement, such as the Security of Information Agreement.

  The Partnership Council may adopt decisions in respect of all matters for which the Trade and Cooperation Agreement or any supplementing agreement so provides. The Partnership Council can only take its decisions and make recommendations by mutual agreement between the Union and the United Kingdom. It can in no way restrict the decision-making at Union level. The Union and the United Kingdom may, through the Partnership Council or Specialised Committees, decide to amend certain aspects of the Trade and Cooperation Agreement or of any supplementing agreement, only in those cases specifically provided therein. When the Parties approve such a decision, it has to be subject to their respective applicable internal requirements and procedures.

  In the performance of its tasks, the Partnership Council will be assisted by the Trade Partnership Committee, which in turn will be assisted by Trade Specialised Committees, and by other Specialised Committees.

  The Trade and Cooperation Agreement establishes the following Trade Specialised Committees:

  (a) The Trade Specialised Committee on Goods;

  (b) The Trade Specialised Committee on Customs Cooperation and Rules of Origin;

  (c) The Trade Specialised Committee on Sanitary and Phytosanitary Measures;

  (d) The Trade Specialised Committee on Technical Barriers to Trade;

  (e) The Trade Specialised Committee on Services, Investment and Digital Trade;

  (f) The Trade Specialised Committee on Intellectual Property;

  (g) The Trade Specialised Committee on Public Procurement;

  (h) The Trade Specialised Committee on Regulatory Cooperation;

  (i) The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development;

(j) The Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties.

The Trade and Cooperation Agreement establishes the following Specialised Committees:

(a) The Specialised Committee on Energy;

(b) The Specialised Committee on Air Transport;

(c) The Specialised Committee on Aviation Safety;

(d) The Specialised Committee on Road Transport;

(e) The Specialised Committee on Social Security Coordination;

(f) The Specialised Committee on Fisheries;

(g) The Specialised Committee on Law Enforcement and Judicial Cooperation;

(h) The Specialised Committee on Participation in Union Programmes.

The Partnership Council may establish or dissolve Trade Specialised Committees or Specialised Committees, and the Trade Partnership Committee may establish or dissolve Trade Specialised Committees.

The Trade and Cooperation Agreement also provides for a role for the Partnership Council and Specialised Committees in dispute settlement, which is addressed in Title I of Part Six of the Trade and Cooperation Agreement.

- **Implementation and application of the Trade and Cooperation Agreement in the Union**

In accordance with Article 216(2) TFEU, agreements concluded by the Union are binding upon the institutions of the Union and its Member States.

It is appropriate to authorise the Commission, pursuant to Article 218(7) TFEU, to approve on behalf of the Union certain modifications to the Trade and Cooperation Agreement that are to be adopted by a simplified procedure or by a body set up by the Trade and Cooperation Agreement. Such modifications relate to the following provisions of the Trade and Cooperation Agreement:

– paragraphs 4, 5 and 8 of Article TBT.9 [Cooperation on market surveillance and non-food product safety and compliance], as regards the establishment of or the amendments to the arrangements for the regular exchange of information between the Parties set out in Annexes [TBT-XX] and [TBT-ZZ];

– paragraph 3 of Article 2 [Product definitions, oenological practices and processes] and paragraph 3 of Article 3 [Certification requirements on import in the respective territories of the Parties] of Annex TBT-5 [Trade in Wine], as regards amendments of the Appendices to that Annex;

– paragraph 2 of Article 1 [Objective and scope] of Annex TBT-4 [Organic Products], as regards amendments of the Appendices to that Annex;

– Article 11 [Amendments to appendices] of Annex TBT-2 [Medicinal Products], as regards amendments of the Appendices to that Annex;

– Article PPROC.18 [Amendment of Section B of ANNEX.PPROC-1] concerning amendments to Section B of Annex PPROC-1 on market access commitments;

– Article AVSAF.12 [Adoption and amendments of annexes to this Chapter] as regards amendments to Annex AVSAF-1 or to annexes as provided for in paragraph 2 of Article AVSAF.3 [Scope and implementation];

– paragraph 3 of Article LAW.EUROPOL.48 [Forms of crime] as regards amendments to Annex LAW-3, where the list of forms of crime for which Europol is competent under Union law is changed;

– paragraph 3 of Article LAW.EUROJUST.63 [Forms of crime] as regards amendments to Annex LAW-4, where the list of forms of crime for which Eurojust is competent under Union law is changed;

– Article SSC.68 [Amendments] of the Protocol on Social Security Coordination as regards amendments to any of the annexes or appendices to the Protocol on Social Security Coordination.

The Commission should inform the Council of the above-mentioned proposed modifications in advance. The Council may object to those proposed modifications by a blocking minority of the Council in accordance with Article 16(4) TEU. In that case, the Commission has to reject the proposed modifications on behalf of the Union, without prejudice to the possibility of subsequently making a proposal to the Council in accordance with Article 218(9) TFEU.

The Commission should also be authorised, pursuant to Article 218(7) TFEU, to approve on behalf of the Union the position to be taken on the following modifications to the Trade and Cooperation Agreement, subject to informing the Council thereof in advance:

– the amendment to the threshold under which the Chapter Three on subsidy control of Title XI of Heading One of Part Two of the Trade and Cooperation Agreement does not apply as set out in paragraph 4 of Article LPFOFCSD.3.2 [Scope and exceptions] and paragraph 3 of Article LPFOFCSD.3.3 [Services of public economic interest] and as regards the threshold under which the transparency obligation does not apply as set out in paragraph 2 of Article LPFOFCSD.3.3 [Services of public economic interest].

Furthermore, in order to allow the Union to timely react 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. Prior to doing so, the Commission should inform the representatives of the Member States, who may object to the position presented by the Commission by a blocking minority. The Commission should also be empowered to adopt, in accordance with the same procedure, any other necessary implementing arrangements for the effective functioning of those Annexes.

Moreover, to guarantee compliance with the obligations under the Trade and Cooperation Agreement, there are robust enforcement mechanisms. The Trade and Cooperation Agreement provides the possibility for the Parties to take

swift, autonomous and operational measures to protect their interests, including in particular in the areas of the level playing field (i.e. rebalancing measures, remedial measures) and fisheries (i.e. compensatory measures, remedial measures), as well as, more generally, in cases of serious economic, societal or environmental difficulties of a sectorial or regional nature.

It is important for the Union to be fully able to deploy these enforcement measures rapidly and effectivlely. For this purpose, the Commission should be empowered to suspend obligations under the Trade and Cooperation Agreement in accordance with Article GOODS.19 on measures in case of breaches or circumvention of customs legislation, Article LPFOFCSD.3.12 on remedial measures in the area of level plaing field, Article ROAD.11 on remedial measures in road transport), Article AIRTRN.8 on refusal, revocation, suspension or limitation of operating authorisation in air transport, Article FISH.14 on remedial measures in the area of fisheries, Article FISH.9 on compensatory measures in case of withdrawal or reduction of access, Articles UNPRO.3.1 and UNPRO.3.20 on suspension and termination of the participation of the United Kingdom in a Union programme and Article INST.24 on temporary remedies or to take appropriate safeguard measures in accordance with Article INST.36.

In accordance with the Treaties, the Commission will also act on behalf of the Union on all steps of the procedure regarding dispute settlement under Title I of Part Six of the Trade and Cooperation Agreement.

- **Detailed explanation of the specific provisions of the draft Agreements**

The broad and ambitious cooperation between the Union and the United Kingdom envisaged by the Trade and Cooperation Agreement reflects the conclusions and guidelines of the European Council of 23 March 2018 and builds upon the Political Declaration.

The Trade and Cooperation Agreement is a single package that comprises four main components:

– general and institutional arrangements;

– economic arrangements (including provisions on trade and level playing field guarantees);

– arrangements on law enforcement and judicial cooperation in criminal matters; and

– provisions on dispute settlement, basic values and safeguard measures.

The envisaged partnership is premised on the recognition of democracy, rule of law and human rights, as well as the fight against climate change and countering proliferation of weapons of mass destruction. A breach of any of these essential elements allows the Parties to terminate or suspend the operation of the Trade and Cooperation Agreement or any supplementing agreement in whole or in part. The Parties also affirm their commitment to ensuring a high level of personal data protection.

The scope of the Trade and Cooperation Agreement is comprehensive. It includes the areas of interest outlined in the Political Declaration: trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, participation in Union programmes and thematic areas of cooperation.

The Trade and Cooperation Agreement does not include arrangements for cooperation in the area of foreign policy, external security and defence, given the position of the United Kingdom not to negotiate nor include such arrangements in the Trade and Cooperation Agreement. The Trade and Cooperation Agreement respects the autonomy of the Union's decision-making powers and its legal order, the integrity of its Single Market and the Customs Union and the indivisibility of the four freedoms of movement (people, goods, services and capital). It covers not only free trade in goods and services but also ways to prevent distortions and unfair competitive advantages. The Trade and Cooperation Agreement reflects the fact that the United Kingdom is leaving the Union's system of common rules, supervision and enforcement mechanisms, and can thus no longer enjoy the benefits of membership or of the Single Market.

The Trade and Cooperation Agreement establishes an overall governance framework covering all areas of cooperation under the Trade and Cooperation Agreement and under any supplementing agreement, such as the Security of Information Agreement, while certain adaptations are included to respond to justified sectorial needs.

To guarantee compliance with the obligations under the Trade and Cooperation Agreement, there are robust enforcement mechanisms. The Trade and Cooperation Agreement foresees the possibility for the Parties to take swift, autonomous and operational measures to protect their interests, including in particular in the areas of the level playing field (i.e. rebalancing measures, remedial measures) and fisheries (i.e. compensatory measures, remedial measures), as well as, more generally, in cases of serious economic, societal or environmental difficulties of a sectorial or regional nature.

As regards its territorial scope, the Trade and Cooperation Agreement covers, with respect to the Union, the territories to which the Treaties apply and, with respect to the United Kingdom, the territory of the United Kingdom. The Trade and Cooperation Agreement also provides a limited coverage for the Channel Islands and Isle of Man in what concerns trade in goods and access to waters. In line with the Declarations included in the minutes of the European Council of 25 November 2018 and with the Council negotiating directives, the Trade and Cooperation Agreement does not apply to Gibraltar.

The Trade and Cooperation Agreement consists in seven Parts (further divided into Headings, Titles, Chapters and Sections), three Protocols and a number of Annexes, as follows:

Part One (Common and Institutional Provisions) contains the general provisions, principles of interpretation of the Trade and Cooperation Agreement and definitions, and institutional framework.

Part One sets out the provisions on governance and implementation of the Trade and Cooperation Agreement and establishes joint governance bodies (the Partnership Council, Trade Partnership Committee, Trade Specialised Committees and other Specialised Committees).

The governance provisions provide clarity on how the Trade and Cooperation Agreement will be operated and controlled. They have been conceived to be flexible and adaptable to specific needs that may arise in different areas. In

view of the scope and complexity of the Trade and Cooperation Agreement, the Union insisted on a single governance framework covering the whole of the Agreement. This provides legal certainty to businesses, consumers and citizens, while avoiding multiple parallel structures and the creation of additional bureaucracy.

The Partnership Council will oversee the implementation of the agreement. Comprised of representatives of the Union and the United Kingdom at ministerial level, the Partnership Council will meet in different configurations depending on the matter at hand. It will be the forum in which the Parties will discuss any issues that might arise, with the power to take binding decisions by mutual consent. It will be assisted in its work by the Trade Partnership Committee, Trade Specialised Committees and other Specialised Committees.

Part Two (Trade, Transport, Fisheries and Other Arrangements) includes six headings:

– Heading One: Trade, consisting of twelve titles: Title I (Trade in goods), Title II (Services and investment), Title III (Digital trade), Title IV (Capital movements, payments, transfers and temporary safeguard measures), Title V (Intellectual property), Title VI (Public procurement), Title VII (Small and medium-sized enterprises), Title VIII (Energy), Title IX (Transparency), Title X (Good regulatory practices and regulatory cooperation), Title XI (Level playing field for open and fair competition and sustainable development), Title XII (Exceptions);

– Heading Two: Aviation, consisting of two titles: Title I (Air Transport) and Title II (Aviation Safety);

– Heading Three: Road Transport, consisting of two titles: Title I (Transport of goods by road) and Title II (Transport of passengers by road);

– Heading Four: Social Security Coordination and visas for short-term travel;

– Heading Five: Fisheries;

– Heading Six: Other Provisions.

As follows from its headings and titles, Part Two covers trade in goods and services, as well as a broad range of other areas of economic and broader cooperation, such as investment, competition, tax transparency, energy, air and road transport, non-discrimination with regard to certain mobility arrangements and social security coordination, and fisheries.

Part Two sets out a modern, sustainable trade policy. Both Parties commit to common high standards in areas such as labour and social standards, environmental protection, the fight against climate change, including carbon pricing, and relevant standards on tax avoidance and tax transparency.[4] It also contains principles on subsidies to prevent either Party from granting subsidies that have a material effect on trade or investment between the Parties. These agreed standards and principles are associated with domestic enforcement and

[4] The Union and the United Kingdom also intend to endorse a Joint Declaration on Countering Harmful Tax Regimes at the time of conclusion of the Agreements.

dispute settlement mechanisms to ensure that businesses from the EU and the UK compete on a level playing field. Part Two foresees that each Party can take unilateral measures as appropriate to protect itself against effects on trade or investment resulting from subsidies or from significant divergences in the respective subsidy control systems or in the respective levels of labour and social, environmental or climate protection.

In terms of trade in goods, the provisions in Part Two go beyond recent EU free trade agreements with partners, such as Canada and Japan, by providing for zero tariffs and zero quotas on all goods. To benefit from these exceptional preferences, businesses must ensure that their products originate in the Union or in the United Kingdom. These 'rules of origin' are essential to ensure the integrity of the Union market. The Trade and Cooperation Agreement will also facilitate, to the extent permitted by the Union Customs Code, the customs formalities that apply to any third country outside the Customs Union. It will also remove unnecessary technical barriers to trade, yet still ensuring that all United Kingdom's goods entering the Union fully meet the Union's high regulatory standards, including on food quality (e.g. sanitary and phytosanitary standards) and product safety.

A significant level of openness for trade in services is also agreed, going beyond the baseline provisions of the WTO General Agreement on Trade in Services (GATS), while reflecting the fact that the United Kingdom no longer benefits from free movement of persons and, hence, from freedom to supply services. United Kingdom's service providers wanting to offer services in the Union will need to meet all appropriate regulatory requirements in the Union, but they will not be treated any less favourably than Union operators in those areas covered by the Trade and Cooperation Agreement, and vice-versa[5]. United Kingdom's investors can also establish legal entities in the Union in order to offer services across the single market and vice-versa. The Agreement includes a framework for the future negotiation of recognition agreements in relation to profesional qualifications.

The Trade and Cooperation Agreement contains provisions aimed at facilitating digital trade, by addressing unjustified barriers, and ensuring an open, secure and trustworthy online environment for businesses and consumers, along with high standards of personal data protection. The Agreement also contains provisions guaranteeing the protection of intellectual property rights. Additionally, it includes provisions on mutual opportunities in the Parties' respective public procurement markets and on procurement standards going beyond their commitments under the WTO Government Procurement Agreement (GPA).

On energy, as the United Kingdom will no longer participate in the single electricity market and EU trading platforms, the Trade and Cooperation Agreement creates a new framework for bilateral energy cooperation, aimed at ensuring cost-efficient, clean and secure supplies of energy that are essential to the functioning of both economies, and putting in place new mechanisms to cooperate on renewable energy, in particular in the North Sea, and tackling

[5] In accordance with the EU's trade policy a limited number of sectors are excluded (public services, some transport services, and audiovisual services to preserve cultural diversity).

climate change. Substantive provisions on level playing field and liberalisation are also part of the Agreement, including in terms of conditions for subsidies in the energy sector. As in the other areas, the provisions on energy do not replicate the full benefits of the Single Market for the United Kingdom, taking into account its third-country status.

On transport, the Trade and Cooperation Agreement provides for continued and sustainable air and road connectivity, while respecting the integrity of the Single Market. It includes provisions to ensure that competition between Union and United Kingdom operators takes place on a level playing field, so that passenger rights and transport safety are not undermined.

Part Two also contains a framework for joint and sustainable management of fish stocks in Union and United Kingdom's waters. The United Kingdom, as an independent coastal state, will have control over its waters and it will be able to further develop British fisheries, yet European fishermen and women will continue to have access to UK waters to carry out their fishing activities.

Part Three (Law Enforcement and Judicial Cooperation in Criminal Matters) sets out a framework for law enforcement and judicial cooperation in criminal matters. It recognises the need for strong cooperation between national police and judicial authorities and also Union agencies and bodies, in particular for fighting and prosecuting cross-border crime and terrorism.

Part Three covers the following key areas:

– Data exchange: arrangements for timely, effective and efficient exchange of air passenger data (known as Passenger Name Records or PNR), DNA, fingerprint and vehicle registration data (so-called 'Prüm data' – which have never before been exchanged between the Union and a non-Schengen third country) criminal record information and operational information – complementing international channels, such as Interpol;

– Europol and Eurojust: effective cooperation between the United Kingdom and Europol and Eurojust, in line with the rules for cooperation with third countries established in Union legislation;

– Surrender: enabling the swift surrender of criminals between the Member States of the Union and the United Kingdom through streamlined procedures, strict deadlines, robust safeguards (including appropriate grounds for refusal of surrender), procedural rights and judicial control;

– Mutual assistance: arrangements to facilitate and supplement the Council of Europe Conventions in criminal matters, e.g. through streamlined procedures, time limits, and technological infrastructures, on a wide range of measures, including freezing and confiscating property;

– Anti-money laundering: provisions for cooperation on combating money laundering and the financing of terrorism.

Part Three respects the United Kingdom's status as a non-Union member outside of the Schengen area. For instance, the United Kingdom will no longer have direct, real-time access to sensitive Union databases that support the Union area of freedom, security and justice – as this is provided only to Member States and very closely associated countries that accept all accompanying obligations.

The close and comprehensive police and judicial cooperation is underpinned by guarantees to respect democracy and the rule of law, to protect effectively fundamental rights and freedoms of individuals, including those enshrined in the European Convention on Human Rights and by giving effect domestically to them, as well as commitments by both Parties to uphold high levels of data protection standards. This was a particularly important demand from the Union side with a view to ensuring that both the security and the fundamental rights of its citizens are protected. Part Three also provides for specific provisions on suspension of cooperation in case of serious and systemic deficiencies in ensuring any of these safeguards, as well as a dedicated dispute settlement mechanism.

Part Four (Thematic Cooperation) includes two titles: Title I: Health Security and Title II; Cyber Security. Part Four sets out provisions for cooperation between the Parties on health security and cyber security issues, including through temporary and limited participation of the United Kingdom in a number of Union structures, only upon invitation by the Union, and provided specific common threats arise.

Part Five (Participation in Union Programmes, Sound Financial Management and Financial Provisions) sets out provisions regarding the United Kingdom's continued participation as a third country in a number of flagship Union programmes, subject to financial contribution by the United Kingdom to the Union budget. The precise list of such programmes will be adopted later by the Specialised Committee on Participation in Union Programmes. In addition the Specialised Committee on Participation in Union Programmes may also set up a list of services provided through the implementation of Union Programmes to which the United Kingdom may have access.

The legal bases (basic acts) of the Union programmes and activities in which the United Kingdom may participate have still not been adopted. However, there is a common understanding between the United Kingdom and the Union on the programmes in which the United Kingdom may participate and under which specific conditions, subject to the conditions provided in the definitive legal bases. Therefore, a Joint Declaration attached to the Trade and Cooperation Agreement provides a framework for the protocols that will be added to that agreement by the Specialised Committee on Participation in Union Programmes when the legal bases of those programmes will be adopted.

Part Six (Dispute Settlement and Horizontal Provisions) includes three titles: Title I (Dispute settlement), Title II (Basis for cooperation) and Title III (Fulfilment of obligations and safeguard measures).

On dispute settlement, if a disagreement arises and a solution cannot be found between the Parties, the Trade and Cooperation Agreement foresees that an independent arbitration tribunal can be established to settle the matter through a binding ruling. This dispute settlement mechanism applies to most areas of the Trade and Cooperation Agreement, including level playing field and fisheries. It is accompanied by credible and robust enforcement and compliance mechanisms, including the possibility to suspend the complaining party's obligations under the Trade and Cooperation Agreement e.g. to reintroduce tariffs and/or quotas. Furthermore, each Party will under certain

conditions be able to cross-retaliate whenever another Party does not comply with the ruling of the arbitration tribunal. For instance, a persisting breach by one Party that concerns a specific economic sector will allow the other Party to retaliate with measures in other economic sectors. Each Party may also unilaterally take appropriate safeguard measures in cases of serious economic, societal or environmental difficulties of a sectorial or regional nature.

Part Seven (Final Provisions) contains final provisions, including on the entry into force, review and termination of the Trade and Cooperation Agreement.

Two **Protocols** provide for **administrative cooperation and combating fraud in the field of Value Added Tax, mutual assistance for the recovery of claims relating to taxes and duties** and for **mutual administrative assistance in customs matters**.

The Protocol on Social Security Coordination sets out a number of social security coordination measures aimed at protecting the social security entitlements of EU citizens and UK nationals in a cross-border situation involving the UK and the EU as of 1 January 2021. Third-country nationals, stateless persons and refugees are also protected. A wide range of benefits is covered, including old-age and survivors' pensions, death grants, sickness benefits, maternity / paternity benefits related to the birth of a child, benefits in respect of accidents at work or pre-retirement benefits. The Protocol ensures that the social security coordination arrangements established therein are based on the principle of non-discrimination between the Member States of the Union.

The Agreement concerning security procedures for exchanging and protecting classified information sets out rules and modalities for the exchange of classified and non-classified sensitive information. In line with other security of information agreements concluded by the Union with other third countries, the Security of Information Agreement ensures the secure handling of sensitive information, based on the principle of the originator's consent prior to the release of the information exchanged. The Security of Information Agreement applies as from the date of application of the Trade and Cooperation Agreement, or from the date the Parties have notified each other that they have completed their respective internal requirements and procedures to release classified information under that agreement, whichever is later.

2020/0382 (NLE)

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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 ('TFEU'), and in particular Article 217, in conjunction with Article 218(6), Article 218(7) 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,[6]

Whereas:

(1) On [DATE], the Council adopted Council Decision No (EU) …, regarding the signing, 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, (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').

(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 its entry into application and termination. The decision on the signing of the Trade and Cooperation Agreement and the Security of Information Agreement (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) It is appropriate to define the modalities of 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

[6] OJ C , , p. .

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 these bodies are to be established in accordance with the procedure set out in Article 218(9) TFEU.

(4) One or more Member States may request that the Commission representative be accompanied, as part of the Union delegation, by a representative of that or those Member States in a meeting of the Partnership Council and other joint bodies established by the Agreement.

(5) It is appropriate to authorise the Commission, pursuant to Article 218(7) TFEU, to approve on the Union's behalf certain modifications to the Trade and Cooperation Agreement that are to be adopted by a simplified procedure or by a body set up by the Trade and Cooperation Agreement in accordance with the provisions of that agreement. The procedure of consultation of the Council regarding such modifications should be established.

(6) Furthermore, in order to allow the Union to timely react 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 TBT-4 [on Organic Products] and Annex TBT-2 [on Medicinal Products]. Prior to doing so, the Commission should inform the representatives of the Member States, who may object to the position presented by the Commission by a blocking minority. The Commission should also be empowered to adopt, in accordance with the same procedure, any other necessary implementing arrangements for the effective functioning of those Annexes.

(7) With a view to enable 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-fulfillement of certain conditions, notably in the areas of trade in goods, level playing field, road transport, air transport, fisheries and Union programmes, as specified in the Trade and Cooperation Agreement, as well as to take appropriate remedial measures, rebalancing measures and countermeasures.

(8) Whenever the Union is required to act in order to comply with the provisions of the Agreements, such action is to be taken in accordance with the provisions of the Treaties, while respecting the limits of the powers conferred upon each 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.

(9) It is recalled that, in accordance with the negotiating directives of 25 February 2020, the territorial scope of the Trade and Cooperation Agreement concluded between the Union and the United Kingdom 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 in line with the declaration of the European Council and of the European Commission included in the minutes of the European Council meeting of 25 November 2018.

(10) The conclusion of the Trade and Cooperation Agreement as regards matters falling under the competence of the European Atomic Energy Community is subject to a separate procedure.

(11) The Agreements should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 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 competence of the European Atomic Energy Community.

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.

The texts of these Agreements are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to proceed, on behalf of the Union, to give the notifications provided for in the following provisions:

(a) with regard to the Trade and Cooperation Agreement:

- Article LAW.OTHER.134 [Notifications];
- Article FINPROV.11 [Entry into force].
- Article SSC.11 of the Protocol on Social Security Coordination;

(b) with regard to the Agreement concerning security procedures for exchanging and protecting classified information:

- Article 19, paragraphs 1 and 2.

Article 3

1. When the Commission represents the Union in bodies created by the Trade and Cooperation Agreement, it shall inform the Council in a timely manner about the discussions and the outcome of the meetings and of acts adopted by written procedure, and, upon request, shall provide minutes and other documents relating to such meetings or procedure. The Commission shall also inform the European Parliament, as appropriate.

2. During the first five years after the entry into force of the Trade and Cooperation Agreement, the Commission shall report annually to the European Parliament and to

the Council on the implementation and application of the Trade and Cooperation Agreement.

Article 4

1. The Commission shall be authorised to approve, on behalf of the Union, modifications to the Trade and Cooperation Agreement to be adopted by the Partnership Council or the Specialised Committees as the case may be, in accordance with the following provisions of that agreement:

   (a) paragraphs 4, 5 and 8 of Article TBT.9 [Cooperation on market surveillance and non-food product safety and compliance], as regards the establishment of or the amendments to the arrangements for the regular exchange of information between the Parties set out in Annexes [TBT-XX] and [TBT-ZZ];

   (b) paragraph 3 of Article 2 [Product definitions, oenological practices and processes] and paragraph 3 of Article 3 [Certification requirements on import in the respective territories of the Parties] of Annex TBT-5 [Trade in Wine], as regards amendments of the Appendices to that Annex;

   (c) paragraph 2 of Article 1 [Objective and scope] of Annex TBT-4 [Organic Products], as regards amendments of the Appendices to that Annex;

   (d) Article 11 [Amendments to appendices] of Annex TBT-2 [Medicinal Products], as regards amendments of the Appendices to that Annex;

   (e) Article PPROC.18 [Amendment of Section B of ANNEX.PPROC-1], as regards amendments to Section B of Annex PPROC-1 on market access commitments;

   (f) Article AVSAF.12 [Adoption and amendments of annexes to this Chapter], as regards amendments to Annex AVSAF-1 or to other annexes as provided in that Article;

   (g) paragraph 3 of Article LAW.EUROPOL.48 [Forms of crime], as regards amendments to ANNEX LAW-3, where the list of forms of crime for which Europol is competent under Union law is changed;

   (h) paragraph 3 of Article LAW.EUROJUST.63 [Forms of crime], as regards amendments to ANNEX LAW-4, where the list of forms of crime for which Eurojust is competent under Union law is changed;

   (i) Article SSC.68 [Amendments] of the Protocol on Social Security Coordination, as regards amendments to any of the Annexes or Appendices to the Protocol on Social Security Coordination.

2. The Commission shall submit the proposed modifications specified in paragraph 1 to the Council before their approval.

   The Commission shall approve those proposed modifications on behalf of the Union unless, within one month after the Commission has submitted them to the Council, a number of Member States representing a blocking minority of the Council in accordance with Article 16(4) of the Treaty on European Union object to them. If there is such an objection, the Commission shall reject the proposed modifications on behalf of the Union.

3. The Commission shall approve, on behalf of the Union, modifications to the Trade and Cooperation Agreement to be adopted by the Partnership Council or the

Specialised Committees as the case may be, in accordance with the following provisions of that agreement:

(a) paragraph 4 of Article LPFOFCSD.3.2 [Scope and exceptions], as regards the threshold under which the Chapter on subsidy control does not apply;

(b) paragraph 2 of Article LPFOFCSD.3.3 [Services of public economic interest], as regards the threshold under which the transparency obligation does not apply;

(c) paragraph 3 of Article LPFOFCSD.3.3 [Services of public economic interest], as regards the threshold under which the Chapter does not apply

(d) Article LPFOCDSD.3.5 [Prohibited subsidies and subsidies subject to conditions], as regards the updating of the conditions to be applied to subsidies under this Article;

(e) Article LPFOCDSD.3.11 [Recovery], as regards different arrangements to ensure recovery of subsidies.

The Commission shall inform the Council of the proposed modifications before their approval.

4. The Commission shall ensure that the approval on behalf of the Union of the proposed modifications set out in this Article:

(a) is in the interests of the Union;

(b) serves the objectives pursued by the Union within the framework of its trade policy, aviation safety, social security and law enforcement and judicial cooperation;

(c) is not contrary to Union law or international law;

(d) avoids creating obstacles to innovation.

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 paragraph 3 of Article 3 [Recognition of equivalence] of Annex TBT-4 [Organic Products];

(b) suspend the recognition of equivalence in accordance with paragraphs 5 and 6 of Article 3 [Recognition of equivalence] of Annex TBT-4 [Organic Products];

(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 paragraphs 3 and 4 of Article 5 [Recognition of inspections] of Annex TBT-2 [Medicinal Products];

(d) adopt any necessary implementing arrangements for the exchange of official Good Manufacturing Practice documents with the authority of the United Kingdom under Article 6 [Exchange of official GMP documents] of Annex TBT-2 [on Medicinal Products] and for the exchange of information with the

authority of the United Kingdom regarding inspections of manufacturing facilities under Article 7 [Safeguards] of Annex TBT-2 [Medicinal Products];

(e) suspend recognition of inspections or acceptance official Good Manufacturing Practice documents issued by the United Kingdom and notify the United Kingdom of its intention to apply Article 9 [Suspension] of Annex TBT-2 [Medicinal Products] and enter into consultations with the United Kingdom in accordance with paragraph 3 of Article 8 [Changes to the applicable legislation] of Annex TBT-2 [Medicinal Products];

(f) suspend totally or partially, for all or some of the products listed in Appendix C to Annex TBT-2 [on Medicinal Products], the recognition of inspections and acceptance of official Good Manufacturing Practice documents of the other Party in accordance with paragraph 1 of Article 9 [Suspension] of Annex TBT-2 [Medicinal Products].

2. The Commission shall take those proposed decisions in accordance with the procedure laid down in Article 4(2) of this Decision.

Article 6

1. Until a specific legislative act regulating the adoption of such measures is adopted and enters into force in the Union, the decision of the Union to take the following measures under the Trade and Cooperation Agreement 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 GOODS.19 [Measures in case of breaches or circumvention of customs legislation];

(b) the application of remedial measures and the suspension of obligations as set out in Article LPFOFCSD.3.12 [Remedial measures];

(c) the application of rebalancing measures and counter-measures as set out in Article LPFOFCSD.9.4 [Rebalancing];

(d) the application of remedial measures as set out in Article ROAD.11 [Remedial measures];

(e) the refusal, revocation, suspension or limitation of operating authorisation of an airline, Article AIRTRN.8 [Refusal, revocation, suspension or limitation of operating authorisation];

(f) the application of remedial measures as set out in Article FISH.14 [Remedial measures and dispute resolution];

(g) compensatory measures as set out in Article FISH.9 [Compensatory measures in case of withdrawal or reduction of access]

(h) the suspension or termination of the participation of the United Kingdom in Union programmes, as set out in Article UNPRO.3.1 [Suspension of the participation of the United Kingdom in a Union programme by the European Union] and Article UNPRO.3.20 [Termination of the participation of the United Kingdom in a Union programme by the European Union];

(i) 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 INST.24 [Temporary Remedies], except as provided in Regulation (EU) No 654/2014;

(j) the safeguard measures and rebalancing measures as set out in Article INST.36 [Safeguard measures].

2. The Commission shall fully inform the Council in a timely manner of its intention to adopt the proposed measures set out in paragraph 1 and take into account the possible views expressed. The Commission shall also inform the European Parliament, as appropriate.

3. 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 foreseen in paragraph 1.

Article 7

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

Done at Brussels,

For the Council
The President