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2022/0070 (NLE)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Trade and Cooperation Agreement between the Union and the United Kingdom (the "Trade and Cooperation Agreement")[1] provides that, in accordance with the conditions set out therein, the Parties may adopt certain unilateral measures.

As regards matters falling under the Euratom Treaty, unilateral measures may be adopted by the European Atomic Energy Community ("the Community") in the cases and under the conditions laid down in Articles 718 and 719 of the Trade and Cooperation Agreement, without having to first resort to the dispute settlement mechanism. 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.

The Council, in its decision on the conclusion of the Trade and Cooperation Agreement empowered the Commission to adopt the above mentioned measures as regards matters falling under the Treaty on the Functioning of the European Union[2], on behalf of the Union and *"until a specific legislative act regulating the adoption of the measures"* under this Agreement be adopted.

The Commission and the Council also agreed on a joint statement, issued at the time of the conclusion of the Trade and Cooperation Agreement, which provides that, without prejudice to its right of initiative under the Treaties, the Commission "will aim to propose the specific legislative act referred to above no later than 31 March 2022"[3].

This legislative proposal fulfils this political commitment as regards matters falling under the Euratom Treaty, namely the association of the United Kingdom with the Research and Training programme of Euratom and with the European Joint Undertaking for 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). The proposed Regulation ensures that the Community can act in a timely and

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1 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'). Agreement concluded, as regards matters falling under the Euratom treaty, pursuant to Commission Decision (Euratom) 2020/2255 of 29 December 2020 on the conclusion, by the European Commission, and provisional application of 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 and on the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, and 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 (OJ L 445, 31.12.2020, p. 2). The Agreement applied provisionally as of 1 January 2021 and entered into force on 1 May 2021.

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,

3 Statement by the Commission and the Council on the monitoring and implementation of the Trade and Cooperation Agreement, paragraph 3.

effective manner to protect its interests in implementing and enforcing the Trade and Cooperation Agreement. The proposed Regulation empowers the Commission to adopt the measures referred to above, as well as to suspend and repeal them as appropriate, by means of implementing acts.

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

There are no precedents of any policy provisions governing the withdrawal of, and the Community's partnership with, a former Member State.

The proposed Regulation is *lex specialis* with regard to other provisions of Community law to the extent that these provisions govern the same subject matter.

An 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 was concluded at the same time as the Trade and Cooperation Agreement[4].

- **Consistency with other Union policies**

A separate legislative proposal governs *inter alia* the adoption of unilateral and enforcement measures in the area of the Union's research and development programmes.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal bases are those in the Euratom Treaty that govern the areas in which unilateral measures may have to be adopted, namely Articles 7, 47 and 48, in conjunction with Article 106a which declares Article 291 of the Treaty on the Functioning of the European Union applicable to the Euratom Treaty.

- **Subsidiarity (for non-exclusive competence)**

n/a

- **Proportionality**

To the extent that the Community's rights to be exercised are set out in the Trade and Cooperation Agreement, the proposed measures do not exceed what is strictly necessary to achieve the objective to ensure a swift and effective exercise of those rights. Moreover, the conditions applying under the Agreement to the adoption of unilateral measures ensure that these measures are limited to what is strictly necessary to achieve the specific purposes laid down therein.

- **Choice of the instrument**

The form of a regulation fits best the objective pursued, namely to lay down general principles and uniform conditions for the exercise of the rights available to the Community in implementing and enforcing the Trade and Cooperation Agreement.

[4] Agreement concluded pursuant to Commission Decision (Euratom) 2020/2255.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n/a

- **Stakeholder consultations**

The initiative is of a procedural and institutional nature.

- **Collection and use of expertise**

n/a

- **Impact assessment**

No impact assessment has been carried out for the following reasons:

1. No policy options are available to the Commission because: (a) the envisaged proposal organises how measures already agreed in an international agreement are taken within the Community with no margin for variation, and (b) the Commission has committed before the European Parliament and the Council to submit a proposal for this legislative act by a given date.
2. No directly identifiable impacts are expected given the procedural nature of the act.

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

Measures adopted under the proposed Regulation would be a lawful action by the Community under the Charter of Fundamental Rights. This is because this action would be taken in conformity with the requirements that the action be taken on the basis of a proper legal basis, by the competent authorities, in pursuit of a legitimate objective, namely that of exercising the Union's rights under the above Agreements, and in line with the principle of proportionality.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

A review of the implementation of the proposed Regulation is foreseen within five years of its entry into force. This period is in line with the joint review of both Parties to the TCA as provided for in Article 776 of the TCA.

- **Explanatory documents (for directives)**

n/a

- **Detailed explanation of the specific provisions of the proposal**

Article 1 lays down the subject matter of the proposed Regulation, namely to establish rules and procedures to ensure an effective and timely exercise of the Community's rights in enforcing and implementing the Trade and Cooperation Agreement .

These rights may be exercised by means of the unilateral measures as defined in the second paragraph of that Article, in accordance with the rules laid down in Article 2 and the committee procedure laid down in Article 3.

Finally, Article 5 provides for a review of this Regulation by the Commission within five years of its entry into force, in order to ascertain that it remains fit for purpose.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 7, 47 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 part[5] (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 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.

(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

[5] OJ L 149, 30.4.2021, p. 10.

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 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 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.

(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 Council[6]. 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 opinion[7],

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.

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6 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).

7 […]

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.

2. The Commission shall be empowered to amend or repeal the measures referred to in Article 1(2), point (a), by means of implementing acts.

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 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.

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