

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

COUNCIL DECISION (EU) 2020/2252

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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

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (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 Union and from the European Atomic Energy Community.
- (2) On 30 January 2020, 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⁽¹⁾ (the ‘Withdrawal Agreement’). The Withdrawal Agreement entered into force on 1 February 2020.
- (3) On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266⁽²⁾ authorising the Commission to open negotiations with the United Kingdom for a new partnership agreement. Those negotiations have been conducted in light of the negotiating directives of 25 February 2020.
- (4) The negotiations resulted in a 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’), an 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

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Agreement') and 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 the Peaceful Uses of Nuclear Energy (the 'Nuclear Energy Agreement').

- (5) The Trade and Cooperation Agreement establishes the basis for a broad relationship between the Union and the United Kingdom involving reciprocal rights and obligations, common actions and special procedures. The Security of Information Agreement is a supplementing agreement to the Trade and Cooperation Agreement, intrinsically linked to the latter in particular with regard to the dates of entry into application and termination. The decision on the 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.
- (6) In view of the exceptional and unique character of the Trade and Cooperation Agreement, which is a comprehensive agreement with a country that has withdrawn from the Union, the Council is hereby deciding to make use of the possibility for the Union to exercise its external competence with regard to the United Kingdom.
- (7) It is appropriate to define the arrangements for the Union's representation in the Partnership Council and the Committees established by the Trade and Cooperation Agreement. The Commission, as provided for in Article 17(1) TEU, is to represent the Union and to express the Union's positions as established by the Council in accordance with the Treaties. The Council is to exercise its policy-making and coordinating functions as provided for in Article 16(1) TEU by establishing the positions to be taken on the Union's behalf in the Partnership Council and the Committees established by the Trade and Cooperation Agreement. Furthermore, where the Partnership Council or the Committees established by the Trade and Cooperation Agreement are called upon to adopt acts having legal effects, the positions to be taken on the Union's behalf in those bodies are to be established in accordance with the procedure set out in Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).
- (8) Each Member State should be allowed to send one representative to accompany the Commission representative, as part of the Union delegation, in meetings of the Partnership Council and of other joint bodies established under the Trade and Cooperation Agreement.
- (9) With a view to enabling the Union to take rapid and effective action to protect its interests in accordance with the Trade and Cooperation Agreement, and until a specific legislative act regulating the adoption of remedial measures under the Trade and Cooperation Agreement is adopted and enters into force in the Union, the Commission should be empowered to take remedial measures, such as the suspension of obligations under the Trade and Cooperation Agreement or any supplementing agreement, in cases of breaches of certain provisions of the Trade and Cooperation Agreement or non-fulfilment of certain conditions, in particular with regard to trade in goods, the level playing field, road transport, air transport, fisheries and Union programmes, as specified in the Trade and Cooperation Agreement, as well as to take remedial measures,

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rebalancing measures and countermeasures. The Commission should fully inform the Council in a timely manner of its intention to adopt such measures with a view to allowing a meaningful exchange of views in the Council. The Commission should take the utmost account of the views expressed. One or more Member States may request the Commission to adopt such measures. If the Commission does not respond positively to such a request, it should inform the Council in a timely manner of its reasons.

- (10) In order to allow the Union to react in a timely manner where relevant conditions are no longer met, the Commission should be empowered to take certain decisions suspending benefits granted to the United Kingdom under the Annex on Organic Products and the Annex on Medicinal Products. The Commission should fully inform the Council in a timely manner of its intention to adopt such measures with a view to allowing a meaningful exchange of views in the Council. The Commission should take the utmost account of the views expressed. One or more Member States may request the Commission to adopt such measures. If the Commission does not respond positively to such a request, it should inform the Council in a timely manner of its reasons.
- (11) Whenever the Union is required to act in order to comply with the Agreements, such action is to be taken in accordance with the Treaties, while respecting the limits of the powers conferred upon each Union institution. It is therefore for the Commission to provide the United Kingdom with the information or notifications required in the Agreements, except where the Agreements refer to other specific institutions, bodies, offices and agencies of the Union, and to consult the United Kingdom on specific matters. It is also for the Commission to represent the Union before the arbitration tribunal where a dispute has been submitted to arbitration in accordance with the Trade and Cooperation Agreement. In compliance with the duty of sincere cooperation referred to in Article 4(3) TEU, the Commission is to consult the Council beforehand, for example by submitting to it the main points of the intended Union submissions to the arbitration tribunal and taking the utmost account of comments made by the Council.
- (12) The Trade and Cooperation Agreement does not exclude the possibility for Member States to enter into bilateral arrangements or agreements with the United Kingdom concerning specific matters covered by the Trade and Cooperation Agreement in the areas of air transport, administrative cooperation in the field of customs and VAT and social security under certain conditions.
- (13) It is therefore necessary to set out a framework to be followed by the Member States where they decide to enter into bilateral arrangements or agreements with the United Kingdom in the areas of air transport, administrative cooperation in the field of customs and VAT and social security, including the conditions and procedure for Member States to negotiate and conclude such bilateral arrangements or agreements, in such a way as to ensure that they are compatible with the purpose of the Trade and Cooperation Agreement and with Union law and take into account the internal market and broader Union interests. In addition, Member States which intend to negotiate and conclude bilateral agreements with the United Kingdom in areas not covered by the Trade and Cooperation Agreement should, in full respect of the principle of sincere cooperation, inform the Commission of their intentions and of the progress of the negotiations.

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- (14) It is recalled that, in accordance with Article FINPROV.1(3) of the Trade and Cooperation Agreement, and in line with the declaration of the European Council and of the European Commission on the territorial scope of future agreements included in the minutes of the European Council meeting of 25 November 2018, the Trade and Cooperation Agreement neither applies to Gibraltar nor has any effects in that territory. As foreseen in that declaration, ‘this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar’ and, ‘without prejudice to the competences of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain’.
- (15) The exercise of Union competence through the Trade and Cooperation Agreement is without prejudice to the respective competences of the Union and of the Member States in relation to any ongoing or future negotiations for, or signature or conclusion of, international agreements with any other third country, or in relation to any future negotiations for, or signature or conclusion of, any supplementing agreements referred to in Article COMPROV.2 [Supplementing agreements] of the Trade and Cooperation Agreement.
- (16) Being a country that has withdrawn from the Union, the United Kingdom is in a different and exceptional situation with regard to the Union compared to other third countries with which the Union has negotiated and concluded agreements. Under the Withdrawal Agreement, Union law applies to and in the United Kingdom during the transition period, and, at the end of that period, the basis for cooperation with the Member States of the Union is therefore at a very high level, in particular in the areas of the internal market, the common fisheries policy, and freedom, security and justice. The transition period will end on 31 December 2020, after which the provisions on other separation issues provided for in the Withdrawal Agreement will settle the smooth closure of such cooperation in a number of areas. If the Agreements do not enter into force from 1 January 2021, the cooperation between the Union and the United Kingdom will fall to a level that is neither desirable nor in the Union interest, causing disruptions in the relationship between the Union and the United Kingdom. Such disruptions can be limited through the provisional application of the Agreements.
- (17) Therefore, given the exceptional situation of the United Kingdom with regard to the Union, the urgency of the situation with the transition period ending on 31 December 2020, as well as the need to give sufficient time to the European Parliament and the Council to appropriately scrutinise the envisaged decision on the conclusion of the Agreements and the texts of the Agreements, the Agreements should be applied on a provisional basis, pending the completion of the procedures necessary for their entry into force.
- (18) Due to the very late completion of the negotiations of the Agreements only seven days before the end of the transition period, it has not been possible to proceed to the final legal-linguistic revision of the texts of the Agreements before their signature. Therefore, starting immediately after the signature of the Agreements, the Parties should

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proceed to the final legal-linguistic revision of the texts of the Agreements in all 24 authentic languages. That legal-linguistic revision should be completed in due time. The Parties should then, by exchange of diplomatic notes, establish those revised texts of the Agreements in all such languages as authentic and definitive. Those revised texts should replace *ab initio* the signed versions of the Agreements.

- (19) The Agreements should be signed, and the attached Declarations and Notification approved, on behalf of the Union.
- (20) The signing of the Trade and Cooperation Agreement as regards matters falling under the Treaty establishing the European Atomic Energy Community (the 'Euratom Treaty') is subject to a separate procedure,

HAS ADOPTED THIS DECISION:

Article 1

1 The signing, on behalf of the Union, as regards matters other than those falling under the Euratom Treaty, 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, is hereby authorised, subject to the conclusion of the said Agreement.

2 The signing, on behalf of the Union, 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 is hereby authorised, subject to the conclusion of the said Agreement.

3 The texts of the Agreements are attached to this Decision.

Article 2

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

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

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