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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION 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

COUNCIL DECISION (EU) 2019/...

of ...

**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**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2),

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Having regard to the opinion of the European Central Bank,

Whereas:

- (1) In accordance with Council Decision (EU) ...¹⁺, 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 ('Agreement') was signed on ...⁺⁺.
- (2) The Agreement should be approved on behalf of the European Union and the European Atomic Energy Community.
- (3) Any references to the Union in this decision should be understood as including the European Atomic Energy Community.
- (4) On the date of entry into force of the Agreement, the mandates of all members of institutions, bodies and agencies of the Union who were nominated, appointed or elected in relation to the United Kingdom's membership of the Union end automatically as a result of the withdrawal.

¹ Council Decision (EU) 201.../... of ... on the signing, on behalf of the European Union and of the European Atomic Energy Community, 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 ...).

⁺ OJ: please insert the serial number from the document [xt 21106/18] and complete the corresponding footnote.

⁺⁺ OJ: please insert the date.

- (5) It is appropriate to define the modalities of the Union's representation in the Joint Committee and the specialised committees established by the 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 Joint committee and the specialised committees. Furthermore, where the Joint Committee is called upon to adopt acts having legal effects, the positions to be taken on the Union's behalf in the Joint Committee 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.
- (6) On 25 November 2018, the European Council approved the Declaration regarding the Withdrawal Agreement and the Political Declaration, according to which 'Where the Union position to be taken in the Joint Committee relates to the extension of the transition period and the review of the Protocol on Ireland/Northern Ireland, the Council will act in accordance with European Council guidelines. Any decision on the extension of the transition period will take into account the fulfilment of obligations by the United Kingdom under the Agreement, including its Protocols'.
- (7) Where the Union is to take a position in the Joint Committee, the Council and the Commission are to respect the Declarations included in the minutes of the European Council of 25 November 2018.

- (8) The European Parliament is to be immediately and fully informed, as provided for in Article 218(10) TFEU, on the basis of practical modalities of cooperation allowing it to exercise fully its prerogatives in accordance with the Treaties.
- (9) Whenever the Union is required to act in order to comply with the provisions of the Agreement, 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 Agreement, except where the Agreement refers to other specific institutions, bodies, offices and agencies of the Union, to consult the United Kingdom on specific matters, and to invite United Kingdom representatives to attend international consultation or negotiation meetings as part of the Union delegation. It is also for the Commission to represent the Union before the arbitration panel where a dispute has been submitted to arbitration in accordance with Article 170 of the 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 lines of the intended Union submissions to the panel and taking into account comments made by the Council. It is for the same reason that it should be for the Commission to agree with the United Kingdom on administrative arrangements such as those referred to in Article 134 of the Agreement.

- (10) In its statement for the minutes of the Council meeting of 29 January 2018, the Commission indicated that it will issue, after consulting the Council, a guidance document on a consistent application of Article 128(5) of the Agreement.
- (11) Pursuant to Article 129(4) of the Agreement, during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union. It is necessary to set out the conditions and procedure for granting such authorisations. Given the political significance of decisions granting such authorisations, it is appropriate to confer on the Council the power to adopt such authorisations by means of implementing acts, acting on a proposal from the Commission.

- (12) The Agreement addresses, in separate protocols, the very specific situations of Ireland/Northern Ireland, of the Sovereign Base Areas of the United Kingdom in Cyprus and of Gibraltar. Given the possible need for Ireland, the Republic of Cyprus and the Kingdom of Spain, respectively, to enter into such bilateral agreements with the United Kingdom as may be necessary for the proper functioning of the arrangements provided for in those specific protocols, it is necessary to set out the conditions and procedure for authorising the respective Member State to negotiate and conclude such bilateral agreements where these concern areas of exclusive Union competence. Given the political significance of decisions granting such authorisations, it is appropriate to confer on the Council the power to adopt such authorisations by means of implementing acts, acting on a proposal from the Commission.

- (13) According to Article 18(1) and (4) of the Agreement, the host Member States are to issue to United Kingdom nationals, their respective family members and other persons who fall within the scope of Title II of Part Two of the Agreement a document evidencing their residence status in accordance with the Agreement. According to Article 26 of the Agreement, the Member State of work is to issue to United Kingdom nationals who have rights as frontier workers under the Agreement a document certifying their status of frontier worker under the Agreement. In order to ensure uniform conditions within the Union for the implementation of those provisions, with the aims of facilitating the recognition of such documents, in particular by border control authorities, and of preventing falsification and counterfeiting through high-level security features, implementing powers should be conferred on the Commission to establish the validity period, format of such documents and technical specifications for such documents, as well as the common statement that documents issued under Articles 18 and 26 of the Agreement are required to have, namely that they were issued in accordance with the Agreement.

Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. For this purpose, the Commission should be assisted by the Committee established by Article 6 of Council Regulation (EC) No 1683/95². If necessary, such implementing acts may include appropriate measures to prevent the counterfeiting and falsification of such documents. In such case, they should be made available only to the bodies designated by the Member States as responsible for the printing and to persons duly authorised by a Member State or the Commission. Such implementing acts should be without prejudice to any special arrangements that Ireland may, by virtue of the Agreement, make with the United Kingdom relating to the movement of persons in the Common Travel Area.

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 Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

- (14) Article 4(1) and Article 13 of Annex 3 of the Protocol on Ireland/Northern Ireland stipulate that the Union shall set out the specimen and explanatory notes for the A. UK. Movement Certificate and the specimen for the label to be affixed on the postal consignments referred to therein, respectively. Such specimens are necessary for use as documentary evidence that a good is within the scope of Annex 2 of the Protocol on Ireland/Northern Ireland. For that purpose, implementing powers should be conferred on the Commission to establish the format of such specimens and explanatory notes, including any technical specifications. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011. For this purpose, the Commission should be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹.
- (15) In accordance with Article 106a of the Treaty establishing the European Atomic Energy Community, Article 50 TEU applies to the European Atomic Energy Community.
- (16) As provided for in Article 50(4) TEU, the United Kingdom has not taken part in the discussions of the Council concerning this decision nor in its adoption,

HAS ADOPTED THIS DECISION:

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

Article 1

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 is hereby approved on behalf of the Union and of the European Atomic Energy Community.

Any references to the Union in this decision shall be understood as including the European Atomic Energy Community.

Article 2

1. The Commission shall represent the Union within the Joint Committee and the specialised committees provided for in Articles 164 and 165 of the Agreement, as well as in any further specialised committee as may be established in accordance with point (b) of Article 164(5) of the Agreement.

Ireland, the Republic of Cyprus and the Kingdom of Spain, respectively, may request that the Commission representative be accompanied by:

- (a) a representative of Ireland, in the meetings of the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland where those issues are specific to Ireland/Northern Ireland;

- (b) a representative of the Republic of Cyprus, in the meetings of the Committee on issues related to the implementation of the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) a representative of the Kingdom of Spain, in the meetings of the Committee on issues related to the implementation of the Protocol on Gibraltar.

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, the Commission shall ensure that the Council receives all the information and documents related to any meeting of the Joint Committee, to any meeting of a specialised committee or to any acts to be adopted by written procedure sufficiently in advance of that meeting or the usage of that written procedure.

The Council shall also be informed in a timely manner about the discussions and the outcome of the meetings of the Joint Committee, the meetings of the specialised committees and the written procedure, and shall receive draft minutes and all documents relating to such meetings or procedure.

3. The European Parliament shall be put in a position to exercise fully its institutional prerogatives throughout the process in accordance with the Treaties.

4. During the first five years after the entry into force of the Agreement, the Commission shall report annually to the European Parliament and to the Council on the implementation and application of the Agreement, in particular of Part Two thereof.

Article 3

1. The Council may authorise the United Kingdom to express its consent, in its own capacity, to be bound by an international agreement intended to enter into force or be applied during the transition period, in an area of exclusive competence of the Union. Such authorisation may only be granted if:
 - (a) the United Kingdom has demonstrated a specific interest in the international agreement in question already entering into force or applying during the transition period;
 - (b) the international agreement in question is compatible with Union law applicable to and in the United Kingdom in accordance with Article 127 of the Agreement and is compatible with the obligations referred to in Article 129(1) of the Agreement; and
 - (c) the entry into force or application of the international agreement in question during the transition period would neither put at risk the attainment of an objective of the Union's external action in the area concerned nor be otherwise prejudicial to the Union's interests.

2. An authorisation granted pursuant to paragraph 1 may be conditional upon the inclusion in or removal from the agreement in question of any provision or may be conditional upon the suspension of the application of any provision of that agreement, where necessary to ensure consistency with the conditions set out in paragraph 1.
3. The United Kingdom shall notify the Commission of its intention to express its consent, in its own capacity, to be bound by an international agreement intended to enter into force or be applied during the transition period, in an area of exclusive competence of the Union. The Commission shall promptly inform the Council of any notification by the United Kingdom of the United Kingdom's intention to express its consent, in its own capacity, to be bound by the international agreement in question.
4. The Council shall adopt the decisions referred to in paragraph 1 by means of implementing acts, on a proposal from the Commission. The Commission's proposal shall include an assessment as to whether the conditions referred to in paragraph 1 are fulfilled. If information provided by the United Kingdom is not sufficient for the assessment, the Commission may request additional information.
5. The Council shall inform the European Parliament of any decision taken pursuant to paragraph 1.

Article 4

1. On a duly justified request from Ireland, the Republic of Cyprus or the Kingdom of Spain, respectively, the Council may authorise those Member States to negotiate bilateral agreements with the United Kingdom in areas of exclusive competence of the Union. Such authorisation may only be granted if:
 - (a) the Member State concerned has provided information showing that the agreement in question is necessary for the proper functioning of the arrangements set out, respectively, in the Protocol on Ireland/Northern Ireland, the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus and the Protocol on Gibraltar, and that the agreement in question complies with the principles and objectives of the Agreement;
 - (b) on the basis of the information provided by the Member State, it appears that the envisaged agreement is compatible with Union law; and
 - (c) the envisaged agreement would neither put at risk the attainment of an objective of the Union's external action in the area concerned nor be otherwise prejudicial to the Union's interests.

2. An authorisation granted pursuant to paragraph 1 may be conditional upon the inclusion in or removal from the agreement in question of any provision or may be conditional upon the suspension of the application of any provision of that agreement, where necessary to ensure the consistency with the conditions set out in paragraph 1.
3. The Member State concerned shall notify the Commission of its intention to enter into negotiations with the United Kingdom. The Commission shall promptly inform the Council thereof. The Member State concerned shall provide the Commission with all the information necessary to assess whether the conditions set out in paragraph 1 are fulfilled.
4. The Commission shall be invited by the Member State concerned to closely follow the negotiations.
5. Before signing the bilateral agreement, the Member State concerned shall notify the Commission of the outcome of negotiations and shall transmit the text of the prospective agreement to the Commission which shall promptly inform the Council. The Member State concerned may only express its consent to be bound by the bilateral agreement in question if the Council has authorised it to do so.
6. The Council shall adopt the decisions referred to in paragraphs 1 and 5 by means of implementing acts, on a proposal from the Commission.

The Commission's proposal shall include an assessment as to whether the conditions set out in paragraph 1 and referred to in paragraph 2 are fulfilled. If information provided by the Member State concerned is not sufficient for the assessment, the Commission may request additional information.

7. When the Council grants an authorisation pursuant to paragraphs 1 and 5, the Member State concerned shall notify the Commission of the entry into force of the bilateral agreement concerned, as well as any subsequent changes concerning the status of that agreement.
8. The Council shall inform the European Parliament of any decisions taken pursuant to paragraph 1 and 5.

Article 5

The Commission shall lay down, by means of implementing acts, the period of validity, format and security features of the documents that Member States are to issue pursuant to Article 18(1) and (4) and Article 26 of the Agreement and the common statement to be contained in such documents. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7 of this Decision.

Article 6

The Commission shall specify, by means of implementing acts, the format and explanatory notes, including technical specifications, of the specimens referred to in Article 4(1) and Article 13 of the Annex 3 to the Protocol on Ireland/Northern Ireland to the Agreement. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7 of this Decision.

Article 7

1. The Commission shall be assisted by:
 - (a) the Committee established by Article 6 of Regulation (EC) No 1683/95 for the adoption of implementing acts referred to in Article 5 of this Decision;
 - (b) the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 for the adoption of implementing acts referred to in Article 6 of this Decision.

Those committees shall be committees 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.

Article 8

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 185 of the Agreement.

Article 9

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

Done at Brussels,

For the Council

The President
