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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union

COUNCIL REGULATION (EU) 2019/...

of ...

**on measures concerning the implementation and financing
of the general budget of the Union in 2019
in relation to the withdrawal of the United Kingdom from the Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament¹,

Acting in accordance with a special legislative procedure,

¹ Consent of ... (not yet published in the Official Journal).

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). The Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after that notification, that is from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. In the absence of a withdrawal agreement with the United Kingdom and of an extension of the two-year period referred to in Article 50(3) TEU a financial settlement with regard to the financial obligations following from the United Kingdom's membership in the Union needs to be agreed in a future international agreement between the United Kingdom and the Union.
- (2) This Regulation is without prejudice to the respective obligations of the Union and the United Kingdom resulting from the whole period of the United Kingdom's membership in the Union.

- (3) It is therefore necessary to lay down rules on the relations between the Union, on the one hand, and the United Kingdom and its beneficiaries, on the other, as regards the financing and implementation of the general budget of the Union ('the budget') in 2019.
- (4) The Treaties do not provide powers other than those under Article 352 of the Treaty on the Functioning of the European Union (TFEU) and Article 203 of the Treaty establishing the European Atomic Energy Community for the adoption of the measures concerning the implementation and financing of the budget in 2019 in relation to the withdrawal of the United Kingdom from the Union.
- (5) The United Kingdom and persons and entities established in United Kingdom are participating in a number of Union programmes or actions on the basis of the United Kingdom's membership in the Union. The participation takes place on the basis of agreements with the United Kingdom or persons or entities established in the United Kingdom or decisions in favour of the United Kingdom or persons or entities established in the United Kingdom which constitute legal commitments.

- (6) For many of those agreements and decisions, the rules governing the eligibility require the beneficiary to be a Member State or a person or entity established in a Member State. The eligibility of the United Kingdom or persons or entities established in the United Kingdom is in such cases linked to the United Kingdom being a Member State. The withdrawal of the United Kingdom from the Union therefore entails the loss of eligibility of such recipients of Union financing under the agreements and decisions. However, this does not concern cases where persons or entities established in the United Kingdom would participate in an action under, and subject to the conditions applicable under, the respective Union rules for persons and entities established in a third country.
- (7) It would be beneficial both for the Union and its Member States and for the United Kingdom and persons and entities established in the United Kingdom to implement the budget for 2019 as it has been adopted for that year. It would also be beneficial if the legal commitments signed and adopted before the date of withdrawal could continue to be executed throughout 2019.

- (8) It is therefore appropriate to lay down conditions under which the United Kingdom and persons and entities established in the United Kingdom could continue to be eligible in 2019 with regard to the agreements signed with them and the decisions adopted with regard to them until the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal'). The conditions would be that the United Kingdom has confirmed the commitment in writing to the Commission to continue to pay a contribution to the budget in 2019 calculated on the basis of the estimated own resources from the United Kingdom as set out in the budget for 2019 as definitively adopted, that a first instalment has been paid by the United Kingdom and that the United Kingdom has confirmed the commitment in writing to the Commission to allow audits and controls in full by the Union in compliance with the applicable rules. In view of the need for certainty, it is appropriate to limit the time for the fulfilment of the conditions. The Commission should adopt a decision on the fulfilment of the conditions.

- (9) As long as the conditions for eligibility of the United Kingdom and persons and entities established in the United Kingdom under this Regulation continue to be fulfilled, it is also appropriate to provide for their eligibility, in 2019, for the purposes of conditions set in calls, tenders, contests or any other procedure which may lead to financing from the Union's budget, with the exception of specific cases related to security and to the loss of membership of the United Kingdom in the European Investment Bank, and to provide Union funding to them. Such Union funding should be limited to eligible expenditure incurred in 2019, except for public procurement contracts signed before the end of 2019 in application of Title VII of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹ ('the Financial Regulation'), which continue to be implemented in accordance with their terms, and except for the United Kingdom agricultural direct payment scheme for the claim year 2019, which should be excluded from eligibility. In line with the Financial Regulation, calls, tenders, contests or other procedures, as well as any ensuing agreements with, or decisions in favour of, the United Kingdom or persons or entities established in the United Kingdom, are to stipulate the conditions for eligibility and for continuation thereof by reference to this Regulation.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (10) It is also appropriate to provide that the eligibility of the United Kingdom and persons and entities established in the United Kingdom would continue under the conditions that United Kingdom continues the payments to the Union budget 2019 and that controls and audits can be carried out effectively. Where these conditions are no longer fulfilled, the Commission should take a decision establishing such failure. In such a case, the United Kingdom and persons and entities established in the United Kingdom should cease to be eligible for Union financing.
- (11) It is also appropriate to provide for the continuation, in 2019, of eligibility of actions in which Member States or persons or entities established in the Member States receive Union funds and which are related to the United Kingdom. However, the potential non-acceptance by the United Kingdom of controls and audits should constitute an element to be taken into account for the purposes of sound financial management when assessing the implementation of such actions.
- (12) The actions should continue to be implemented in compliance with the relevant rules governing such actions, including the Financial Regulation. Therefore, it is necessary to treat the United Kingdom as a Member State for the purpose of the application of such rules.

- (13) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, as they concern the Union budget and programmes and actions implemented by the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (14) In order to allow for a limited flexibility, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a possible extension of the deadlines set out in points (a), (b) and (c) of the first subparagraph of Article 2(1), and amendments to the payment schedule for the months after August 2019. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. Where, in the case of a risk of a serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the delegated act should enter into force without delay and should apply as long as no objection is expressed by the European Parliament or the Council.

¹ OJ L 123, 12.5.2016, p. 1.

- (15) To avoid any unnecessary disruption for beneficiaries of EU spending programmes and other actions at the date of the withdrawal of the United Kingdom from the Union, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and should apply from the day following that on which the Treaties cease to apply to and in the United Kingdom, unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date. Given that at the date of withdrawal an adopted budget of the Union, which provides for the participation of the United Kingdom in its financing, covers only 2019, it should only apply to the eligibility for the year 2019,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down rules on the implementation and the financing of the general budget of the Union ('the budget') in 2019 in relation to the withdrawal of the United Kingdom from the Union and on actions under direct, indirect and shared management for which the eligibility is fulfilled through the membership of the United Kingdom in the Union at the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal').
2. This Regulation applies without prejudice to the territorial cooperation programmes covered by Regulation (EU) 2019/... of the European Parliament and of the Council¹⁺ and to the learning mobility activities under the Erasmus+ programme covered by Regulation (EU) 2019/... of the European Parliament and of the Council²⁺⁺.

¹ Regulation (EU) 2019/... of the European Parliament and of the Council of

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 12/19 (2018/0432(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

² Regulation (EU) 2019/... of the European Parliament and of the Council of

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 55/19 (2019/0030(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

Article 2
Conditions for eligibility

1. Where the United Kingdom or a person or entity established in the United Kingdom receive Union funds under an action carried out in direct, indirect or shared management pursuant to legal commitments signed or adopted before the date of withdrawal and eligibility under that action depends on the membership of the United Kingdom in the Union, they shall continue to be eligible for Union funding for eligible expenditure incurred in 2019 following the date of withdrawal, if the following conditions are met, and as long as no decision as referred to in Article 3(2) has entered into force:
 - (a) the United Kingdom has confirmed at the latest on 18 April 2019 in writing to the Commission that it will continue to contribute to the budget in 2019 the amount displayed in the line 'United Kingdom' and column 'Total Own Resource' of table 7 of part 'A. Introduction and financing of the general budget of the Union' of the revenue part of the budget for 2019 set out in the general budget of the European Union for the financial year 2019¹, as adopted on 12 December 2018, reduced by the amount of own resources made available by the United Kingdom in respect of the financial year 2019 before the date of withdrawal, in accordance with the payment schedule laid down in this Regulation;

¹ Definitive adoption (EU, Euratom) 2019/... of the European Union's general budget for the financial year 2019 (OJ L [...], [...], p. [...]).

- (b) the United Kingdom has paid at the latest on 30 April 2019 on the account determined by the Commission the first payment which corresponds to the instalment referred to in the second subparagraph of this paragraph multiplied by the result of the following: the number of full months between the date of withdrawal and the end of the year 2019 reduced by the number of months between the month of the first payment, excluding that month, and the end of the year 2019;
- (c) the United Kingdom has confirmed at the latest on 18 April 2019 the commitment in writing to the Commission that it will continue to accept the controls and audits which cover the entire period of the programmes and actions in accordance with the applicable rules; and
- (d) the Commission has adopted the decision referred to in paragraph 2 confirming that the conditions referred to in point (a), (b) and (c) of this subparagraph have been fulfilled.

The amount referred to in point (a) of the first subparagraph shall be broken down into equal instalments. The number of instalments shall correspond to the number of full months between the date of withdrawal and the end of the year 2019. The payments of the amount referred to in point (a) of the first subparagraph shall constitute other revenue of the Union's budget.

The commitment referred to in point (c) of the first subparagraph shall include in particular the cooperation in the protection of the financial interests of the Union and the acceptance of the rights of the Commission, the Court of Auditors and the European Anti-Fraud Office to access data and documents relating to Union contributions, and perform controls and audits.

2. The Commission shall adopt a decision on whether the conditions laid down in points (a), (b) and (c) of the first subparagraph of paragraph 1 have been fulfilled.
3. The Commission is empowered to adopt delegated acts in accordance with Article 7 concerning the extension of the deadlines set in points (a), (b) and (c) of the first subparagraph of paragraph 1 of this Article.

Where, in the case of a risk of serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the procedure provided for in Article 8 shall apply to delegated acts adopted pursuant to this paragraph.

Article 3
Continuation of eligibility of United Kingdom
and of persons and entities established in the United Kingdom

1. The eligibility of the United Kingdom and persons and entities established in the United Kingdom established in accordance with Article 2 shall continue in the year 2019 as long as the following conditions are fulfilled:
 - (a) the United Kingdom has, following the first payment made in accordance with point (b) of the first subparagraph of Article 2(1), paid on the account determined by the Commission the monthly instalment referred to in the second subparagraph of Article 2(1) on the first working day of each month until August 2019;
 - (b) the United Kingdom has paid on the account determined by the Commission on the first working day of September 2019 the remaining monthly instalments referred to in the second subparagraph of Article 2(1), unless the Commission communicates to the United Kingdom a different payment schedule for this payment by 31 August 2019; and
 - (c) no significant deficiencies have been observed in the execution of the controls and audits referred to in point (c) of the first subparagraph of Article 2(1).

2. Where one or more of the conditions referred to in paragraph 1 are not fulfilled, the Commission shall adopt a decision to that effect. That decision shall be published in the *Official Journal of the European Union*.

As of the date of entry into force of the decision referred to in the first subparagraph of this paragraph, the United Kingdom and persons and entities established in the United Kingdom shall cease to be eligible under paragraph 1 of this Article, and under Articles 2 and 4, actions shall cease to be eligible under Article 6(2), and Article 5 shall cease to apply.

3. The Commission is empowered to adopt delegated acts in accordance with Article 7 concerning a different payment schedule for the payment referred to in point (b) of paragraph 1 of this Article.

Where, in the case of a risk of a serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the procedure provided for in Article 8 shall apply to delegated acts adopted pursuant to this paragraph.

Article 4

Participation in calls and eligibility of resulting expenditures

1. As of the date of entry into force of the decision referred to in point (d) of the first subparagraph of Article 2(1), and as long as no decision as referred to in Article 3(2) has entered into force, the United Kingdom or persons and entities established in the United Kingdom shall be eligible in 2019 for the purposes of conditions set in any calls, tenders, contests or any other procedure which may lead to financing from the Union's budget to the same extent as Member States and persons or entities established in the Member States, and be eligible for Union funding for eligible expenditure incurred in 2019.

Notwithstanding the first subparagraph:

- (a) contracts signed in application of Title VII of the Financial Regulation until the end of 2019 shall be implemented in accordance with their terms and until their end date;
- (b) expenditure in respect of the United Kingdom direct payments scheme for the claim year 2019 pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council¹ shall not be eligible for Union funding.

¹ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

2. The first subparagraph of paragraph 1 shall not apply:
- (a) where the participation is limited to the Member States and persons or entities established in the Member States for security reasons;
 - (b) to financial operations carried out within financial instruments managed directly or indirectly under Title X of the Financial Regulation or to financial operations guaranteed by the Union budget under the European Fund for Strategic Investments (EFSI) established by Regulation (EU) 2015/1017 of the European Parliament and of the Council¹ or under the European Fund for Sustainable Development (EFSD) established by Regulation (EU) 2017/1601 of the European Parliament and of the Council².

¹ Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

² Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund (OJ L 249, 27.9.2017, p. 1).

Article 5

Other necessary adaptations

If the conditions laid down in Article 2(1) are fulfilled, and as long as no decision as referred to in Article 3(2) has entered into force, for the purpose of the application of any rules governing the actions carried out under the legal commitments referred to in Article 2(1), the calls referred to in Article 4 and the actions carried out under the legal commitments signed or adopted following the calls referred to in Article 4, which are necessary to give effect to Articles 2(1) and 4(1), the United Kingdom shall be treated as a Member State, subject to the provisions of this Regulation.

However, the United Kingdom or United Kingdom representatives shall not be allowed to participate in any committee assisting in the management under the rules of the relevant basic act, or expert groups or other bodies advising on the programmes or on the actions, with the exception of monitoring or similar committees specific for the particular operational, national or similar programmes in shared management.

Article 6

Eligibility of actions that relate to the United Kingdom, where the Member States or persons or entities established in the Member States receive the Union funds

1. Actions under direct, indirect and shared management for which the Member States or persons or entities established in the Member States receive Union funds under legal commitments signed or adopted before the date of withdrawal and for which the eligibility is fulfilled through the membership of the United Kingdom in the Union at the date of withdrawal, shall be eligible for Union funding for eligible expenditure incurred in 2019 as of the date of withdrawal.

2. Actions for which the eligibility condition of a minimum number of participants from different Member States in a consortium is fulfilled at the date of withdrawal through a member of the consortium which is a person or entity established in the United Kingdom, shall be eligible for Union funding for eligible expenditure incurred in 2019 where the conditions of Article 2(1) are fulfilled and as long as no decision as referred to in Article 3(2) has entered into force.

3. The non-fulfilment of the condition referred to in point (c) of the first subparagraph of Article 2(1) or a Commission decision as referred to in Article 3(2) concerning the non-fulfilment of conditions referred to in point (c) of Article 3(1), shall be taken into account by the responsible authorising officer for the purposes of assessment of a possible serious deficiency in complying with the main obligations in the implementation of the legal commitment referred to in paragraph 1 of this Article.

Article 7

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 2 and 3 shall be conferred on the Commission for an indeterminate period of time from date of entry into force of this Regulation.
3. The delegation of power referred to in Articles 2 and 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 2 and 3 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

Article 8
Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 7(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 9
Entry into force and application

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

It shall apply from the date following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the TEU.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the TEU has entered into force by the date referred to in the second paragraph of this Article.

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

Done at ...,

For the Council
The President
