



EUROPEAN  
COMMISSION

Brussels, 7.9.2023  
COM(2023) 527 final

2023/0319 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Specialised  
Committee on Participation in Union Programmes**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Specialised Committee on Participation in Union programmes (the ‘Specialised Committee’) in connection with the envisaged amendment of Annex 47 “Implementation of the Financial Conditions” (‘Annex 47’) to 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 Agreement’) and the adoption of Draft Protocol I “Programmes and activities in which the United Kingdom participates” (‘Protocol I’) and Draft Protocol II “on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate” (‘Protocol II’).

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. 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**

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 (the ‘United Kingdom’), of the other part (‘the Agreement’) entered into force on 1 May 2021<sup>1</sup>. It sets out in Part V “PARTICIPATION IN UNION PROGRAMMES, SOUND FINANCIAL MANAGEMENT AND FINANCIAL PROVISIONS”, the rules for the participation of the United Kingdom in Union programmes, activities and services.

Article 710(1) of the Agreement establishes that the United Kingdom shall participate in and contribute to the Union programmes, activities, or in exceptional cases, the part of Union programmes or activities, which are open to its participation, and which are listed in Protocol I.

Article 731(1) of the Agreement establishes that where the United Kingdom does not participate in a programme or activity, it may nevertheless have access to services provided under Union programmes and activities under the terms and conditions established in the Agreement, the basic acts and any other rules pertaining to the implementation of Union programmes and activities. It further establishes in Article 731(2) that the services and the specific conditions under which the United Kingdom will participate shall be established under Protocol II.

However, the Protocols could not be concluded as part of the Agreement, since the participation in the programmes and activities was subject to the prior entry into force of the basic acts that had not been adopted. Consequently, the parties issued a Joint Declaration on Participation in Union Programmes and Access to Programme Services (the ‘Joint Declaration’).

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<sup>1</sup> 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. 2–9)

In view of associating the United Kingdom to certain Union programmes as of beginning of 2024, Article 1 of Protocol I establishes that the United Kingdom shall participate in and contribute as of 1 January 2024 to the Union programmes and activities, or parts thereof, established by the following basic acts:

- Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU, insofar as it concerns the rules applicable to the component referred to in point (c) of Article 3, paragraph 1 of that Regulation (“Copernicus”);
- Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013, insofar as it concerns the rules applicable to the components referred to in paragraph 2(a) and (b) of Article 1 of that Regulation;
- Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU

In addition, Article 1 of Protocol II establishes that the United Kingdom shall have access to the following services under the terms and conditions established in the Agreement, the basic acts and any other rules pertaining to the implementation of the relevant Union programmes and activities:

- Space Surveillance and Tracking (“SST”) Services as defined in Article 55 of Regulation (EU) 2021/696 of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU

Protocols I and II apply from the fourth year of the Union’s multi-annual financial framework 2021-2027. The United Kingdom will not be associated to the Union programmes referred to above in the years 2021-2023. Therefore, changes to Annex 47 are necessary.

The Specialised Committee on Participation in Union Programmes is established by Article 8(1)(s) of the Agreement.

The Agreement provides in Article 714(11) that the Specialised Committee on Participation in Union Programmes may amend Annex 47. It also provides in Articles 710(2) and 731(3) that the Specialised Committee on Participation in Union Programmes is to adopt Protocol I and II, respectively.

## **2.2. The envisaged acts of the Specialised Committee on Participation in Union Programmes**

The Specialised Committee is to amend Annex 47 and to adopt Protocol I and Protocol II (‘the envisaged acts’).

The purpose of the envisaged acts is to allow participation of the United Kingdom and United Kingdom entities in the Union programmes and access to programme services, as set out above.

The envisaged acts will become binding on the parties as part of the Agreement in accordance with Article 778(1) of the Agreement, which provides that the “Protocols, Annexes, Appendices and footnotes to this Agreement shall form an integral part of this Agreement”. In accordance with Rule 9 in conjunction with Rule 13 (1) of Annex 1 of the Agreement, decisions adopted by the Specialised Committee shall specify the date at which they take effect.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

It is proposed to agree to the adoption of Protocols I and II and to the amendment of Annex 47 to the Agreement as regards participation of the United Kingdom and United Kingdom entities in Union programmes.

### **4. LEGAL BASIS**

#### **4.1. Procedural legal basis**

##### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’<sup>2</sup>.

##### *4.1.2. Application to the present case*

The Specialised Committee on the Participation in Union Programmes is a body set up by an agreement, namely the Agreement.

The act which the Specialised Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 778(1) of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

#### **4.2. Substantive legal basis**

##### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely

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<sup>2</sup> Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, C-399/12, ECLI:EU:C:2014:2258, paragraph 63.

incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component<sup>3</sup>.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9), TFEU will have to include, exceptionally, the various corresponding legal bases.

#### *4.2.2. Application to the present case*

The envisaged act pursues objectives and has components in the area of research and technical development and space. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: the Treaty on the Functioning of the European Union, and in particular Article 173(3) Article 182(1) and (4), Article 183, the second paragraph of Article 188, and Article 189(2) thereof.

### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 173(3) Article 182(1) and (4), Article 183, the second paragraph of Article 188, and Article 189(2), in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the decision of the Specialised Committee on Participation in Union Programmes amending Annex 47 and adopting Protocols I and II has legal effects, it is appropriate to publish the decision of the Specialised Committee on Participation in Union Programmes in the Official Journal of the European Union after its adoption.

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<sup>3</sup> Judgement of 4 September 2018, *Commission v. Council*, C-244/17, EU:C:2018:662, paragraph 38.

Proposal for a

## **COUNCIL DECISION**

### **on the position to be taken on behalf of the European Union in the Specialised Committee on Participation in Union Programmes**

#### **THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173(3) Article 182(1) and (4), Article 183, Article 188, second paragraph and Article 189(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (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 ('the Agreement') was concluded by Council Decision (EU) 2021/689<sup>1</sup> and entered into force on 1 May 2021.
- (2) Pursuant to Article 710(2) and Article 731(3) of the Agreement, the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) of the Agreement (the 'Specialised Committee') is to adopt Protocol I "Programmes and activities in which the United Kingdom participates" ('Protocol I') and Protocol II "on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate" ('Protocol II').
- (3) Pursuant to Article 714(11) of the Agreement, the Specialised Committee may amend Annex 47 "Implementation of the Financial Conditions" ('Annex 47').
- (4) Annex 47 as well as Protocols I and II form an integral part of the Agreement.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Specialised Committee, as regards the adoption of the Protocols and the amendment of Annex 47.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the Specialised Committee established by Article 8(1)(s) of the Agreement, on a decision to be taken under Articles 710(2), 714(11) and

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<sup>1</sup> 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. 2–9)

731(3) thereof, shall be based on the draft decision of the Specialised Committee attached to this Decision.

Minor technical changes to the draft decision may be agreed to by the representatives of the Union in the Specialised Committee, without further decision of the Council.

#### *Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*



EUROPEAN  
COMMISSION

Brussels, 7.9.2023  
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ANNEX 1

**ANNEX**

**to the**

**Proposal for a COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Specialised  
Committee on Participation in Union Programmes**



## **ANNEX 1**

### **Decision No 1/2023 of the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) 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,**

**of ...**

### **adopting Protocols I and II and amending Annex 47 to the Trade and Cooperation Agreement**

THE SPECIALISED COMMITTEE ON PARTICIPATION IN UNION PROGRAMMES,

Having regard to 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<sup>1</sup> (the ‘Trade and Cooperation Agreement’), and in particular Articles 710(2), 714(11) and 731(3) thereof,

Whereas:

- (1) Pursuant to Article 710(2), and Article 731(3) of the Trade and Cooperation Agreement, the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) of the Trade and Cooperation Agreement is empowered to adopt Protocol I Programmes and activities in which the United Kingdom participates (‘Protocol I’), and Protocol II on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate (‘Protocol II’).
- (2) Protocols I and II apply from the fourth year of the Union’s multiannual financial framework 2021-2027. United Kingdom entities did not participate from the beginning of the programmes and activities identified therein. Due to these circumstances, Protocol I should include specific modalities in the form of an additional mechanism to address the situation in which the amounts of the initial legal commitments (competitive grants) entered into with the United Kingdom or United Kingdom entities in relation to a given budgetary year would be substantially lower than the corresponding operational contribution paid by the United Kingdom for the same year to the Horizon Europe programme, in line with the existing terms and conditions of the Trade and Cooperation Agreement. If such difference in absolute terms exceeds 16% of the corresponding operational contribution for that budgetary year, under the mechanism, the operational contribution to be paid by the United Kingdom for the second budgetary year following that budgetary year should be reduced by the difference between the absolute amount calculated in accordance with the method laid down in Article 716(2) for that budgetary year and the amount which corresponds to 16% of the corresponding operational contribution for the same year. The mechanism should be without prejudice to the performance review set out in Article 721 of the Trade and Cooperation Agreement. For the purpose of avoiding a double adjustment, the amount of any adjustment made under the additional mechanism is to be taken into account in the application of Article 721(3)(b) of the Trade and Cooperation Agreement.
- (3) Pursuant to Article 714(11) of the Trade and Cooperation Agreement, the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) of

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<sup>1</sup> OJ L 149, 30.4.2021, p.10.

the Trade and Cooperation Agreement is empowered to amend Annex 47 to the Trade and Cooperation Agreement.

- (4) The Union programmes' basic acts referred to in the Joint Declaration on participation in Union Programmes and access to programme services referred to in Council Decision (EU) 2020/2252 have now been adopted.

HAS ADOPTED THIS DECISION:

*Article 1*

Protocols I and II as set out in the Annex to this Decision are hereby adopted.

*Article 2*

Annex 47 to the Trade and Cooperation Agreement is hereby amended as follows:

a) Paragraphs 4, 6 and 7 are deleted.

b) Paragraph 5 becomes paragraph 4 and shall read as follows:

“The call for funds for a given year shall have the value established by dividing the annual amount calculated in application of Article 714 of this Agreement, including any adjustment under Article 714(8), Article 716 or 717 of this Agreement, by the number of calls for funds for that year pursuant to paragraph 2 of this Annex.”<sup>2</sup>

c) Paragraphs 8 and 9 become paragraphs 5 and 6 respectively.

*Article 3*

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

It shall apply from 1 January 2024.

Done at ...,

*For the Specialised Committee on Participation in Union Programmes*

*The Co-chairs*



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ANNEX 2

**ANNEX**

**to the**

**Proposal for a COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Specialised  
Committee on Participation in Union Programmes**

## **ANNEX 2**

### **Decision No 1/2023 of the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) 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,**

**of ...**

### **adopting Protocols I and II and amending Annex 47 to the Trade and Cooperation Agreement**

THE SPECIALISED COMMITTEE ON PARTICIPATION IN UNION PROGRAMMES,

Having regard to 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<sup>1</sup> (the ‘Trade and Cooperation Agreement’), and in particular Articles 710(2), 714(11) and 731(3) thereof,

Whereas:

- (1) Pursuant to Article 710(2), and Article 731(3) of the Trade and Cooperation Agreement, the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) of the Trade and Cooperation Agreement is empowered to adopt Protocol I Programmes and activities in which the United Kingdom participates (‘Protocol I’), and Protocol II on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate (‘Protocol II’).
- (2) Protocols I and II apply from the fourth year of the Union’s multiannual financial framework 2021-2027. United Kingdom entities did not participate from the beginning of the programmes and activities identified therein. Due to these circumstances, Protocol I should include specific modalities in the form of an additional mechanism to address the situation in which the amounts of the initial legal commitments (competitive grants) entered into with the United Kingdom or United Kingdom entities in relation to a given budgetary year would be substantially lower than the corresponding operational contribution paid by the United Kingdom for the same year to the Horizon Europe programme, in line with the existing terms and conditions of the Trade and Cooperation Agreement. If such difference in absolute terms exceeds 16% of the corresponding operational contribution for that budgetary year, under the mechanism, the operational contribution to be paid by the United Kingdom for the second budgetary year following that budgetary year should be reduced by the difference between the absolute amount calculated in accordance with the method laid down in Article 716(2) for that budgetary year and the amount which corresponds to 16% of the corresponding operational contribution for the same year. The mechanism should be without prejudice to the performance review set out in Article 721 of the Trade and Cooperation Agreement. For the purpose of avoiding a double adjustment, the amount of any adjustment made under the additional mechanism is to be taken into account in the application of Article 721(3)(b) of the Trade and Cooperation Agreement.
- (3) Pursuant to Article 714(11) of the Trade and Cooperation Agreement, the Specialised Committee on Participation in Union Programmes established by Article 8(1)(s) of

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<sup>1</sup> OJ L 149, 30.4.2021, p.10.

the Trade and Cooperation Agreement is empowered to amend Annex 47 to the Trade and Cooperation Agreement.

- (4) The Union programmes' basic acts referred to in the Joint Declaration on participation in Union Programmes and access to programme services referred to in Council Decision (EU) 2020/2252 have now been adopted.

HAS ADOPTED THIS DECISION:

*Article 1*

Protocols I and II as set out in the Annex to this Decision are hereby adopted.

*Article 2*

Annex 47 to the Trade and Cooperation Agreement is hereby amended as follows:

a) Paragraphs 4, 6 and 7 are deleted.

b) Paragraph 5 becomes paragraph 4 and shall read as follows:

“The call for funds for a given year shall have the value established by dividing the annual amount calculated in application of Article 714 of this Agreement, including any adjustment under Article 714(8), Article 716 or 717 of this Agreement, by the number of calls for funds for that year pursuant to paragraph 2 of this Annex.”

c) Paragraphs 8 and 9 become paragraphs 5 and 6 respectively.

*Article 3*

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

It shall apply from 1 January 2024.

Done at ...,

*For the Specialised Committee on Participation in Union Programmes*

The

Co-chairs

## Protocol I

### Programmes and activities in which the United Kingdom participates

#### *Article 1: Scope of the United Kingdom's participation*

- (1) The United Kingdom shall participate in and contribute as of 1 January 2024 to the Union programmes and activities, or parts thereof, established by the following basic acts:
- a) Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU<sup>1</sup>, insofar as it concerns the rules applicable to the component referred to in point (c) of Article 3, paragraph 1 of that Regulation (“Copernicus”);
  - b) Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013<sup>2</sup>, insofar as it concerns the rules applicable to the components referred to in paragraph 2(a) and (b) of Article 1 of that Regulation; and
  - c) Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU<sup>3</sup>.
- (2) This Protocol shall not apply to award procedures which implement budgetary commitments for 2021, 2022 and 2023.

#### *Article 2: Duration of the United Kingdom's participation*

- (1) The United Kingdom shall participate in the Union programmes and activities, or parts thereof, referred to in Article 1 of this Protocol from 1 January 2024 for their remaining duration or until the end of the multiannual financial framework 2021-2027, whichever is shorter.
- (2) The United Kingdom or United Kingdom entities shall be eligible under the conditions laid down in Article 711, with regard to Union award procedures, which implement the budgetary commitments of the programmes and activities or parts thereof, referred to in Article 1 of this Protocol within the time limits set out in the first paragraph of this Article. The United Kingdom or United Kingdom entities shall not be eligible for Union funding under Union award procedures which implement budgetary commitments for 2021, 2022 and 2023, without prejudice to the applicable eligibility rules for entities of non-associated countries laid down in the basic act or other rules pertaining to the implementation of the Union programme or activity.

#### *Article 3: Specific terms and conditions of participation in Copernicus*

- (1) Subject to the provisions of the Trade and Cooperation Agreement and in particular of Article 711, the United Kingdom shall participate in Copernicus and benefit from Copernicus services and products in the same way as other participating countries.

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<sup>1</sup> OJ L 170, 12.5.2021, p. 69.

<sup>2</sup> OJ L 170, 12.5.2021, p. 1.

<sup>3</sup> OJ L 167I, 12.5.2021, p. 1.

- (2) The United Kingdom shall have full access to the Copernicus Emergency Management Service and shall notify to the European Commission the national focal point that will act as Authorised Copernicus Management Service User.
- (3) The United Kingdom shall have access as authorised user to the Copernicus Security Service components to the extent the cooperation between the parties in the relevant policy areas is agreed. The modalities of activation and use shall be subject to specific agreements. Detailed rules for the access to such services shall be laid down in the respective agreements including in relation to the specific operation of Articles 718 (4), 719 (4) and 720 (5).
- (4) For the purposes of paragraph 3, negotiations between the United Kingdom and the Union shall start as soon as possible after the participation of the United Kingdom in Copernicus has been established in this Protocol and in accordance with the provisions governing the access to such services. Should such an agreement be substantially delayed or prove impossible, the Specialised Committee on Participation on Union Programmes shall examine how to adjust the participation of the United Kingdom in Copernicus and its financing taking into account this situation.
- (5) Participation by the United Kingdom's representatives in the Security Accreditation Board meetings shall be governed by the rules and procedures for participating in this board taking into account the status of the United Kingdom as a third country.

*Article 4: Specific terms and conditions of participation in the Horizon Europe programme*

- (1) Subject to Article 6, the United Kingdom shall participate as an associated country in all parts of the Horizon Europe programme as referred to in Article 4 of Regulation (EU) 2021/695 implemented through the specific programme established by Decision (EU) 2021/764 and through a financial contribution to the European Institute of Innovation and Technology established by Regulation (EU) 2021/819 of the European Parliament and of the Council of 20 May 2021 on the European Institute of Innovation and Technology (recast).
- (2) Subject to the provisions of the Trade and Cooperation Agreement and in particular of Article 711, United Kingdom entities may participate in the activities of the Joint Research Centre (“JRC”) and in indirect actions under equivalent conditions as those applicable to Union entities.
- (3) Where the Union adopts measures for the implementation of Articles 185 and 187 of the Treaty on the Functioning of the European Union, the United Kingdom and United Kingdom entities may participate in the legal structures created under those provisions, in conformity with the Union legal acts relating to the establishment of these legal structures.
- (4) Regulation (EU) 2021/819<sup>4</sup> or the Union legal act replacing that regulation, and Decision (EU) 2021/820 of the European Parliament and of the Council of 20 May 2021 on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021-2027: Boosting the Innovation Talent and Capacity of Europe and repealing Decision No. 1312/2013/EU<sup>5</sup>, shall apply to participation of

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<sup>4</sup> OJ L 189, 28.5.2021, p. 61.

<sup>5</sup> OJ L 189, 28.5.2021, p. 91.

United Kingdom entities in Knowledge and Innovation Communities in conformity with Article 711.

- (5) Where United Kingdom entities participate in the activities of the JRC, representatives of the United Kingdom shall have the right to participate as observers in the Board of Governors of the JRC, without voting rights. Subject to that condition, such participation shall be governed by the same rules and procedures as those applicable to representatives of Member States, including speaking rights and procedures for receipt of information and documentation in relation to a point that concerns the United Kingdom.
- (6) For the purposes of calculating the operational contribution pursuant to Article 714(5) the initial commitment appropriations entered in the Union budget definitively adopted for the applicable year for financing Horizon Europe, including the support expenditure of the programme, shall be increased by the appropriations corresponding to external assigned revenue under Article 2 paragraph 2 letter (a) point (iv) of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis<sup>6</sup>.
- (7) United Kingdom rights of representation and participation in the European Research Area Committee and its subgroups shall be those applicable to associated countries.

The United Kingdom may participate in a European Research Infrastructure Consortium (“ERIC”) in accordance with the legal acts establishing that ERIC and taking into account its participation in Horizon 2020 in accordance with the terms which apply to that participation before this Protocol entered into force and its participation in Horizon Europe as established in this Protocol.

*Article 5: Modalities on the application of an automatic correction mechanism to the Horizon Europe programme under Article 716*

- (1) Article 716 shall apply to the Horizon Europe programme.
- (2) The following modalities shall apply:
  - (a) For the purposes of calculating the automatic correction, ‘competitive grants’ means grants awarded through calls for proposals where the final beneficiaries can be identified at the time of the calculation of the automatic correction with the exception of financial support to third parties as defined in Article 204 of the Financial Regulation<sup>7</sup> applicable to the general budget of the Union;
  - (b) Where a legal commitment is signed with a coordinator of a consortium, the amounts used to establish the initial amounts of the legal commitment referred to in Article 716 (1) shall be the cumulative initial amounts allocated in the legal commitment to members of a consortium that are United Kingdom entities;

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<sup>6</sup> OJ L 433I, 22.12.2020, p. 23;.

<sup>7</sup> 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 EU L 193, 30.7.2018, p. 1).



- (c) All amounts of legal commitments shall be established using the European Commission electronic system eCorda;
  - (d) ‘Non-intervention costs’ means operational programme costs other than competitive grants, including support expenditure, programme-specific administration and other actions<sup>8</sup>; and
  - (e) Amounts allocated to international organisations as legal entities being the final beneficiary<sup>9</sup> shall be considered as non-intervention costs.
- (3) The mechanism shall be applied as follows:
- (a) Automatic corrections for year N in relation to the execution of commitment appropriations for year N shall be applied based on data on year N and year N+1 from eCorda referred to in point (c) of paragraph 2 in year N+2 after any adjustments pursuant to Article 714(8) have been applied to the United Kingdom’s contribution to Horizon Europe. The amount considered will be the amount of competitive grants for which the data is available.
  - (b) The amount of the automatic correction shall be calculated by taking the difference between:
    - (i) the total amount of these competitive grants apportioned to United Kingdom entities as commitments made on budget appropriations of year N; and
    - (ii) the amount of the United Kingdom adjusted contribution for year N multiplied by the ratio between:
      - (A) the amount of competitive grants made on commitment appropriations of year N for this programme, and
      - (B) the total of all the legal commitments made on commitment appropriations of year N, including support expenditure.

Where any adjustment for situations where United Kingdom entities are excluded, is made, pursuant to the application of Article 714(8), the corresponding competitive grant amounts shall not be included in the calculation.
- (4) If in relation to the United Kingdom’s operational contribution for a given year N, the amount of the difference calculated in accordance with the method laid down in Article 716(2) is negative and in absolute terms exceeds 16% of the corresponding operational contribution for year N, the future operational contribution of the United Kingdom for year N+2 shall be reduced by the difference between the absolute amount calculated in accordance with the method laid down in Article 716(2) for year N, and the amount which corresponds to 16% of the corresponding operational contribution for year N.

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<sup>8</sup> “Other actions” might include prizes, financial instruments, provision of technical/scientific services by JRC, Subscriptions (OECD, Eureka, IPEEC, IEA, ...), delegation agreements, Experts (evaluators, monitoring of projects).

<sup>9</sup> International organisations would only be considered as non-intervention costs if they are final beneficiaries. This will not apply where an international organization is a coordinator of a project (distributing funds to other coordinators).

After the end of the period referred to in paragraph 1 of Article 2 of this Protocol, any reductions of future operational contributions, as referred to in the first subparagraph of this paragraph, shall be applied to operational contributions of the United Kingdom to a succeeding programme in which the United Kingdom participates.

If the operational contribution of the United Kingdom is adjusted in year N+2 in accordance with the first and second subparagraphs, such adjustment shall be taken into account for the purpose of calculating the annual amount for year N+2 in accordance with paragraph 4 of Annex 47.

#### *Article 6: Exclusion from the European Innovation Council Fund*

- (1) The United Kingdom and United Kingdom entities shall not participate in the European Innovation Council ("EIC") Fund established under Horizon Europe. The EIC Fund is the financial instrument which is the part of the EIC Accelerator of Horizon Europe that provides investment through equity or other repayable form<sup>10</sup>.
- (2) As from 2024, and until 2027, each year, the contribution of the United Kingdom to Horizon Europe shall be adjusted by an amount obtained by multiplying the estimated amounts to be allocated to beneficiaries of the EIC Fund established under the programme, excluding the amount stemming from repayments and reflows, by the contribution key as defined in Article 714(6).
- (3) Following any year N in which an adjustment has been made under paragraph 2, the United Kingdom's contribution shall in subsequent years be adjusted upwards or downwards, by multiplying the difference between the estimated amount allocated to beneficiaries of the EIC Fund, as referred in Article 6(2) of this Protocol, and the amount allocated to beneficiaries of the EIC Fund in year N, by the contribution key, as defined in Article 714(6).

#### *Article 7: Reciprocity*

For the purpose of this article "Union entity" means any type of entity, whether a natural person, legal person or another type of entity, who resides or which is established in the Union.

Eligible Union entities may participate in programmes of the United Kingdom equivalent to those referred in points (b) and (c) of Article 1 of this Protocol in accordance with United Kingdom law and rules.

#### *Article 8: Intellectual property*

For the programmes and activities listed in Article 1 of this Protocol and subject to the provisions of the Trade and Cooperation Agreement and in particular of Article 711, United Kingdom entities participating in programmes covered by this Protocol shall, as regards ownership, exploitation and dissemination of information and intellectual property arising from such participation, have equivalent rights and obligations as entities established in the

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<sup>10</sup> In accordance with Article 11(3) of Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation and repealing Decision 2013/743/EU, and its Annex I, Pillar III, section 1, the EIC Fund will manage only the "investment" components of the EIC Accelerator support. United Kingdom entities may hence only participate in the grant or other non-repayable forms of support provided under the EIC Accelerator.

Union participating in the programmes and activities in question. This provision shall not apply to the results obtained from projects started before the application of this Protocol.

## Protocol II

on access of the United Kingdom to services established under certain Union programmes and activities in which the United Kingdom does not participate

### *Article 1: Scope of the access*

The United Kingdom shall have access to the following services under the terms and conditions established in the Trade and Cooperation Agreement, the basic acts and any other rules pertaining to the implementation of the relevant Union programmes and activities:

- a) Space Surveillance and Tracking (“SST”) Services as defined in Article 55 of Regulation (EU) 2021/696<sup>1</sup> the Space Regulation.

Pending the entry into force of the implementing acts setting the third country conditions to the three publicly available SST services, SST services as referred to in Article 5.1 of Decision 541/2014/EU shall be provided to the United Kingdom and public and private spacecraft owners and operators operating in or from the United Kingdom in accordance with Article 5.2 of that Decision (or any legislation replacing it with or without modification).

### *Article 2: Duration of the access*

The United Kingdom shall have access to the services referred to in Article 1 for the remaining duration or until the end of the multiannual financial framework 2021-2027, whichever is shorter.

### *Article 3: Specific terms and conditions for access to SST services*

Access of the United Kingdom to publicly available SST services referred to in point (a), (b) and (c) of Article 55(1) of that Regulation shall be granted in accordance with Article 8(2) of Regulation (EU) 2021/696, upon request and subject to conditions applicable to third countries.

Access of the United Kingdom to SST services referred to in point (d) of Article 55(1) of Regulation (EU) 2021/696 shall, when available, be subject to conditions applicable to third countries.

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<sup>1</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU OJ L 170, 12.5.2021, p. 69.