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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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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 2021¹. 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').

¹ 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*’².

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

² 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 component³.

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.

³ 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) 2021/689¹ 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

¹ 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