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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 857 final/2
Subject:	Recommendation for a COUNCIL DECISION approving the conclusion, by the European Commission, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, 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

Delegations will find attached document COM(2020) 857 final/2.

Encl.: COM(2020) 857 final/2



Brussels, 26.12.2020
COM(2020) 857 final/2

COM(2020) 857 final of 25.12.2020 downgraded on 26.12.2020.

Recommendation for a

COUNCIL DECISION

approving the conclusion, by the European Commission, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the ‘United Kingdom’) notified the European Council pursuant to Article 50 of the Treaty on European Union (‘TEU’) of its intention to withdraw from the European Union and from the European Atomic Energy Community (“Euratom” or the “Community”).

Following the Council authorisation of 22 May 2017, the Commission negotiated an agreement with the United Kingdom setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community. On 30 January 2020, following the consent of the European Parliament, the Council adopted Decision (EU) 2020/135,¹ regarding the conclusion, 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 (the ‘Withdrawal Agreement’). The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that agreement. That period will end on 31 December 2020.

In its guidelines of 23 March 2018, the European Council restated the Union’s determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, such a partnership should cover trade and economic cooperation as well as other areas. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration agreed between the Union and the United Kingdom accompanying and referred to in the Withdrawal Agreement.

The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom² (‘Political Declaration’). It establishes the parameters of ‘an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.’ In relation to the civil nuclear energy area, the Political declaration states: ‘[r]ecognising the importance of nuclear safety and non-proliferation, the future relationship should include a wide-ranging Nuclear Cooperation Agreement between the European Atomic Energy Community (Euratom) and the United Kingdom on peaceful uses of nuclear energy, underpinned by commitments to their existing high standards of nuclear safety.’ It further noted: ‘[...] the United Kingdom’s intention to be associated with the Euratom research and training programmes.’

Article 184 of the Withdrawal Agreement provides that the ‘Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their

¹ Council Decision (EU) 2020/135 of 30 January 2020 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 (OJ L 29, 31.1.2020, p. 1).

² Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom (OJ C 34, 31.1.2020, p. 1).

future relationship referred to in the Political Declaration of 17 October 2019 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.’

On 25 February 2020, the Council adopted the Decision (EU, Euratom) 2020/266³ authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement and the directives set out in the addendum to that Decision for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland (‘negotiating directives’). The Commission was nominated as the Union negotiator.

In relation to civil nuclear, the negotiating directives, inter alia, state: ‘[t]he aim of the negotiations is to establish a new partnership between the Union, and Euratom where relevant, and the United Kingdom that is comprehensive and covers the areas of interest outlined in the Political Declaration [...]’ and that ‘[r]ecognising the importance of nuclear safety, radiation protection and non-proliferation, the envisaged partnership should include provisions for wide-ranging cooperation between the Euratom and the United Kingdom on peaceful uses of nuclear energy’.

Such an Agreement will allow the United Kingdom and Euratom to set up cooperation in several areas in the nuclear field, including in the field of nuclear research. The Political Declaration underlined the United Kingdom’s interest to become associated to the Euratom research programme and the negotiating directives stated that the envisaged partnership should establish general principles, terms and conditions for the United Kingdom’s participation in and contribution to Union and Euratom programmes, subject to the conditions set out in the corresponding instruments. Considering that the United Kingdom has long-standing expertise in nuclear research, in particular in the field of fusion energy, and that Euratom is engaged internationally in developing this field, this association would benefit both Euratom and the United Kingdom. In particular, this association would allow the United Kingdom to participate as an associated third country to the Euratom Research Programme and in the European fusion activities, including ITER activities, through its membership, as a third country, to the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy).

The Commission conducted the negotiations within the framework set by the negotiating directives of 25 February 2020, in consultation with Coreper and the Working Party on the United Kingdom of the Council.

Following negotiations, the Parties agreed at negotiators’ level an Agreement for Cooperation on the Safe and Peaceful Uses of Nuclear Energy (the “Euratom Agreement”), as well as for a Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the “Trade and Cooperation Agreement”).

The entry into application of the Trade and Cooperation Agreement is a matter of special urgency. The United Kingdom, as a former Member State, has extensive links with the Union in a wide range of economic and other areas. If there is no applicable framework regulating

³ Council Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement (OJ L 58, 27.2.2020, p. 53).

the relations between the Union and the United Kingdom after 31 December 2020, those relations will be significantly disrupted, to the detriment of individuals, businesses and other stakeholders. The negotiations could only be finalised at a very late stage before the expiry of the transition period. Such late timing should not jeopardise democratic scrutiny to be exercised by the European Parliament in accordance with the Treaties. In light of these exceptional circumstances and for consistency with the separate procedure on the signing and provisional application of the Trade and Cooperation Agreement on behalf of the Union, the Commission recommends to apply the Agreement on a provisional basis also as regards matters falling under the competence of Euratom.

- **Consistency with existing policy provisions in the policy area**

Both the European Council guidelines of 23 March 2018 and the Political Declaration called for a close partnership between the Union and the United Kingdom in the future.

The Euratom Agreement confirms the clear commitment of the two Parties in favour of non-proliferation and a high level of nuclear safety in order to guarantee the safe and peaceful uses of nuclear energy. It is in line with the Community's policy on energy security of supply. With a view to continuing the overall co-operative relationship between Euratom and the United Kingdom, the importance of concluding this separate Euratom Agreement is mainly based on the mutual interest to establish a stable legal framework which would foster equal and reciprocal cooperation on the safe and peaceful uses of nuclear energy and facilitate the exchange of nuclear material, equipment and technologies, considering the fact that the United Kingdom plays an important role in the civil nuclear field and there is an important interrelationship between the Parties in this field.

For Euratom, the particular interest in concluding this Agreement stems from the fact that it ensures a continuous cooperation in nuclear safety, nuclear safeguards, nuclear research and development and allows for an appropriate level of safeguards, physical protection, and export control standards. The Euratom Agreement further facilitates nuclear trade between the Parties and with other third countries with which the Community has similar cooperation agreements. The Euratom Agreement also ensures that the principles of the nuclear common market under the Treaty establishing the European Atomic Energy Community (the "Euratom Treaty") are applied to the items subject to the Agreement and requires that transfers of such items and the provision of relevant services be carried out under fair commercial conditions.

The conclusion of the Euratom agreement will create a long-term and stable framework for both Parties and their governments and industrial operators, within which such co-operation could take place, as well as encourage and facilitate the co-operation in research and development in the field of nuclear energy on the basis of mutual benefit, equality and reciprocity.

The Euratom agreement is based on existing precedents in this field, i.e. currently there are eight existing Euratom Nuclear Cooperation Agreements with third countries (with the USA, Canada, Australia, Japan, Kazakhstan, Uzbekistan, Ukraine and Argentina).

The novelty of this Euratom Agreement is that it contains broader and more ambitious provisions on cooperation on nuclear safety in line with the Political Declaration and on transfers of nuclear technologies in line with the negotiating directives.

Nuclear research cooperation and, in particular, the association of the United Kingdom as a third country to the Euratom research programme and the activities of Fusion for Energy will

allow the United Kingdom to continue sharing its expertise in the field of fission and fusion activities, including on ITER related activities. This association will be implemented through the Trade and Cooperation Agreement and its Protocols and will be instrumental for the development of the European nuclear research in which the United Kingdom was a major actor as a Member State of Euratom.

- **Consistency with other Union and Euratom Community policies**

The Euratom Agreement complements the Trade and Cooperation Agreement and fully respects the Treaties and preserves the integrity and the autonomy of the Euratom Community and of the European Union legal orders. It promotes the values, objectives, and interests of the Euratom Community and of the European Union, and ensures the consistency, effectiveness and continuity of its policies and actions.

2. LEGAL BASIS

The specific legal basis to negotiate and conclude the Euratom Agreement, as well as the Trade and Cooperation Agreement as regards matters falling under the competence of the European Atomic Energy Community, is Article 101 of the Treaty establishing the European Atomic Energy Community.

3. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The scope of the cooperation envisaged in the Euratom Agreement is comprehensive and in line with the Council negotiating directives of 25 February 2020. It includes areas of interest outlined in the Political Declaration.

The Euratom Agreement respects the autonomy of the Euratom and of the Union's decision-making and their legal order, the integrity of its single market including the nuclear common market. The Euratom Agreement reflects the United Kingdom's status as a third country that cannot have the same rights and enjoy the same benefits as a member of the European Union and of the Euratom Community. The Euratom Agreement is based on a governance framework that is typical for existing Euratom Nuclear Cooperation agreements.

The Commission's draft text proposal for the Euratom Agreement consists of 25 Articles and one Annex.

Article 1 defines the objective of the Euratom Agreement, which is to provide a framework for cooperation between Euratom and the United Kingdom in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party.

Article 2 provides definitions. The scope and forms of nuclear cooperation (Articles 3 and 4) mainly comprise transfers of nuclear material, non-nuclear material, equipment and technology; nuclear safeguards; physical protection; research and development in the field of nuclear energy, safe management of spent fuel and radioactive waste, including geological disposal; nuclear safety and radiation protection, including emergency preparedness and monitoring of levels of radioactivity in the environment; use of radioisotopes and radiation in agriculture, industry, medicine, and research; regulatory aspects of the peaceful uses of nuclear energy; exchange of information in areas of mutual interest, such as nuclear

safeguards, nuclear safety, levels of radioactivity in the environment and supply of radioisotopes, etc.

The Euratom Agreement further defines the items subject to this Agreement (Article 5). It is underlined that nuclear material shall be subject to specific safeguards provisions (for the Community: the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards and its Additional Protocols; for the United Kingdom: the domestic safeguards system and to the IAEA safeguards and its Additional Protocols) (Article 6). The Euratom Agreement contains one article on physical protection (Article 7).

In its Article 8 the Euratom Agreement ensures that the UK continues to maintain an appropriate level of nuclear safety and that Euratom and the UK shall work together on the continuous improvement of international nuclear safety standards and Conventions, and of their implementation; it also provides for continued cooperation via the possible UK's participation as a third country in various Community systems and groups, such as established Community systems for monitoring and exchanging information on levels of radioactivity in the environment (the European Community Urgent Radiological Information Exchange (ECURIE) and the European Radiological Data Exchange Platform (EURDEP) as well as in the European Nuclear Safety Regulators Group (ENSREG).

The Euratom Agreement further contains provisions on transfers, retransfers of nuclear items subject to the Agreement and facilitation of trade (Article 9). It also provides for an agreed framework in which both parties may perform enrichment and reprocessing activities (Article 10 and 11).

The Euratom Agreement also contains provisions on cooperation on nuclear research and development, which may include participation of the United Kingdom as a third country in the Community's research and training programmes and activities; and the United Kingdom's membership of the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) in accordance with the conditions laid out under the Trade and Cooperation Agreement (Article 12).

Specific provisions on the exchange of information and technical expertise Article 13, Intellectual Property (Article 14), administrative arrangements (Article 15) and implementation (Article 16) follow. In order to guarantee the smooth application and implementation of the Euratom Agreement, specific articles on applicable law (Article 17), Existing agreements (Article 18), Joint Committee (Article 19), consultation (Article 20), settlement of disputes (Article 21), cessation of cooperation in case of serious breach (Article 22), amendments (Article 23), entry into force and duration (Article 24) and on authentic texts (Article 25) are inserted.

The Annex contains specific provisions on reprocessing.

Through a Protocol to the Part Five of the Trade and Cooperation Agreement, the United Kingdom will participate as an associated third country in the Euratom Research Programme. The United Kingdom will also become member, as an associated third country, of Fusion for Energy. This association will be in accordance with the Council Decision of 27 March 2007 establishing Fusion for Energy, and its Statutes attached to it, as last amended or to be amended in the future, contributing to the future scientific and technological cooperation in the field of controlled nuclear fusion through the United Kingdom's association to the Euratom Programme.

Through the Trade and Cooperation Agreement, United Kingdom entities may participate in direct actions of the Joint Research Centre.

The specificities of the participation of the United Kingdom as an associated third country to the Euratom Research Programme and the fusion activities carried out by Fusion for Energy, including the ITER activities, are detailed in a Protocol to the Part Five of the Trade and Cooperation Agreement.

4. CONCLUSION

The Commission considers that both the Trade and Cooperation Agreement and the Euratom Agreement, the adoption of which is proposed:

- are in conformity with the negotiating directives issued by the Council of 25 February 2020;
- confirm the clear commitment of the two Parties in favour of non-proliferation and of continued high level of nuclear safety in order to guarantee the safe and peaceful uses of nuclear energy;
- are in line with the Community's policy on energy security of supply;
- will further strengthen the very good relations between the EU and the United Kingdom in the field of energy policy cooperation; and
- will further strengthen the cooperation between the Parties on nuclear research, in particular on the development of fusion energy.

The Commission therefore recommends to the Council to approve, pursuant to the second paragraph of Article 101 of the Euratom Treaty, the Trade and Cooperation Agreement and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, which is annexed to this Recommendation.

Recommendation for a

COUNCIL DECISION

approving the conclusion, by the European Commission, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy and the conclusion, by the European Commission, on behalf of the European Atomic Energy Community, 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community (the 'Euratom Treaty'), and in particular the second paragraph of Article 101 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 25 February 2020, the Council authorised the European Commission to open negotiations with the United Kingdom for a new partnership agreement. Following negotiations, the Parties agreed at negotiators' level a Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part, (the 'Trade and Cooperation Agreement') and an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy.
- (2) The Trade and Cooperation Agreement covers matters falling under competences of the European Atomic Energy Community (the 'Community'), namely the association to the Research and Training programme of Euratom and to the European Joint Undertaking for ITER governed by the provisions of Part Five of the Trade and Cooperation Agreement [Participation in Union programmes, sound financial management and financial provisions]. The Trade and Cooperation Agreement should therefore also be concluded on behalf of the Community as regards matters falling under the Euratom Treaty. The signing and conclusion of the Trade and Cooperation Agreement on behalf of the European Union is subject to a separate procedure.
- (3) It is recalled that draft bilateral agreements between a Member State of the Community and the United Kingdom within the purview of the Euratom Treaty, including agreements for the exchange of scientific or industrial information in the nuclear field, may be concluded provided that the conditions and the procedural requirements set out in Articles 29 and 103 of that Treaty are complied with.
- (4) The conclusion, by the Commission, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy should be approved.

- (5) The conclusion, by the Commission, acting on behalf of the European Atomic Energy Community, of the Trade and Cooperation Agreement should be approved.
- (6) The entry into application of the Trade and Cooperation Agreement is a matter of special urgency. The United Kingdom, as a former Member State, has extensive links with the Union in a wide range of economic and other areas. If there is no applicable framework regulating the relations between the Union and the United Kingdom after the transition period ending on 31 December 2020, those relations will be significantly disrupted, to the detriment of individuals, businesses and other stakeholders. Given the exceptional situation of the United Kingdom with regard to the Union, the urgency of the situation with the transition period ending on 31 December 2020, as well as the need to give sufficient time to the European Parliament and the Council to appropriately scrutinise the text of the Trade and Cooperation Agreement, that agreement should be applied on a provisional basis also as regards matters falling under the competence of the European Atomic Energy Community. Provisional application should be limited in time as set out in Article FINPROV.11(2) [Entry into force and provisional application] of the Trade and Cooperation Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy is hereby approved.

The conclusion by the Commission, on behalf of the European Atomic Energy Community, 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, including its provisions on provisional application, is hereby approved, as regards matters falling under the Treaty establishing the European Atomic Energy Community.

The texts of the Agreements are annexed to this Decision.

Article 2

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

Done at Brussels, 26.12.2020

*For the Council
The President*