

## **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

COM(2020) 856

14336/20

**Proposal for a COUNCIL DECISION 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**

Submitted by the Foreign, Commonwealth and Development Office on 5<sup>th</sup> February 2021.

### **SUBJECT MATTER**

1. This is a Council Decision on the conclusion, on behalf of the EU, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland ('the TCA'), and 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 (hereinafter 'the Agreement', agreed between Chief Negotiators on 24 December 2020).
2. On 25 February 2020, the Council authorised the Commission to open negotiations with and conclude an Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning the exchange of classified information. The decision presented is the draft text of that Agreement.
3. The Agreement constitutes a supplementing agreement to the TCA. It addresses the following subjects: the definition of 'classified information'; the institutions and entities to which this Agreement applies; a commitment that the receiving party will protect classified information provided to them to a level at least equivalent to that afforded by the providing party for its own information; a commitment to hold classified information securely; restrictions on how such information will be used, accessed and disclosed; personnel security clearance requirements for accessing classified information; how classified information is to be provided to contractors; equivalent European Union and United Kingdom security classifications; procedures on how classified information will be transmitted between the parties; a commitment that the parties will, before classified information is provided or exchanged under this Agreement, establish an Implementing Arrangement to lay down the standards for the reciprocal protection of classified information; responsibilities for overseeing the implementation of the Agreement; the responsibilities of each party in the event of the unauthorised disclosure or loss of classified information; clarification that dispute resolution will be through consultation;

and details on how the Agreement will enter into force, including how it can be amended or terminated.

4. It should be noted that the Agreement does not obligate either party to provide classified information to the other. The Agreement provides an agreed legal framework should one party decide to exchange classified information with the other.
5. The Agreement was negotiated and agreed between the UK and the EU as part of the overall Future Relationship negotiations.

## **SCRUTINY HISTORY**

6. There is no previous scrutiny history. This Agreement is similar to previous Security of Information Agreements between the EU and other third States.

## **MINISTERIAL RESPONSIBILITY**

7. The Secretary of State for Foreign, Commonwealth and Development Affairs is the Minister with overall responsibility for UK policy on the European Union's Common Foreign and Security Policy. The Minister for the Cabinet Office has an interest as the Cabinet Office are the policy leads on protective security policy. The Cabinet Office is the UK's National Security Authority and will oversee implementation of the Agreement. The Home Secretary has responsibility for policy matters relating to national security. The Secretary of State for Defence also has policy interests in this area.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

8. Although UK foreign affairs is a reserved matter under the UK's devolution settlements, Devolved Administrations were kept informed of this Agreement throughout the negotiations and raised no concerns.

## **LEGAL AND PROCEDURAL ISSUES**

- i. Legal Basis: The substantive legal basis is Article 217 of the Treaty on the Functioning of the European Union. The procedural basis is Articles 218(6), 218(7), and the second sub-paragraph of Article 218(8) of the Treaty on the Functioning of the European Union.
- ii. Voting Procedure: Unanimity

- iii. Timetable for adoption and implementation (or expected next steps for non-legislative documents): The decision was adopted on 29 December 2020. The UK and EU are currently negotiating the Implementing Arrangement and agreed in a Joint Declaration to exert their best endeavours to complete those negotiations as soon as is reasonably practicable.
- iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof? No.
- v. Do JHA opt-in, Schengen opt-out issues arise? No.

## **POLICY IMPLICATIONS**

- 9. Given the operational need for the European Union to exchange classified information with third States, including the United Kingdom, this Agreement was negotiated to provide the necessary framework for the protection of classified information exchanged between the European Union and the United Kingdom.
- 10. The Agreement only concerns the exchange of EU classified information and UK classified information. The scope does not extend to classified information exchanged directly between EU Member States and the UK.
- 11. Cabinet Office judge that the UK would be able to exchange more classified information, and at a higher classification level, with an Agreement in place than if we had not reached one; though no formal assessment has been made. Cabinet Office are not able to judge whether this agreement will mean that the volume of information sharing between the EU institutions and UK is maintained given that such exchanges are not centrally monitored.
- 12. There is little impact on our protective security policy. We will have to make a minor amendment to our national policy in one section, to reflect the final outcome of the Agreement, the Implementing Arrangement, and our new relationship with the EU. The only significant policy change is likely to be the routing of hard-copy classified information exchanges through central points in Brussels.
- 13. There should be no impact on other partners (e.g. Five Eyes) as the scope of the Agreement is strictly between the UK and the EU as an institution. Cabinet Office judge there may be more direct bilateral exchanges between the UK and EU Member States now that the Transition Period is over, but this is also beyond the scope of the Agreement.
- 14. The TCA is currently subject to provisional application.

## **CONSULTATION**

15. The Crown Dependencies and Overseas Territories were consulted when negotiating the Agreement.

## FINANCIAL IMPLICATIONS

16. There are no significant direct financial implications for the United Kingdom or the European Union. Any costs incurred by either Party in the application of the security provisions of this Agreement will be borne by that Party.

A handwritten signature in black ink that reads "Nigel Adams". The signature is written in a cursive style with a long horizontal stroke at the end.

Nigel Adams MP  
Minister of State for Asia  
Foreign, Commonwealth and Development Office

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[1] [Section 13A of the EU \(Withdrawal\) Act 2018](#), as inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#).