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Recommendation for a

COUNCIL DECISION

approving the conclusion, by the European Commission, of the Agreement in respect of Gibraltar 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

The Trade and Cooperation Agreement concluded between the European Union and the United Kingdom was signed on 30 December 2020, applied provisionally as of 1 January 2021 and entered into force on 1 May 2021.

In accordance with the negotiating directives of 25 February 2020 (Council Decision (EU, Euratom) 2020/266¹), the Trade and Cooperation Agreement does not include nor has any effect on Gibraltar. This does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar in line with the Declaration of the European Council and of the European Commission included in the minutes of the European Council (Article 50) meeting of 25 November 2018².

On 31 December 2020, Spain and the United Kingdom agreed on a political framework for a future Agreement in respect of Gibraltar between the European Union and the United Kingdom.

On 5 October 2021, the Council adopted the Decision authorising the opening of the negotiations for an agreement with the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar. The Commission was appointed as the Union negotiator. The Council Decision also included an addendum with the directives for the negotiation of such agreement ('negotiating directives').

In relation to civil nuclear, the negotiating directives provide for the possibility for the envisaged Agreement to cover matters under the Euratom Treaty and its secondary legislation scope, in particular, but not limited to, provisions related to health and safety, the nuclear common market and nuclear safeguards.

The Commission conducted the negotiations in consultation with the Working Party on the United Kingdom of the Council and kept the European Parliament fully informed, notably via its United Kingdom Coordination Group.

The negotiations were completed on 12 December 2025, after more than four years of negotiations. The negotiations could only be finalised at a very late stage due to the complex political and legal issues to be solved in the areas of movement of persons and goods covered by the Agreement.

As the Agreement contains only a single provision on civil nuclear cooperation to which the European Atomic Energy Community is a party, this provision was kept in the body of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland.

The entry into application of the Agreement is a matter of special urgency. The Agreement foresees the removal of all physical barriers between the territory of the Union and Gibraltar. The European Union's new Entry/Exit System, replacing manual stamping of passports with digital recording of third country

¹ 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 (OJ L 58, 27.2.2020, p. 53)

² EUCO XT 20017/18.

nationals entering the Schengen area, is currently in a progressive rollout with full operational deployment expected at all external borders of the 29 participating countries by 10 April 2026. If the Agreement in respect of Gibraltar does not apply by 10 April 2026, fully-fledged border control will need to be put in place between the territory of the Union and Gibraltar. This will significantly disrupt individuals, businesses and other stakeholders operating in the area of Campo del Gibraltar and go against the very purpose of the Agreement, which is to create an area of shared prosperity to the benefit of both the Union and Gibraltar.

In light of these exceptional circumstances, the Commission recommends to apply the Agreement, as regards matters falling within the competence of Euratom, on a provisional basis for a short period from the date of full deployment of the Entry/Exit System until the first day of the month following that in which Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

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

The Trade and Cooperation Agreement established a new relationship between the Union and the United Kingdom following the withdrawal of the United Kingdom from the European Union and from the European Atomic Energy Community – without including Gibraltar. It is accompanied by 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.

The Agreement complements the Trade and Cooperation Agreement from that perspective and constitutes the last piece of the close partnership between the Union and the United Kingdom for which the European Council called following the withdrawal of the United Kingdom.

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

The 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 also ensures continuous cooperation in nuclear safety and security and nuclear safeguards, which is paramount in view of the geographical proximity between the two Parties. It is in line with the overall co-operative relationship between Euratom and the United Kingdom since Brexit.

2. **LEGAL BASIS**

- **Legal basis**

The specific legal basis to negotiate and conclude the Agreement in respect of Gibraltar 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, 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 provision on civil nuclear cooperation aims at confirming the two Parties' international commitments in relation to effective nuclear safety standards and their implementation. The United Kingdom will ensure that the standards of protection in this respect and their enforcement are applied in Gibraltar.

The United Kingdom commits to implement an effective system of nuclear material accountancy in Gibraltar and to implement safety and security arrangements in relation to any relevant civil nuclear facilities and radioactive sources in Gibraltar when this will be required.

The United Kingdom commits to extend the application of the Convention on Third Party Liability in the Field of Nuclear Energy, as last amended by the Protocol of 12 February 2004) to Gibraltar and to maintain operational arrangements with Gibraltar in relation to events in, or affecting, Gibraltar, covered by the Convention on the Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.

Finally, the United Kingdom commits to ensure an equivalent effectiveness and coverage, over time, as that provided under both Directive 2008/68/EC on the inland transport of dangerous goods and Council Directive 2013/59/Euratom laying basic safety standards for protection against the dangers arising from exposure to ionising radiation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 101, second paragraph, thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The United Nations General Assembly Resolutions on decolonisation of the territory of Gibraltar (hereinafter “Gibraltar”) list Gibraltar as a ‘Non-Self-Governing Territory Administered by the United Kingdom of Great Britain and Northern Ireland’ in application of Chapter XI of the Charter of the United Nations.
- (2) On 5 October 2021, the Council authorised the European Commission to open negotiations for an agreement with the United Kingdom in respect of Gibraltar. Following negotiations, the Parties agreed at negotiators’ level an Agreement in respect of Gibraltar 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.
- (3) The Agreement covers matters falling under the scope of the European Atomic Energy Community, namely the provisions on civil nuclear cooperation. The 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 Agreement on behalf of the Union is subject to a separate procedure.
- (4) The conclusion, by the Commission, acting on behalf of the European Atomic Energy Community, of the Agreement should be approved.
- (5) The Agreement, or any activity or measure taken in application or as a result thereof, does not imply any modification of the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction in relation to Gibraltar.
- (6) As the authorities of Gibraltar have a local character and exercise exclusively internal competences, any participation of these authorities in the application of this Agreement should be considered as conducted exclusively within the internal competences of Gibraltar, unless otherwise specifically provided.
- (7) The Agreement provides for the removal of all physical barriers between the territory of the Union and Gibraltar. The Union Entry/Exit System should be fully deployed at all external borders of the Schengen area by 10 April 2026. If the Agreement does not enter into force by 10 April 2026, a fully-fledged border should be put in place between the Union and Gibraltar. This will significantly disrupt individuals, businesses and other stakeholders operating in the area and go against the purpose of

the Agreement to create an area of shared prosperity. Such disruptions can be limited through the provisional application of the Agreement.

- (8) Therefore, given the exceptional situation of the United Kingdom in respect of Gibraltar and the urgency of the situation with the Entry/Exit System being fully deployed at all external borders by 10 April 2026, the Agreement should be applied on a provisional basis, for a short period, in accordance with Article 336 thereof, pending the completion of the procedures necessary for its entry into force,

HAS ADOPTED THIS DECISION:

Article 1

The conclusion by the European Commission, on behalf of the European Atomic Energy Community, of the Agreement in respect of Gibraltar 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 text of the Agreement is annexed to this Decision.

Article 2

This Decision is addressed to the Commission and shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*