



Council of the
European Union

**Brussels, 30 September 2021
(OR. en)**

12178/21

LIMITE

UK 212

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION authorising the opening of negotiations for an 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, in respect of Gibraltar

COUNCIL DECISION (EU, Euratom) 2021/...

of ...

**authorising the opening of negotiations for an 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,
in respect of Gibraltar**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 217, in conjunction with Article 218(3) and (4) thereof,

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

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') withdrew from the European Union and the European Atomic Energy Community ('Euratom').
- (2) 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') provided for arrangements for the orderly withdrawal of the United Kingdom, including a Protocol on the specific arrangements in respect of Gibraltar. In accordance with Article 3(1)(a) of the Withdrawal Agreement, Union law applied to and in the United Kingdom during a transition period which ended on 31 December 2020. The Protocol, with the exception of Article 1 thereof, ceased to apply in Gibraltar after the end of the transition period.

- (3) Council Decision (EU) 2021/689¹ provides for the conclusion, on behalf of the Union, of a Trade and Cooperation Agreement between the European Union and Euratom, of the one part, and the United Kingdom, of the other part. The Trade and Cooperation Agreement has been provisionally applied from 1 January 2021 and entered into force on 1 May 2021. The Trade and Cooperation Agreement neither applies nor produces any effect in Gibraltar, which is excluded from its territorial scope.
- (4) At the European Council meeting of 25 November 2018, a statement was made to the minutes of that meeting establishing the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar, without prejudice to the competences of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, and that those separate agreements will require prior agreement of the Kingdom of Spain.

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).

- (5) On 31 December 2020, the Kingdom of Spain conveyed its desire that the Union establish a broad and balanced arrangement with regard to Gibraltar based on the understanding reached with the United Kingdom on a possible framework for an agreement on Gibraltar.
- (6) It appears beneficial to conclude such an agreement in view of Gibraltar's geographical proximity and economic interdependence with the Union.
- (7) Negotiations should therefore be opened with a view to concluding an agreement between the Union and Euratom, of the one part, and the United Kingdom, of the other part, in respect of Gibraltar. The Commission should be nominated as the Union negotiator.
- (8) The agreement should be without prejudice to the issues of sovereignty and jurisdiction and should not affect the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction in respect of Gibraltar.
- (9) The agreement should respect the territorial integrity of the Member States as guaranteed by Article 4(2) of the Treaty on European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate an agreement with the United Kingdom of Great Britain and Northern Ireland in respect of the British Overseas Territory of Gibraltar.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiations shall be conducted in consultation with the Working Party on the United Kingdom and in accordance with the directives contained in the addendum to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

Article 4

This Decision is addressed to the Commission.

Done at ...,

For the Council

The President
