

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

14337/20

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

Submitted by the Department for Business, Energy & Industrial Strategy on 14 January 2021.

SUBJECT MATTER

1. The UK and the European Atomic Energy Community (Euratom) have agreed a Nuclear Cooperation Agreement (the UK-Euratom NCA), which is entirely separate from the wider UK-EU Trade and Cooperation Agreement (TCA). To make this clear, Article 18 of the UK-Euratom NCA says that “This Agreement shall not constitute a supplementing agreement to the Trade and Cooperation Agreement”. But some of the subject matter in the UK-Euratom NCA is related to the TCA as the latter governs UK participation in specific nuclear research programmes that the UK has agreed to participate in (namely the Euratom Research and Training Programme and the European Joint Undertaking for the ITER fusion project “Fusion for Energy”).
2. The Commission recommendation that is the subject of this Explanatory Memorandum is for the Council to approve the UK-Euratom NCA and the parts of the TCA that relate to Euratom.
3. Nuclear Cooperation Agreements (NCAs) are commonly used international treaties which give legal underpinning to civil nuclear cooperation and provide key non-proliferation assurances, including in respect of nuclear safeguards, and a framework for nuclear trade. The UK-Euratom NCA achieves this in respect of cooperation between the UK and Euratom. Although Euratom is a separate entity to the European Union (EU), it should be noted that every member of the EU is also a member of Euratom, and there are no members of Euratom that are not members of the EU. The EU and Euratom share common institutional arrangements, such as these Council processes, and organisationally the

Euratom team is part of DG Ener in the European Commission.

4. The Euratom Treaty allows for Euratom Member States to have bilateral NCAs with third countries, as well as all Euratom Member States being covered by Euratom NCAs. This is an unusual legal position and is in contrast to, for example, trade agreements with third countries. Because of this “parallel competence”, the UK already has a number of existing bilateral NCAs with countries such as the Republic of Korea, which is being amended to reflect the UK’s new position outside Euratom. In addition, the UK has signed new bilateral NCAs with the USA, Canada and Australia which came into force at the end of the Transition Period at 11pm on 31st December 2020, the point at which Euratom’s NCAs with those countries ceased to cover the UK.
5. The UK-Euratom NCA provides a framework for transfer of nuclear materials and technology, facilitates research and development, enables exchange of information and expertise including on medical radioisotopes and highlights both Parties’ commitment to continue cooperating on nuclear safety and improving global nuclear safety standards. It provides robust mutual assurances that traded nuclear material will remain subject to safeguards and provides a comprehensive framework and other key assurances for transfers of nuclear materials and related items, including procedures for retransfers to third countries. It underlines both parties’ commitments to the existing international nuclear safeguards, safety and security regimes overseen by the International Atomic Energy Agency, which works under the United Nations charter to promote peace and international cooperation.
6. Article 12 of the UK-Euratom NCA covers cooperation on nuclear research and development, and notes that such cooperation may include UK participation in Euratom’s research and training programmes (Euratom R&T), and membership of Fusion for Energy (F4E) which is the Euratom body responsible for delivering Euratom’s contribution to the international ITER fusion project. The Article notes that such participation and membership would be in accordance with certain terms outlined in the separate TCA.
7. The relevant terms in the TCA relating to cooperation on nuclear research and development are detailed in Part 5 (Participation in Union Programmes, Sound Financial Management and Financial Provisions) which sets out the arrangements for the UK’s participation in Union programmes and activities and access to programme services. These terms provide for the UK to make a fair and appropriate financial contribution towards the relevant programmes and activities, fair treatment of UK participants, balanced provisions to ensure the sound financial management of programme / activity funds, and appropriate governance arrangements.

8. Details of the specific programmes and activities that the UK will participate in [for the period 2021-27] will be included in a protocol to the TCA. A draft protocol showing the programmes and activities that the UK intends to participate in – including Euratom R&T and F4E - has been published alongside the TCA, and will be adopted once the regulations establishing the programmes / activities are settled.

SCRUTINY HISTORY

9. In addition to existing legislation, section 28 of the European Union (Future Relationship) Act 2020 contains provisions ensuring the UK can comply with its obligations under the UK-Euratom NCA. This section was not subject to any amendments/questions from MPs/Lords during the passage of the Act. Parliament supported the aims of Government which were presented to Parliament in February 2020 in the paper entitled “*The Future Relationship with the EU | The UK’s Approach to Negotiations*” and the aims in respect of nuclear were agreed without being contested. The NCA meets those aims.
10. Section 27 of the European Union (Future Relationship) Act 2020 includes provisions to ensure the UK can apply certain privileges and immunities necessary for the UK to participate in F4E and the ITER organisation, which is a condition of its membership of F4E set out in the Protocol to the TCA. This section was not subject to further comments from MPs/Lords during the passage of the bill.

MINISTERIAL RESPONSIBILITY

11. Civil nuclear policy falls within the remit of the Secretary of State for Business, Energy and Industrial Strategy, and policy on nuclear export controls belongs with the Secretary of State for International Trade. The Office for Nuclear Regulation (ONR), which is an independent statutory body reporting to the Department for Work and Pensions, became responsible for the UK safeguards regime at 11pm on 31st December 2020. The ONR is named as a competent authority in the NCA (see Article 2 *definitions*).
12. The Secretary of State for Foreign and Commonwealth Affairs has responsibility for the overall relationship between the UK and the Overseas Territories. The Secretary of State for Justice has overall responsibility for the relationship between the UK and the Crown Dependencies. The NCA does not however extend to UK overseas territories or Crown Dependencies

INTEREST OF THE DEVOLVED ADMINISTRATIONS

13. Civil nuclear is a reserved matter under the UK’s devolution settlements and no

devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

14. This is not a proposal for legislation.

i. Legal Base

15. The legal basis to negotiate and conclude the UK-Euratom NCA and the provisions of the TCA falling under the competence of Euratom is Article 101 of the Treaty establishing the European Atomic Energy Community (Euratom Treaty).

ii. Voting Procedure

16. Article 101 of the Euratom Treaty requires the Council to act by qualified majority to approve the relevant treaty but does not require approval of the EU Parliament or individual Member States before ratification.

17. On 29 December 2020, the Council approved the Recommendation of the European Commission. The Council Decision was adopted as Council Decision (Euratom)2020/2253.

POLICY IMPLICATIONS

The NCA

18. Both the UK and Euratom are global leaders in supporting responsible practices in civil nuclear, including nuclear safety and the non-proliferation of nuclear weapons. Whilst NCAs are not a legal requirement for the UK or Euratom in order for nuclear trade to take place between them, both sides recognise the importance of civil nuclear cooperation and it was set out clearly in the Political Declaration in 2019 that a Nuclear Cooperation Agreement should be agreed between the UK and Euratom.

19. The UK-Euratom NCA sends a clear message to the wider international community, the nuclear sector, and the public that both parties are fully committed to cooperation on civil nuclear, including safeguards, safety, and security. It provides a framework for trade in nuclear materials and technology (e.g. Article 9 *Transfers, retransfers, and facilitation of trade*) and while trade would have been possible without the NCA, it would have been more-time consuming and complex. It also facilitates research and development (e.g. Article 12 *Cooperation on nuclear research and development*), and enables exchange of information and expertise including on medical radioisotopes (e.g. Article 13 *Exchange of information and technical expertise*).

20. The UK-Euratom NCA is a separate agreement from the TCA, in line with the UK's negotiations objectives and contrary to the approach that the EU took. In their published draft agreement, they included nuclear cooperation provisions within a single "partnership agreement", and this continued to be their position until they conceded to a separate NCA late on in the negotiations as part of the discussions on structure and governance. It is a short agreement, consisting of 25 Articles and one Annex, which covers the following:

- **Safeguards:** this agreement provides robust mutual assurances that traded nuclear material will remain subject to safeguards (part of global nuclear non-proliferation);
- **Nuclear transfers:** this agreement facilitates civil nuclear trade by providing a comprehensive framework and key assurances for transfers of nuclear materials and related items, including procedures for retransfers to third countries;
- **Nuclear research:** this agreement provides for a long-term legal basis for future cooperation in both fission and fusion research and development; while this NCA provides the legal framework for long-term cooperation, the specific terms of participation for the nuclear research programmes that the UK has agreed to participate in from 2021 onwards, namely the Euratom Research and Training Programme and "Fusion for Energy", are set out in the "Participation in Union Programmes" part of the TCA. The NCA is distinct from, but complementary to, such participation.
- **Medical radioisotopes:** this agreement provides for cooperation on issues such as security of supply or the development of novel technologies and treatments;
- **Nuclear safety,** this agreement provides for commitments from both sides to improving global standards, and maintaining their existing safety standards.
- **Sharing of information and technical expertise,** including the option for the UK's participation, as a third country, in systems such as European Community Urgent Radiological Information Exchange (ECURIE) and the European Radiological Data Exchange Platform (EURDEP) as well as various other expert advisory groups.

Euratom-relevant parts of the TCA

21. Part 5 of the TCA and the Protocol on UK participation in Union programmes and activities (once the latter has been adopted by a Specialised Committee under the TCA) will mean that the UK shall participate as an associated country in all parts of the Euratom R&T programme and as a member of F4E for the next multiannual financial framework 2021-2027.

22. This agreement will ensure that UK researchers and UK companies will continue

to have full access to funding and commercial opportunities under Euratom R&T and F4E. This includes the ability for the UK to attend and participate in governance boards and influence decision-making in the UK interest. This agreement also secures full access to ITER, one of the largest international science collaborations in the world. Remaining part of ITER through F4E means the UK can access scientific outputs crucial for supporting the development of fusion energy, as well as billions of pounds of commercial opportunities.

Northern Ireland Protocol

23. In respect of the NCA and the Euratom-relevant parts of the TCA, there is no implication under the Northern Ireland Protocol.

CONSULTATION

24. BEIS consulted across government before negotiating the NCA including with the Devolved Administrations, the UK's independent regulator, the Office for Nuclear Regulation (ONR), and the Environment Agencies, which are responsible for some aspects of nuclear safety. A formal consultation on this agreement was held with the Crown Dependencies and Overseas Territories. The agreement was ratified on behalf of the UK only.
25. BEIS consulted across government regarding the option to associate with Euratom R&T and F4E prior to negotiations, including with parties such as HMT and the UK Atomic Energy Authority (UKAEA), alongside other interested stakeholders as necessary.

FINANCIAL IMPLICATIONS

26. Costs of collaboration, exchanges of personnel, training etc. encouraged by the UK-Euratom NCA would be met by persons operating within the framework of the NCA and at no additional cost to the UK Government. The cost of the UK running its own nuclear safeguards regime is an additional cost to the UK taxpayer but does not result from the NCA or the Council decision. It is a consequence of the UK leaving the EU and Euratom, whether with a future relationship agreement or not. The UK's nuclear safeguards regime was previously run by Euratom and was therefore paid for indirectly by the UK taxpayer through the UK's overall contribution to the EU budget.
27. As a participant in Euratom R&T and F4E, the UK will make a financial contribution to these programmes using the UK/EU27 GDP ratio to determine the UK share of programme budgets and administrative costs. This financial contribution will be administered by BEIS.



THE RT HON ANNE-MARIE TREVELYAN MP

Minister of State for Business, Energy and Clean Growth

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