



EUROPEAN
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ANNEX

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to the

Recommendation for a COUNCIL DECISION

authorising the opening of negotiations between the European Union and the United Kingdom of Great Britain and Northern Ireland on a common sanitary and phytosanitary area between the European Union and the United Kingdom in respect of Great Britain and to link the United Kingdom and the Union's greenhouse emissions trading systems

ANNEX

INSTITUTIONAL PROVISIONS RELEVANT FOR BOTH AGREEMENTS

1. The implementation of the envisaged agreements should be subject to joint governance mechanisms. These mechanisms should have adequate roles in the procedures ensuring the incorporation of the Union's evolving legislation, through dynamic alignment, into the legal order of the United Kingdom. The Commission shall ensure provisions are included for the unilateral termination of the agreements.

General principles

2. The common institutional provisions should have the objective to ensure that the rules applicable to relations with the United Kingdom in the fields covered by the agreements, where relevant, are the same as those applying in the Union internal market, at all times, and that their interpretation and application cannot differ.
3. Bearing in mind that objective, the institutional provisions should reflect the following essential principles and include the following elements:

Dynamic alignment

4. The common institutional provisions should ensure that the United Kingdom applies at all times the full body of Union acquis that is relevant for the purposes of each agreement, on a dynamic basis. This body of Union acquis should be listed in the agreements as existing at the time of signature. Subsequent relevant legal acts of the Union should be incorporated into the respective agreement by means of appropriate mechanisms. The incorporation of new relevant acts of Union law into the respective agreement should be done by a joint committee as soon as possible after their adoption and if possible within a given deadline and constitute an obligation for the Parties. If the deadline is not met, the Parties should be able to submit the case to dispute settlement.
5. For both agreements, the principle of dynamic alignment should ensure that identical rules within the scope of the agreement are simultaneously applied. In addition, the agreement on a common sanitary and phytosanitary area should provide that certain provisions of Union law, including emergency measures and those applicable to the entry into the Union of animals, plants and goods from the rest of the world, are immediately applicable to and in the United Kingdom in respect of Great Britain.
6. The agreement on a common sanitary and phytosanitary area should provide the same possibilities for the United Kingdom to take targeted action to protect its biosecurity and public health as those offered to Member States under Union law. In addition, the agreement may include a short list of limited exceptions to the principles of dynamic alignment and simultaneous application. An exception should only be agreed if: (i) it does not lead to the application of lower standards in the United Kingdom in respect of Great Britain as compared to those laid down in the relevant Union rules; (ii) it may not be invoked to restrict or affect in any other negative way the entry into the territory of the United Kingdom of animals, plants and goods originating in the Union that comply with Union law; (iii) it respects the principle that only animals, plants and goods which comply with Union law can enter the Union.

Decision shaping

7. Neither agreement should give the United Kingdom the right to participate in the Union's decision-making. However, the United Kingdom should be involved at an early stage and contribute appropriately for a country that is not a member of the European Union to the decision-shaping process of European Union legal acts in the fields covered by the obligation to dynamically align and simultaneously apply. The European Commission should consult the United Kingdom at an early stage of policy-making. These rights would not extend to participation in the work of the Council or its preparatory bodies.

Uniform interpretation and application of the Union acquis

8. The institutional provisions should lay down an obligation to interpret and apply the Union law in the relations between the Parties in the same way as it is interpreted and applied within the Union. This requires that the Union acts referred to in the agreements and, to the extent that their application involves concepts of Union law, the provisions of the agreements be interpreted and applied in accordance with the case-law of the Court of Justice of the European Union both prior and subsequent to the signature of the corresponding agreement.

Dispute settlement

9. The institutional provisions should ensure that disputes in the interpretation or application of the agreements can be submitted by the Parties to a dispute settlement mechanism based on that established by the Trade and Cooperation Agreement for their resolution if an amicable solution cannot be found within a joint committee. The dispute settlement mechanism should safeguard the exclusive competence of the Court of Justice of the European Union to interpret Union law. To that end, the arbitral tribunal should be under an obligation to refer to the Court of Justice of the European Union all questions of Union law (including a concept or a provision of Union law) for it to give a ruling which should be binding on the arbitral tribunal.

Appropriate measures to protect the Union interests and interconnection between agreements

10. An effective system of appropriate measures should guarantee the integrity of the internal market in case of non-compliance with the ruling of the arbitral tribunal. In particular, the procedure to be followed in case of non-compliance with the arbitral tribunal's decision should include the possibility to take appropriate measures to protect the Union interests, including in the agreement concerned or in another agreement in force between the parties.

Consistency with the Trade and Cooperation Agreement

11. Without prejudice paragraphs 1 to 10, the agreements should build on the institutional framework laid down in the Trade and Cooperation Agreement, in particular as regards the role of the Partnership Council.
12. The agreements should include provisions to ensure that cross-retaliation between the new agreements and the areas covered by the Trade and Cooperation Agreement remains possible as contemplated in the Trade and Cooperation Agreement.
13. The agreements should ensure that the Safeguard Measures clause of the Trade and Cooperation Agreement (Article 773 of the Trade and Cooperation Agreement) applies.

14. The provisions of the Trade and Cooperation Agreement as regards essential elements (Articles 771 and 772 of the Trade and Cooperation Agreement) should apply with respect to the new agreements.
15. Provisions in the Trade and Cooperation Agreement that are in conflict with the new agreements should be disapplied.

AGREEMENT ON A COMMON SANITARY AND PHYTOSANITARY AREA

Territorial scope

16. The agreement should apply, as regards the Union, to and in the territories in which the Treaties apply and under the conditions laid down therein and, as regards the United Kingdom, to and in the United Kingdom in respect of Great Britain¹.

Material scope

17. The agreement should cover sanitary, phytosanitary, food safety and general consumer protection rules applicable to the production, distribution and consumption of agrifood products, the regulations of live animals and pesticides, the rules on organic production and labelling of organic products, as well as marketing standards applicable to certain sectors or products. All of these areas should be addressed in their entirety, including the enforcement of legal requirements and the rules on certification and official controls.

Controls and checks

18. As part of the principle of dynamic alignment described above, the agreement should ensure that the United Kingdom in respect of Great Britain dynamically aligns with the relevant rules, including on controls and checks that apply to intra-EU trade.
19. As a consequence, the agreement would also ensure that the rules applicable to the entry into the United Kingdom in respect of Great Britain from the rest of the world of animals, plants, and those goods, which are subject to the rules to which the United Kingdom would dynamically align in the context of the agreement, are the same as those provided for by relevant Union law on the entry of animals, plants, and goods into the Union from the rest of the world.

Other aspects

20. The agreement should be without prejudice to:
 - the rules of origin applicable to trade in goods between the Union and the United Kingdom as laid down in the Trade and Cooperation Agreement;
 - the Union's customs rules.
21. Independently of the conduct and outcome of the negotiations, the Windsor Framework continues to provide for the Union rules as regards sanitary and phytosanitary measures and other relevant Union rules to apply to and in the United Kingdom in respect of Northern Ireland.

¹ The Windsor Framework makes Union law in the area of SPS automatically applicable to and in the United Kingdom in respect of Northern Ireland. Trade between the Union and Northern Ireland, as well as the movements between Great Britain and Northern Ireland, are governed by the Windsor Framework.

AGREEMENT TO LINK THE UNITED KINGDOM AND THE UNION'S GREENHOUSE EMISSIONS TRADING SYSTEMS

Territorial and material scope

22. The agreement to link the United Kingdom and the Union's greenhouse emissions trading systems should apply, for the Union, to the territories in which the Treaties apply and under the conditions laid down therein and, for the United Kingdom, in respect of Great Britain. The agreement should also apply to and in the United Kingdom in respect of Northern Ireland except as regards wholesale electricity markets, where the arrangements in Article 9 of and Annex 4 to the Windsor Framework will continue to apply. The agreement should ensure that the United Kingdom applies the same territorial scope for emissions trading as the Union for aviation and maritime transport.
23. The agreement should cover all aspects of a link between emission trading systems such as those falling under the scope of Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and the derived legislation.
24. In particular, the sectors falling in the scope of the agreement should be clearly defined. Among others, the scope should include the sectors of electricity generation, industrial heat generation (excluding the individual heating of houses), industry, domestic and international maritime transport and domestic and international aviation. Within this scope, the agreement should ensure the dynamic alignment of the United Kingdom with the relevant European Union rules to avoid risks of carbon leakage and competitive distortions. The agreement should provide for a procedure to further expand the list of sectors to be covered by the linking agreement.
25. The agreement should also ensure the dynamic alignment of the United Kingdom with the provisions of the Union's financial regulatory and supervisory framework applicable to trade of EU ETS allowances and derivatives thereof.

Ambition

26. The agreement should require that the cap and reduction pathway of the United Kingdom are at least as ambitious as the cap and reduction pathway followed by the Union.
27. The agreement should not constrain the Union and the United Kingdom from pursuing higher environmental ambition, consistent with their international obligations.

Recognition of allowances

28. The agreement should include an obligation to recognise emission allowances under the emissions trading system of one party under the emissions trading system of the other party.

Carbon Border Adjustment Mechanism

29. The agreement should create the conditions for goods originating in the Union and the United Kingdom to benefit from mutual exemptions from the respective Union and United Kingdom Carbon Border Adjustment Mechanisms, subject to compliance with the relevant provisions of the Union's and the United Kingdom's respective legislation.

Other aspects

30. The agreement should ensure that the trading of allowances and derivatives thereof on primary and secondary markets takes place in accordance with the same rules as the ones which apply within the Union, including relevant financial sector rules.
31. The agreement should safeguard the integrity of the emission allowance markets in the Union.
32. The agreement should include appropriate provisions relating to the Union opening negotiations with a view to linking the emissions trading system of the Union with the emissions trading systems of other third countries.
33. The agreement should contain appropriate transitional provisions with regard to allowances in circulation in case of termination of the agreement.

FINANCIAL CONTRIBUTION

34. The United Kingdom should bear appropriate costs for participation in the common sanitary and phytosanitary area and for the implementation of the agreement to link the United Kingdom and the Union's greenhouse emissions trading systems.
35. The United Kingdom should contribute financially to supporting the relevant costs associated with the Union's work in these policy areas. This includes financial contribution to *inter alia* the functioning of the relevant Union agencies, systems and databases to which the United Kingdom would gain appropriate access.

PROCEDURAL ARRANGEMENTS FOR THE CONDUCT OF THE NEGOTIATIONS

36. The Commission should conduct the negotiations in consultation with the Council's Working Party on the United Kingdom, which shall be a special committee within the meaning of Article 218(4) TFEU.
37. The Commission should, in a timely manner, consult and report to the special committee. The Commission should provide in a timely manner all necessary information and documents relating to the negotiations.
38. The Commission should, in a timely manner, keep the European Parliament fully informed of the negotiations.