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2023/0461 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Partnership Council established by 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 as regards the transitional product-specific rules for electric accumulators and electrified vehicles**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Partnership Council established by 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. The decision relates to the envisaged adoption of a decision to amend the transitional product-specific rules for electric accumulators and electrified vehicles in Annex 5 of the EU-UK Trade and Cooperation Agreement to extend the period of application of the product-specific rules in SECTION 1 of Annex 5 until 31 December 2026 and to cease the application of the product-specific rules in SECTION 2. In addition, the scope of Article 68 shall be changed to specify that this is a one-off extension of the product-specific rules as well as a one-off change to the substance of these rules for products covered by Annex 5.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Trade and Cooperation Agreement between the European Union and the United Kingdom**

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 ('the EU-UK Trade and Cooperation Agreement') establishes, among others, the rules governing trade between the Union and the United Kingdom. Those rules include rules of origin that specify how a product can be considered originating from the Union or the United Kingdom. Only products originating in a Party to the EU-UK Trade and Cooperation Agreement can benefit from the preferential regime established by the Agreement.

The Agreement entered into force on 1 May 2021.

#### **2.2. The Partnership Council**

The Partnership Council established by the EU-UK Trade and Cooperation Agreement oversees the attainment of the objectives of the Agreement and supervises and facilitates its implementation and application. It comprises representatives of the Union and the United Kingdom and adopts its decision by mutual consent.

Article 68 of the EU-UK Trade and Cooperation Agreement confers powers to the Partnership Council to amend provisions related to rules of origin.

#### **2.3. The envisaged act of the Partnership Council**

The Partnership Council is to adopt by written procedure a decision on rules of origin for electric accumulators and electrified vehicles ('the envisaged act').

The envisaged act modifies Annex 5 and Article 68 of the EU-UK Trade and Cooperation Agreement to ensure that:

- The application of transitional product-specific rules of origin for electric accumulators and electrified vehicles applicable until 31 December 2023 is extended to 31 December 2026; and
- the rules of origin for electric accumulators and electrified vehicles included in Annex 3 and Annex 5 of the EU-UK Trade and Cooperation Agreement cannot be modified again by the Partnership Council.

As provided for in Article 10 of the Agreement, the envisaged act will become binding on the Parties pursuant to: ‘The decisions adopted by the Partnership Council [...] shall be binding on the Parties and on all the bodies set up under this Agreement and under any supplementing Agreement’.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

Annex 5 to the Trade and Cooperation Agreement provides for a phased-in entry into force of rules of origin for electric accumulators and electrified vehicles.

The global security, economic and trade context, including Russia’s aggression against Ukraine, the COVID pandemic, and the competition from international subsidy support schemes, and its consequences (soaring energy costs, high inflation) have led to the postponement of some investments in the European battery ecosystem. This led to an undersupply of electric batteries necessary for electric vehicles produced in the EU.

As a result, the EU industry has raised concerns that European automotive exports to the United Kingdom will not comply with the incoming rules on origin, foreseen to become applicable as of 1 January 2024, leading to tariffs imposed on those exports, followed by the loss of their competitiveness on the UK market.

The envisaged act aims to provide industry with a bridging mechanism, allowing the continuation of the application of the current, less strict rules of origin for electric accumulators and electrified vehicles until 31 December 2026.

However, the ultimate objective of these rules of origin is to incentivise the investment in a battery manufacturing capacity in the EU and in the United Kingdom. Therefore, from 1 January 2027 the product-specific rules of origin specified in Annex 3 to the Trade and Cooperation Agreement will apply, as originally envisaged.

Also, no further postponement of the incoming rules should take place. Therefore, the envisaged act removes the possibility to extend, through the same procedure, the interim product-specific rules of origin. Furthermore, the envisaged act removes the possibility to change the substance of the product-specific rules for electric accumulators and electrified vehicles.

### **4. LEGAL BASIS**

#### **4.1. Procedural legal basis**

##### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’<sup>1</sup>.

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<sup>1</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

#### *4.1.2. Application to the present case*

The Partnership Council is a body set up by an agreement, namely 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.

The act which the Partnership Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on the Parties pursuant to Article 10 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.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

### **4.2. Substantive legal basis**

#### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

#### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 of the Treaty on the Functioning of the European Union.

### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the Partnership Council will amend Article 68 of the EU-UK Trade and Cooperation Agreement and Annex 5 (Transitional product-specific rules for electric accumulators and electrified vehicles) to the EU-UK Trade and Cooperation Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 (the ‘Trade and Cooperation Agreement’) was concluded by the Union by means of Council Decision (EU) 2021/689 of 29 April 2021 and entered into force on 1 May 2021.
- (2) Chapter 2 of Title 1 of Part 2 of the Agreement and Annexes 2 to 9 to the Agreement lay down provisions on the definition of originating products and methods of administrative cooperation.
- (3) Pursuant to Articles 7 and 68 of the Agreement, the Partnership Council may amend Chapter 2 “Rules of origin” of Title I “Trade in Goods” of Part 2 “Trade, transport, fisheries and other arrangements”, and its annexes.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Council, as the Decision will be binding on the Union.
- (5) The Trade and Cooperation Agreement, in its Annex 5, provides for a phased-in entry into force of product-specific rules of origin for electric accumulators and electrified vehicles.
- (6) The global security, economic and trade context, including Russia’s aggression against Ukraine, the COVID pandemic, and the competition from new international subsidy support schemes, has led to the pausing or postponement of some investments in the European battery ecosystem, as well as a slower delivering of the significant investment plans that were maintained despite the overall conditions. The direct consequences of those external events such as soaring energy costs and high inflation rates have further hindered the development the battery ecosystem in the EU.
- (7) This slower than expected development of the battery ecosystem has raised concerns of the EU industry that European automotive exports to the United Kingdom will not comply with the incoming product- specific rules on origin, leading to tariffs imposed on those exports and impacting negatively their competitiveness in the UK market.

- (8) It is therefore appropriate to provide industry with a bridging mechanism. This mechanism should allow the battery industry to further scale-up and support a strong production base of electric vehicles in Europe that can compete internationally. This will ensure that European automotive exports to the United Kingdom can ultimately comply with the rules of origin under the Trade and Cooperation Agreement.
- (9) This bridging mechanism will allow the continuation of the application of the current product-specific rules of origin for electric accumulators and electrified vehicles until 31 December 2026. From 1 January 2027 the product-specific rules of origin specified in Annex 3 of the Trade and Cooperation Agreement will apply.
- (10) The aim of the rules of origin for electric accumulators and electrified vehicles set out in the Trade and Cooperation Agreement is to incentivise the investment in a battery manufacturing capacity in the EU and in the United Kingdom. No further postponement of the incoming rules is considered. Therefore, the possibility for further changes to the product-specific rules of origin for electric accumulators and electrified vehicles should be removed.
- (11) The EU is committed to developing and strengthening EU supply chains and an ecosystem on batteries and electric vehicles. Therefore, a one-off extension of the currently applicable rules of origin should be accompanied by strategic support of the battery sector and more active engagement with the industry. In particular, it is important that the European automotive industry increases their investments along the entire battery value chain, concluding offtake agreements in view of meeting at least 70% of the demand for batteries through domestic sourcing, and contributing to the strengthening the sustainability, traceability and circularity of the battery in line with the existing acquis and notably Regulation (EU) 2023/1542 of the European Parliament and the Council of 12 July 2023 concerning batteries and waste batteries<sup>2</sup>.
- (12) To further foster faster and more cost-efficient support for the manufacturing of the most sustainable batteries in Member States, the Commission will set up a dedicated instrument under the Innovation Fund<sup>3</sup>. This instrument, which will be launched in 2024, will provide funding of up to € three billion for the next three years, awarded, possibly as a fixed premium to manufactured battery capacity to European manufacturers of the most sustainable batteries creating important spill-over effects on the entire European battery value chain, notably its upstream segment. The mechanism should support CAPEX and OPEX, in conformity with the Treaties, and be cumulative to other forms of support received by eligible entities. The budget of the calls, the eligibility criteria and other terms and conditions for this instrument will be determined in 2024.
- (13) The Commission will also extend this instrument to enable Member States to use their national budgets' resources to award support to projects relevant for the development of EU capacities for sustainable manufacturing of batteries located on their territory, while relying on an EU-wide auction mechanism to identify the most competitive projects. This will avoid the fragmentation of the battery market in the EU and will save the administrative costs of developing different support schemes by Member States..

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<sup>2</sup> OJ L 191, 28.7.2023

<sup>3</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community OJ L 275, 25.10.2003

- (14) The Commission will closely monitor the above-described engagement of the European automotive industry in the development of a European battery eco-system. In particular, the Commission will engage in semi-annual dialogues with the automotive and battery industries in order to constantly assess progress towards meeting the headline target of at least 70% of their demand for batteries through domestic sourcing, as well as industry's preparedness for meeting the permanent TCA rules of origin applying as of 2027. Based on this assessment, the Commission will consider additional measures for better compliance, as appropriate.
- (15) While this decision removes one step in the phasing in of stricter rules of origin under the EU-UK Trade and Cooperation Agreement, and therefore extends the current rules of origin until the end 2026, the EU remains committed to the rules that will enter into force in 2027. Accordingly, this decision excludes a possibility of further changes of product-specific rules of origin for electric accumulators and electrified vehicles through a decision of the Partnership Council. The Commission will re-evaluate the situation on global and European battery markets on a continuous basis.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Partnership Council is set out in the Annex.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*