



Brussels, 11.4.2019  
COM(2019) 194 final

2019/0097 (NLE)

Proposal for a

**COUNCIL DECISION**

**amending Decision (EU) 2019/274 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

On 29 March 2017, the United Kingdom notified the European Council pursuant to Article 50 of the Treaty on European Union of its intention to withdraw from the European Union and from the European Atomic Energy Community. In accordance with that provision, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal (hereinafter “the Withdrawal Agreement”), taking account of the framework for its future relationship with the Union.

On 5 December 2018, the Commission presented proposals for a Council Decision on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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 (COM(2018) 833), and a Council Decision on the conclusion of 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 (COM(2018)834).

On 11 January 2019, the Council adopted Decision (EU) 2019/274 authorising the signature of the Withdrawal Agreement<sup>1</sup> and transmitted the draft Council Decision on the conclusion of the Withdrawal Agreement to the European Parliament for its consent.

The Withdrawal Agreement attached to Decision (EU) 2019/274, published in the Official Journal C 66I on 19 February 2019, provides 30 March 2019 as date of entry into force of the agreement.

However, the Government of the United Kingdom did not obtain the necessary support from its Parliament to proceed with the signature and ratification of the Withdrawal Agreement. Additional reassurances for the United Kingdom were provided in an exchange of letters between Presidents Tusk and Juncker and Prime Minister May on 14 January 2019.

Following the meeting between President Juncker and Prime Minister May of 20 February 2019, discussions resumed and intensified on three strands: possible guarantees with regard to the backstop that underline once again its temporary nature and give the appropriate legal assurance to both sides; the process the European Commission and the United Kingdom will follow when working in detail on the role alternative arrangements could play in replacing the backstop in the future; and whether additions or changes to the Political Declaration could be made. Discussions between the Commission and United Kingdom negotiators continued between 21 February and 10 March 2019. On 11 March 2019, they resulted in an agreement between Prime Minister May and the President of the European Commission Juncker on the Instrument relating to the Withdrawal Agreement and the Joint Statement supplementing the Political Declaration. On 21 March 2019, the European Council approved those two texts.

On 20 March 2019, the United Kingdom submitted a request to the European Council for an extension of the period provided for in Article 50(3) of the Treaty on European Union. The European Council in agreement with the United Kingdom decided to extend that period until

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<sup>1</sup> Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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 (OJ L 47I, 19.2.2019, p. 1). The text of the Withdrawal Agreement attached to Decision (EU) 2019/274 was published in OJ C 66I, 19.2.2019, p. 1.

22 May 2019, provided the House of Commons approved the Withdrawal Agreement<sup>2</sup>. On 5 April 2019, the United Kingdom submitted another request to the European Council for an extension of the period provided for in Article 50(3) of the Treaty on European Union. On 11 April 2019, the European Council, in agreement with the United Kingdom, decided to further extend that period until 31 October 2019. The European Council recalled that, under Article 50(3) TEU, the Withdrawal Agreement may enter into force on an earlier date, should the Parties complete their respective ratification procedures before 31 October 2019. Consequently, the withdrawal should take place on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest. Furthermore, as indicated in its Article 2, second paragraph, the Decision will cease to apply on 31 May 2019 in the event that the United Kingdom has not held elections to the European Parliament in accordance with applicable Union law and has not ratified the Withdrawal Agreement by 22 May 2019.

As a consequence, the date of entry into force of the Withdrawal Agreement has to be brought in line with the European Council Decision referred above. In agreement with the United Kingdom, the Withdrawal Agreement was adapted in three instances as follows:

- in the last recital, the words “after 29 March 2019” were replaced by “from the date of entry into force of this Agreement”;
- in Article 185, the first paragraph was replaced by “This Agreement shall enter into force on one of the following dates, whichever is the earliest:
  - (a) the day following the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, provided that, prior to that date, the depositary of this Agreement has received the written notifications by the Union and the United Kingdom on the completion of the necessary internal procedures;
  - (b) the first day of the month following the receipt by the depositary of this Agreement of the last of the written notifications referred to in point (a).

In the event that, prior to the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, the depositary of this Agreement has not received the written notifications referred to in point (a), this Agreement shall not enter into force.”;

- in Article 2 of the Protocol of Gibraltar, the date of 30 March 2019 was replaced by “the date of entry into force of the Withdrawal Agreement”.

Therefore, Decision (EU) 2019/274 needs to be amended to replace the text of the Withdrawal Agreement attached to that Decision with the adapted text reflecting the three modifications described above. As a consequence, the Commission proposal for a Council Decision on the conclusion of the Withdrawal Agreement (COM(2018) 834) is to be understood as to refer to the Withdrawal Agreement as adapted following the European Council Decision (EU) of 11 April 2019.

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<sup>2</sup> European Council Decision (EU) 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3) TEU (OJ L 80I, 22.3.2019, p. 1).

Proposal for a

## COUNCIL DECISION

**amending Decision (EU) 2019/274 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the European Union and the European Atomic Energy Community ('Euratom') in accordance with Article 50 of the Treaty on European Union ('TEU'), which applies to Euratom by virtue of Article 106a of the Treaty establishing the European Atomic Energy Community.
- (2) In accordance with Article 50 TEU, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement').
- (3) On 11 January 2019, the Council adopted Decision (EU) 2019/274<sup>1</sup> on the signing of the Withdrawal Agreement<sup>2</sup>.
- (4) On 21 March 2019, the European Council approved the Instrument relating to the Withdrawal Agreement and the Joint Statement supplementing the Political Declaration, agreed between Prime Minister May and the President of the European Commission Juncker on 11 March 2019.
- (5) By Decision (EU) 2019/476<sup>3</sup>, the European Council, in agreement with the United Kingdom, decided to extend the period under Article 50(3) TEU until 22 May 2019 in

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<sup>1</sup> Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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 (OJ L 47I, 19.2.2019, p. 1).

<sup>2</sup> The text of the Withdrawal Agreement attached to Decision (EU) 2019/274 was published in OJ C 66I, 19.2.2019, p. 1.

the event that the House of Commons approved the Withdrawal Agreement by 29 March 2019, or, if that were not to be the case, until 12 April 2019. The House of Commons did not approve the Withdrawal Agreement by 29 March 2019.

- (6) On 5 April 2019, the United Kingdom submitted another request to the European Council for an extension of the period provided for in Article 50(3) TEU. On 11 April 2019, by Decision (EU) 2019 ...<sup>4+</sup> the European Council, in agreement with the United Kingdom, decided to further extend that period until 31 October 2019. The European Council recalled that, under Article 50(3) TEU, the Withdrawal Agreement may enter into force on an earlier date, should the Parties complete their respective ratification procedures before 31 October 2019. Consequently, the withdrawal should take place on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest. Furthermore, as indicated in the second paragraph of Article 2 of that Decision, that Decision will cease to apply on 31 May 2019 in the event that the United Kingdom has not held elections to the European Parliament in accordance with applicable Union law and has not ratified the Withdrawal Agreement by 22 May 2019.
- (7) As a consequence, the date of entry into force of the Withdrawal Agreement had to be adapted to reflect the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom.
- (8) On 11 April 2019, in agreement with the United Kingdom, the Withdrawal Agreement was adapted in three instances as follows:
- in the last recital, the words “after 29 March 2019” were replaced by “from the date of entry into force of this Agreement”;
  - in Article 185, the first paragraph was replaced by: “This Agreement shall enter into force on one of the following dates, whichever is the earliest:
    - (a) the day following the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, provided that, prior to that date, the depositary of this Agreement has received the written notifications by the Union and the United Kingdom regarding the completion of the necessary internal procedures;
    - (b) the first day of the month following the receipt by the depositary of this Agreement of the last of the written notifications referred to in point (a).

In the event that, prior to the end of the period provided for in Article 50(3) TEU, as extended by the European Council in agreement with the United Kingdom, the depositary of this Agreement has not received the written notifications referred to in point (a), this Agreement shall not enter into force.”;

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<sup>3</sup> European Council Decision (EU) 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3) TEU (OJ L 80I, 22.3.2019, p. 1).

<sup>4</sup> European Council Decision (EU) 2019/... taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) TEU (OJ ..., ..., p. ...).

<sup>+</sup> OJ: please insert the adoption date and serial number from the document XT... [number to be inserted before archiving] and complete the corresponding footnote.

- in Article 2 of the Protocol on Gibraltar, the date of 30 March 2019 was replaced by “the date of entry into force of the Withdrawal Agreement”.

(9) Decision (EU) 2019/274 should therefore be amended accordingly.

(10) As provided for in Article 50(4) TEU, the United Kingdom has not taken part in the discussions of the Council concerning this decision nor in its adoption,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Article 1 of Decision (EU) 2019/274 is replaced by the following:

“Article 1

The signing, on behalf of the Union and the European Atomic Energy Community, of 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, as adapted, is hereby authorised, subject to the conclusion of the said Agreement.

The text of the Agreement, as adapted, is attached to this Decision.”

#### *Article 2*

The text of the Agreement attached to Decision (EU) 2019/274 is replaced by the text of the adapted Agreement attached to this Decision.

#### *Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council  
The President*