



# OPINION

European Economic and Social Committee

## Implementation and enforcement of the UK Withdrawal Agreement

Proposal for a

Regulation of the European Parliament and of the Council  
laying down rules for the exercise of the Union's rights in the implementation and  
enforcement 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 and 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<sup>1</sup>

[COM(2022) 89 final - 2022/0068 (COD)]

**REX/557**

Rapporteur: **Jack O'CONNOR**

<sup>1</sup>

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0089>

[www.eesc.europa.eu](http://www.eesc.europa.eu)

**EN**



[www.eesc.europa.eu/facebook](https://www.facebook.com/eesc.europa.eu)



[www.eesc.europa.eu/twitter](https://www.eesc.europa.eu/twitter)



[www.eesc.europa.eu/linkedin](https://www.eesc.europa.eu/linkedin)



[www.eesc.europa.eu/instagram](https://www.eesc.europa.eu/instagram)

Referral	Council, 22/03/2022 European Parliament, 23/03/2022
Legal basis	Article 43 of the Treaty on the Functioning of the European Union <sup>2</sup> (fisheries), Articles 91 and 100 of the Treaty on the Functioning of the European Union (transport), Articles 173, 182, 188 and 189 of the Treaty on the Functioning of the European Union (Union programmes), Article 207 of the Treaty on the Functioning of the European Union (common commercial policy), Article 304 of the Treaty on the Functioning of the European Union (the Economic and Social Committee).
Plenary Assembly decision	22/03/2022
Section responsible	Section for External Relations
Adopted in section	12/05/2022
Adopted at plenary	15/06/2022
Plenary session No	570
Outcome of vote (for/against/abstentions)	202/0/5

## 1. **Conclusions and recommendations**

- 1.1 The proposed Regulation empowers, by means of implementing acts, the EU Commission to adopt and apply certain measures for the exercise of the Union's rights under the provisions 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<sup>3</sup> (Withdrawal Agreement) and 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<sup>4</sup> (Trade and Cooperation Agreement).
- 1.2 The Parties to the relevant Agreements are the United Kingdom and the Union only. The EESC therefore agrees that it is entirely appropriate that initiation of any action would lie at Union level, with recourse to comitology procedures, as set out in the proposed Regulation.
- 1.3 The EESC agrees that the Union needs an agile and effective procedure in the event of the United Kingdom's non-compliance with the Withdrawal Agreement and/or the Trade and Cooperation Agreement.
- 1.4 The recourse to comitology procedures as a way to empower the Commission to adopt and apply certain measures in the event of breaches of or non-compliance with the relevant Agreements seems fully justified, and is in accordance with the principles of proportionality and subsidiarity that necessarily determine EU action.
- 1.5 The EESC welcomes the proposal for a review of the Regulation five years after its entry into force, and notes that this would be in line with similar provisions in the relevant Agreements.
- 1.6 In view of the above, the EESC supports the proposed Regulation. Furthermore, the EESC maintains that this is an excellent inter-institutional compromise to deal with any eventualities arising from a breach of or non-compliance with the Withdrawal Agreement and/or the Trade and Cooperation Agreement.

---

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29>

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC)

## 2. **General comments**

2.1 The proposed Regulation empowers the European Commission to adopt and apply certain measures for the exercise of the Union's rights under the provisions of the Withdrawal Agreement and the Trade and Cooperation Agreement. It is designed to facilitate a timely and effective response to any potential breach of or non-compliance with the provisions of the relevant Agreements by the United Kingdom.

2.2 The empowerment applies to:

- the application of temporary measures to induce compliance and/or compensatory measures authorised by an arbitration tribunal at the request of a Party in the event of inadequate or incomplete compliance, or appropriate action in the event that the other Party does not cooperate in facilitating recourse to binding dispute settlement procedures;
- remedial measures under the Withdrawal Agreement in relation to a failure to add relevant instruments of Union Law to the Protocol on Ireland/Northern Ireland and/or under the Trade and Cooperation Agreement in relation to subsidies, road transport and fisheries;
- rebalancing measures under the Withdrawal Agreement in relation to safeguard measures adopted by the UK under the Protocol on Ireland /Northern Ireland;
- rebalancing measures under the Trade and Cooperation Agreement, in relation to safeguard measures which create an imbalance between rights and obligations under the Trade and Cooperation Agreement or any supplementary agreement; or specifically regarding divergences in the areas of labour and social, environmental or climate protection or subsidy control;
- countermeasures under the Trade and Cooperation Agreement, in response to rebalancing measures under Article 411 of the Trade and Cooperation Agreement;
- safeguard measures under the Withdrawal Agreement (if the application of the IE/NI Protocol leads to serious economic, societal, or environmental difficulties that are liable to persist, or to a diversion of trade), and under the Trade and Cooperation Agreement (in case of serious economic, societal, or environmental difficulties of a sectorial or regional nature that are liable to persist);
- suspension of obligations under the Trade and Cooperation Agreement in the event of breach or non-fulfilment of certain conditions, in particular with regard to trade in goods, air transport, road transport, fisheries or Union programmes, or if the United Kingdom fails to pay its financial contributions or introduces significant changes to certain initial conditions.

2.3 These measures should also apply to any supplementary bilateral agreements to the Trade and Cooperation Agreement.

2.4 In its decision on the conclusion of the Trade and Cooperation Agreement, the Council empowered the Commission to adopt a majority of the measures listed in point 2.2 until a specific legislative act enters into force. It was envisaged that the latter would be proposed no later than 31 March 2022.

- 2.5 Notwithstanding the Withdrawal Agreement, the Trade and Cooperation Agreement covers a broad range of issues beyond trade in goods and services. These include investment, competition, State aid, tax transparency, air and road transport, energy and sustainability, fisheries, data protection and social security coordination. Therefore, the Trade Enforcement Regulation<sup>5</sup> and other existing instruments do not fully cover the scope of this new type of agreement. As a result, a new legal instrument must be adopted. The proposed Regulation would be *lex specialis* with regard to sectoral provisions of Union law, to the extent that these provisions govern the same subject matter.
- 2.6 The legal bases of the proposal are:
- Article 43 of the Treaty on the Functioning of the European Union<sup>6</sup> (fisheries);
  - Articles 91 and 100 of the Treaty on the Functioning of the European Union<sup>7</sup> (transport);
  - Articles 173, 182, 188 and 189 of the Treaty on the Functioning of the European Union<sup>8</sup> (Union programmes);
  - Article 207 of the Treaty on the Functioning of the European Union<sup>9</sup> (common commercial policy);
  - Article 304 of the Treaty on the Functioning of the European Union<sup>10</sup> (the Economic and Social Committee).
- 2.7 The Withdrawal Agreement and the Trade and Cooperation Agreement are the Union's only legal instruments vis-à-vis the United Kingdom. Therefore, action under international law can only be taken by the Union. However, the proposal envisages adoption of measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union<sup>11</sup>. The comitology system's examination procedure would apply, as set out in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>12</sup>, as measures which might be adopted would almost certainly affect Member States.
- 2.8 The proposal envisages a review of the Regulation five years after its entry into force. This would be in line with the similar provision in the Withdrawal Agreement and the Trade and Cooperation Agreement.
- 2.9 The proposed Regulation does not cover measures within the scope of the Union's policies in the Area of Freedom, Security and Justice.

---

5 [Regulation \(EU\) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation \(EU\) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules](#)

6 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, page 18.

7 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, pages 39 & 41.

8 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, pages 80, 83 & 85.

9 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, page 94.

10 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, page 132.

11 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>

12 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32011R0182>

2.10 A separate legislative proposal governs the adoption of measures in the area of Euratom's research and training programmes.

### 3. **Specific comments**

3.1 The proposal seeks to create a framework to enable the Union to react effectively and in a timely manner in the event of breaches or non-compliance by the United Kingdom in respect of the Withdrawal Agreement and/or the Trade and Cooperation Agreement.

3.2 As the Agreements are EU-only, it is clear that appropriate action should be taken at that level.

3.3 Taking into account the potential implications for the Member States, as well as the requirement for optimum effectiveness, the application of the comitology system's examination procedure is entirely logical and justified.

3.4 This is fully in accord with the principle of subsidiarity as the comitology system allows the Member States to monitor the implementing acts delegated to the Commission.

3.5 It is also worth noting that Articles 7 and 8 of Regulation (EU) No 182/2011<sup>13</sup> allow the Commission, by way of derogation from the regular procedures, to adopt implementing acts on grounds of urgency (Article 8), or potential significant disruption of the markets in the area of agriculture (Article 7), without submitting them beforehand to the corresponding committee. This procedural bypass reinforces the Union's ability to respond quickly to unexpected breaches of the Agreements, if necessary.

3.6 The Committee welcomes the comprehensive range of the measures set out in Article 1.2 of the proposed Regulation, as well as their limitations.

3.7 As there are no precedents for the withdrawal of a Member State, the issue of consistency with existing legislation in the policy area does not arise.

3.8 Clear criteria to govern the selection of any measures are set out in detail in Article 2.2 of the proposed Regulation. The EESC accepts that the proposed Regulation meets the requirements of proportionality and that it does not exceed what is strictly necessary to achieve the objective to ensure a swift and effective exercise of those rights in the event of any potential breach of or non-compliance with the Agreements.

3.9 The EESC does not see any need for impact assessment given the procedural nature of the proposed Regulation.

3.10 The EESC welcomes the proposal for review of the Regulation after five years, and notes that this is appropriate as it would be in line with similar provisions in the relevant Agreements.

---

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0182&from=en>, pages 4 & 5.

3.11 In view of the above, the EESC supports the proposal. Furthermore, the EESC maintains that this is an excellent inter-institutional compromise to deal with any eventualities arising from a breach of or non-compliance with the Withdrawal Agreement and/or the TCA.

Brussels, 15 June 2022

Christa Schweng  
The president of the European Economic and Social Committee

---