Council Regulation (EU, Euratom) 2019/2234 of 19 December 2019 on measures concerning the implementation and financing of the general budget of the Union in 2020 in relation to the withdrawal of the United Kingdom from the Union

COUNCIL REGULATION (EU, Euratom) 2019/2234

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on measures concerning the implementation and financing of the general budget of the Union in 2020 in relation to the withdrawal of the United Kingdom from the Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament[(1)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). The Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after that notification, that is, from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. The period has been extended twice by the European Council, most recently by its Decision (EU) 2019/584[(2)], which extended it until 31 October 2019. In the absence of a withdrawal agreement with the United Kingdom and of a further extension of the period referred to in Article 50(3) TEU, a financial settlement with regard to the financial obligations following from the membership of the United Kingdom in the Union needs to be agreed in a future international agreement between the Union and the United Kingdom.

(2) This Regulation is without prejudice to the respective obligations of the Union and the United Kingdom resulting from the whole period of the membership of the United Kingdom in the Union.

(3) Council Regulation (EU, Euratom) 2019/1197[(3)] has laid down rules on the relations between the Union, on the one hand, and the United Kingdom and its beneficiaries, on the other, as regards the financing and implementation of the general budget of the

Union ('the budget') in 2019. It is necessary to lay down rules on the relations between the Union, on the one hand, and the United Kingdom and its beneficiaries, on the other, also as regards the financing and implementation of the budget in 2020.

(4) The Treaties do not provide powers other than those under Article 352 of the Treaty on the Functioning of the European Union (TFEU) and Article 203 of the Treaty establishing the European Atomic Energy Community for the adoption of the measures concerning the implementation and financing of the budget in 2020 in relation to the withdrawal of the United Kingdom from the Union without a withdrawal agreement.

(5) The United Kingdom, and persons and entities established in the United Kingdom, are participating in a number of Union programmes or actions on the basis of the membership of the United Kingdom in the Union. That participation takes place on the basis of agreements with the United Kingdom or persons or entities established in the United Kingdom, or decisions in favour of the United Kingdom or persons or entities established in the United Kingdom which constitute legal commitments.

(6) For many of those agreements and decisions, the rules governing the eligibility require the beneficiary to be a Member State or a person or entity established in a Member State. The eligibility of the United Kingdom, or persons or entities established in the United Kingdom, is in such cases linked to the United Kingdom being a Member State. The withdrawal of the United Kingdom from the Union without a withdrawal agreement therefore entails the loss of eligibility of such recipients of Union financing under such agreements and decisions. However, this does not concern cases where persons or entities established in the United Kingdom would participate in an action under, and subject to the conditions applicable under, the respective Union rules for persons and entities established in a third country.

(7) In case of a withdrawal without a withdrawal agreement, it would be beneficial both for the Union and its Member States and for the United Kingdom, and persons and entities established in the United Kingdom, to provide for the eligibility in 2020 of the United Kingdom and beneficiaries established in the United Kingdom to receive Union funds and for the participation of the United Kingdom in the financing of the budget for 2020. It would also be beneficial if the legal commitments signed and adopted before the date of withdrawal, or in 2019 in application of Article 4 of Regulation (EU, Euratom) 2019/1197, could continue to be executed throughout 2020.

(8) It is therefore appropriate to lay down conditions under which the United Kingdom, and persons and entities established in the United Kingdom, could continue to be eligible in 2020 with regard to the agreements signed with them and the decisions adopted with regard to them until the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal') or, where applicable, in 2019 in application of Article 4 of Regulation (EU, Euratom) 2019/1197. The following conditions are required for the application of this Regulation: (i) the United Kingdom has confirmed the commitment in writing to the Commission to continue to pay a contribution calculated on the basis of the estimated own resources from the United Kingdom as set out in the draft budget for 2020, as proposed on 5 July 2019, and adjusted to take into account the total amount of payment appropriations set out in the adopted budget for 2020; (ii) a first instalment

has been paid by the United Kingdom; (iii) the United Kingdom has confirmed the commitment in writing to the Commission to allow audits and controls in full by the Union in compliance with the applicable rules; (iv) and the Commission has adopted the decision pursuant to Article 2(2) of Regulation (EU, Euratom) 2019/1197 and has not adopted a decision pursuant to Article 3(2) of that Regulation. The last condition is only applicable insofar as Regulation (EU, Euratom) 2019/1197 has become applicable before the end of the financial year 2019. In view of the need for certainty, it is appropriate to limit the time for the fulfilment of the conditions. The Commission should adopt a decision on the fulfilment of the conditions.

(9) The condition as regards the contribution from the United Kingdom should be based on the draft budget for 2020 as proposed for 28 Member States and should be adjusted to take into account the total amount of payment appropriations under the adopted budget. It is reasonable that no Member State should be in a less favourable position as regards their relative contribution than laid down in the budget for 2020 as proposed, following the adoption of this Regulation. Therefore, to ensure the beneficial effect of this Regulation for all Member States, it is appropriate to deduct a specific amount from the amount of the contribution by the United Kingdom to be entered in the budget. Such specific amount should benefit the Member States which would otherwise be at a disadvantage following the adoption of this Regulation, as further specified in dedicated practical arrangements setting out the distribution of the payments due and entrusting the Commission with the disbursement of the specific amount.

(10) As long as the conditions for eligibility of the United Kingdom, and persons and entities established in the United Kingdom, under this Regulation continue to be fulfilled, it is also appropriate to provide for their eligibility, in 2020, for the purposes of conditions set in calls, tenders, contests or any other procedure which may lead to financing from the Union's budget, with the exception of specific cases related to security, and to the loss of membership of the United Kingdom in the European Investment Bank, and to provide Union funding to them. Such Union funding should be limited to eligible expenditure incurred in 2020, except for public procurement contracts signed before the end of 2020 in application of Title VII of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(4)] ('the Financial Regulation'), which continue to be implemented in accordance with their terms, and except for the United Kingdom agricultural direct payment scheme for the claim year 2020, which should be excluded from eligibility. It is also appropriate to exclude the United Kingdom, or persons or entities established in the United Kingdom, from eligibility under Regulation (EU) No 1309/2013 of the European Parliament and of the Council[(5)], as amended by Regulation (EU) 2019/1796[(6)] of the European Parliament and of the Council, for actions covering workers made redundant and self-employed persons whose activity has ceased as a consequence of a withdrawal without an agreement, and under Council Regulation (EC) No 2012/2002[(7)], as amended for actions covering serious financial burden inflicted on Member States directly imputable to a withdrawal without a withdrawal agreement. In line with the Financial Regulation, calls, tenders, contests or other procedures, as well as any ensuing agreements with, or decisions in favour of, the United Kingdom

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU, Euratom) 2019/2234. (See end of Document for details)*

or persons or entities established in the United Kingdom, are to stipulate the conditions for eligibility and for continuation thereof by reference to this Regulation.

(11) It is also appropriate to provide that the eligibility of the United Kingdom, and persons and entities established in the United Kingdom, would continue under the conditions that the United Kingdom continues to pay the contribution for 2020 and, where applicable, for 2019 under Regulation (EU, Euratom) 2019/1197, and that controls and audits can be carried out effectively. Where these conditions are no longer fulfilled, the Commission should take a decision establishing such failure. In such a case, the United Kingdom, and persons and entities established in the United Kingdom, should cease to be eligible for Union financing.

(12) It is also appropriate to provide for the continuation, in 2020, of eligibility of actions in which Member States or persons or entities established in the Member States receive Union funds and which are related to the United Kingdom. However, the potential non-acceptance by the United Kingdom of controls and audits should constitute an element to be taken into account for the purposes of sound financial management when assessing the implementation of such actions.

(13) The actions should continue to be implemented in compliance with the relevant rules governing such actions, including the Financial Regulation. It is therefore, necessary to treat the United Kingdom as a Member State for the purpose of the application of such rules.

(14) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, as they concern the Union budget and programmes and actions implemented by the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(15) In order to allow for a limited flexibility, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a possible extension of the deadlines set out in points (a), (b) and (c) of the first subparagraph of Article 2(1), and amendments to the payment schedule. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[8]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. Where, in the case of a risk of a serious disruption of the implementation and financing of the Union budget in 2020, imperative grounds of urgency so require, the delegated act should enter into force without delay and should apply as long as no objection is expressed by the European Parliament or by the Council.

(16) To avoid the most significant disruptions for beneficiaries of Union spending programmes and other actions at the date of the withdrawal of the United Kingdom from the Union, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and should apply from the day following that on which the Treaties cease to apply to and in the United Kingdom, unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date. Given that this Regulation lays down measures concerning the implementation and financing of the budget of the Union for 2020, it should only apply to the eligibility for the year 2020,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down rules on the implementation and the financing of the general budget of the Union ('the budget') in 2020 in relation to the withdrawal of the United Kingdom from the Union without a withdrawal agreement and on actions under direct, indirect and shared management for which the eligibility is fulfilled through the membership of the United Kingdom in the Union at the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal').

This Regulation applies without prejudice to the territorial cooperation programmes covered by Regulation (EU) 2019/491 of the European Parliament and of the Council[(9)] and to the learning mobility activities under the Erasmus+ programme covered by Regulation (EU) 2019/499 of the European Parliament and of the Council[(10)].

Article 2

Conditions for eligibility

1 Where the United Kingdom, or a person or entity established in the United Kingdom, receive Union funding under an action carried out in direct, indirect or shared management pursuant to legal commitments signed or adopted before the date of withdrawal or, where applicable, in 2019 in application of Article 4 of Regulation (EU, Euratom) 2019/1197 and eligibility under that action depends on the membership of the United Kingdom in the Union, they shall continue to be eligible for Union funding for eligible expenditure incurred in 2020 following the date of withdrawal, if the following conditions are met, and as long as no decision as referred to in Article 3(2) has entered into force:

a the United Kingdom, on 1 January 2020 or within 7 calendar days after the entry into force of this Regulation or after the date of its application, whichever is the later, has confirmed in writing to the Commission that it will contribute in euros, in accordance with the payment schedule laid down in this Regulation, the amount resulting from the following formula: UK OR DB2020 + UK GNI key DB2020 x (PA B2020 – PA DB2020);

b the United Kingdom, on 20 January 2020 or within 20 calendar days after the entry into force of this Regulation or after the date of its application, whichever is the later, has paid on the account determined by the Commission the first payment which corresponds to [3,5] twelfths of the amount referred to in point (a) of this subparagraph;