



Brussels, 27.1.2021
COM(2020) 832 final/2

2020/0367 (NLE)

COM(2020) 832 final of 10.12.2020 downgraded on 27.1.2021.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by Article 164 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 as regards the adoption of a decision to amend the Protocol on Ireland/Northern Ireland to that Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be adopted on the Union's behalf in the Joint Committee established by 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 ('the Withdrawal Agreement') on a Joint Committee decision to amend that Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. 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

The Withdrawal Agreement sets out the arrangements for the orderly withdrawal of the United Kingdom from the Union and Euratom. The Withdrawal Agreement entered into force on 1 February 2020.

2.2. The Joint Committee

The Joint Committee established under Article 164(1) of the Withdrawal Agreement comprises representatives of the Union and of the United Kingdom. It is co-chaired by the Union and the United Kingdom. Annex VIII to the Withdrawal Agreement lays down the rules of procedure of the Joint Committee. The Joint Committee meets at least once a year or at the request of the Union or the United Kingdom and it sets its meeting schedule and agenda by mutual consent.

The tasks of the Joint Committee are laid down in Article 164 of the Withdrawal Agreement and consist principally of:

- overseeing the implementation and application of the Agreement directly or through the work of the specialised committees reporting to it;
- adopting decisions and recommendations, including amendments to the Agreement in the cases provided therein;
- preventing problems and resolving disputes that may arise regarding the interpretation and application of the Agreement.

2.3. The envisaged decision of the Joint Committee

The Joint Committee can adopt a decision amending the Withdrawal Agreement, pursuant to Article 164(5)(d) of the Agreement, to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Withdrawal Agreement was signed, provided that the modifications do not amend the essential elements of the Agreement.

The purpose of the envisaged decision is to address errors which do not amend the essential elements of the Withdrawal Agreement.

The envisaged decision will become binding on the Parties in accordance with Article 166(2) of the Withdrawal Agreement. In accordance with Rule 9 of the Rules of Procedure, decisions adopted by the Joint Committee will specify the date at which they take effect.

3. POSITION TO BE ADOPTED ON THE UNION'S BEHALF

Correction of Annex 2 to the Protocol on Ireland/Northern Ireland

The Protocol on Ireland/Northern Ireland has been put in place in order to address the unique circumstances on the island of Ireland in the framework of the withdrawal of the United Kingdom from the Union. It includes provisions for avoiding a hard border between Ireland and Northern Ireland and foresees Northern Ireland's alignment to a limited set of rules that are related to the Union's Single Market for goods. Annex 2 to the Protocol contains a list of the provisions of Union law referred to in Article 5(4) of the Protocol, which apply in this respect to Northern Ireland. Two acts which oblige manufacturers of new light-duty vehicles to gradually reduce the average specific CO₂ emissions of new vehicles registered in the Union have also been listed in this Annex by mistake, even though they do not relate to the placing on the market of goods in the Union.

4. LEGAL BASIS

4.1. Procedural legal basis

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 decision which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on Parties law in accordance with Article 166(2) of the Agreement.

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.

The sole objective and content of the envisaged act relates to, on one hand, amending the Agreement to address omissions and deficiencies, while not amending the essential elements therein, and, on the other, amending the Agreement in a case specifically foreseen by the latter.

The conclusion of the Agreement was based on Article 50(2) of the Treaty on European Union.

Therefore, and in accordance with the basic principle that an act can be amended only by an act of the same type, the substantive legal basis of the proposed decision is Article 50(2) of the Treaty on European Union.

4.2. Substantive legal basis

The decision on 'Corrections' implements the NI Protocol, which was concluded on the basis of Article 50. As the Northern Ireland Protocol is a trade agreement between the EU and the UK in respect of Northern Ireland, the legal basis is also Article 207 TFEU.

Therefore, the substantive legal bases of the proposed decision are Article 50 TEU and Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 50 TEU and Article 207 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the decision of the Joint Committee will amend the Withdrawal 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 European Union, and in particular Article 50(2) thereof,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135¹ of 30 January 2020 and entered into force on 1 February 2020.
- (2) Article 164(5)(d) of the Withdrawal Agreement empowers the Joint Committee to adopt decisions amending that Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Agreement was signed, and provided that such decisions do not amend the essential elements of that Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom. The Union and the United Kingdom must implement those decisions, which shall have the same legal effect as the Withdrawal Agreement. In accordance with Article 182 of the Withdrawal Agreement, the Protocol on Ireland/Northern Ireland forms an integral part of that Agreement.
- (3) By mistake, two legal acts on the CO₂ emission performance of new cars and vans registered in the Union have been listed in Annex 2, point 9, to the Protocol on Ireland/Northern Ireland. Contrary to other legislation listed in Annex 2 and made applicable by Article 5 (4) of the Protocol on Ireland/Northern Ireland, these two Regulations do not relate to the placing on the market of goods in the Union. They should therefore be removed from that Annex.
- (4) One legal act on single-use plastics relates to the placing on the market of such goods and to the free movement of goods, albeit only partially. Only those provisions that are

¹ OJ L 29, 31.1.2020, p.1.

essential for the application of the rules of the internal market in respect of Northern Ireland should be included in Annex 2 to the Protocol.

- (5) The Joint Committee should adopt a decision pursuant to Article 164(5)(d) of the Withdrawal Agreement to address these errors.
- (6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee established by the Withdrawal Agreement on a Joint Committee decision to be taken in accordance with Article 164(5)(d) thereof shall be to amend the Withdrawal Agreement as follows:

In Annex 2 to the Protocol on Ireland/Northern Ireland, the following two entries under “9. Motor vehicles, including agricultural and forestry tractors”, following the entry for “Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46”, shall be deleted :

- “Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emissions performance standards for new passenger cars as part of the Community’s integrated approach to reduce CO2 emissions from light-duty vehicles”²; and
- “Regulation (EC) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emissions performance standards for new light commercial vehicles as part of the Union’s integrated approach to reduce CO2 emissions from light-duty vehicles”³.

In Annex 2 to the Protocol, the following note shall be inserted under “25. Waste”, following the entry for “Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment”:

“In relation to the application of those Articles and Parts to and in the United Kingdom in respect of Northern Ireland, any reference to ‘3 July 2021’ in Articles 4 (1), 14 and 17 (1) is to be read as ‘1 January 2022’. Articles 2, 3, 14 and 17, and Part F of the Annex, shall only apply insofar as they relate to Articles 4 to 7.”

In Annex 2 to the Protocol on Ireland/Northern Ireland, the following provisions shall be added under “25. Waste”:

- Articles 2 to 7, 14 and 17 as well as Parts A, B, C, D and F of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment⁴.

² OJ L 140, 5.6.2009, p. 1.

³ OJ L 145, 31.5.2011, p. 1.

⁴ OJ L 155, 12.6.2019, p. 1.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*