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Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union 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 as regards the adoption of a decision to amend the 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 omissions and deficiencies 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

3.1. Part Five on Financial Provisions

As the Withdrawal Agreement entered into force later than initially envisaged due to several extensions of the UK's status as a Union Member State, Part Five on Financial Provisions requires several technical adjustments.

- 3.1.1. *Article 135 concerns the United Kingdom's contribution and participation in the implementation of the Union budgets. It aims at ensuring the United Kingdom's normal contribution and participation in the Union budgets from the date of withdrawal until the end of the transition period. As the date of withdrawal of the United Kingdom from the Union was 31 January 2020, it is appropriate, for the sake of legal certainty, to delete the reference to the year 2019 in the title and paragraph 1 of Article 135 of the Agreement.*
- 3.1.2. *Article 137 concerns the United Kingdom's participation in the implementation of the Union programmes and activities from the date of withdrawal of the United Kingdom from the Union until the end of the transition period. As the date of withdrawal of the United Kingdom from the Union was 31 January 2020, it is appropriate, for the sake of legal certainty, to delete the reference to the year 2019 in the title and in paragraph 1 of Article 137 of the Agreement.*
- 3.1.3. *Article 143 concerns the contingent financial liabilities related to loans for financial assistance, EFSI, EFSD and the external lending mandate. It contains several reporting obligations for the Union for which the reference dates have already passed. The first date is 31 July 2019 which was the expected date for the first report illustrating the situation on financial operations under Article 143 at the date of withdrawal of the United Kingdom from the Union. As the date of withdrawal was 31 January 2020, it is necessary to modify paragraph 1 of Article 143 to the effect that the first report be due on 31 July 2020. It is also necessary to delete the references to the year 2019 in the rest of that paragraph.*
- 3.1.4. *Article 144 concerns financial instruments under direct or indirect implementation financed by the programmes of the MFF 2014-2020 or under earlier financial perspectives. It contains a reference to the first report illustrating the situation on financial operations under Article 143 and its date. It is therefore necessary to modify the reference to this date in Article 144(1).*
- 3.1.5. *Article 150 concerns the continued liability of the United Kingdom and reimbursement of paid-in capital in the framework of the European Investment Bank (EIB) in twelve instalments. It contains the date for the first instalment in the framework of the reimbursement by the EIB of the paid-in capital to the United Kingdom (15 December 2019), with the objective of starting repayment at the end of the year in which the withdrawal of the United Kingdom from the Union takes place. As the date of withdrawal was 31 January 2020, it is necessary to modify the reference to this date. After discussions with the EIB, it is proposed to foresee the first instalment in 2020 and more specifically on 15 October 2020. With the reimbursement starting one year later, it is also necessary to modify the date of the final payment, which should be on 15 October 2031. Paragraph 4 of Article 150 should be amended accordingly.*

Article 150 also provides for the communication by the EIB of the United Kingdom's exposure under the EIB financial operations on 31 July 2019. As the date of

withdrawal was 31 January 2020, it is necessary to modify in paragraph 8 the date of this communication to the same day but a year later, i.e. to 31 July 2020.

Article 150 contains an obligation for the EIB to communicate every year and until the extinction of the liability of the United Kingdom under that Article the remaining exposure of the United Kingdom under the EIB financial operations. The date currently indicated in the Agreement is 31 March of every year starting in 2020. As the date of withdrawal was 31 January 2020, the first remaining exposure to be reported is the one for 31 December 2020; therefore, the first communication should be made on 31 March 2021. Article 150(8), second subparagraph should be amended accordingly.

- 3.1.6. *Article 145 concerns the reimbursement of the United Kingdom's share of the net assets of the European Coal and Steel Community (ECSC). The revenue of these assets are transferred to the Research Fund for Coal and Steel (RFCS) that finances research projects in the area of coal and steel. These projects are not part of the MFF and have their own legal base in Protocol No 37 of the Treaty on the European Union on the financial consequences of the expiry of the ECSC treaty and on the Research fund for Coal and Steel. It follows that the grants related to these projects are not covered by Articles 137 and 138 of the Withdrawal Agreement and that therefore there are no provisions foreseen for such on-going grants awarded to United Kingdom's beneficiaries by the end of the transition period.*

It is therefore necessary to amend the Withdrawal Agreement in order to fill in this legal vacuum. It is proposed to follow for grants under the RFCS the same logic as the one applied to grants financed under the MFF. It means that RFCS grants signed with United Kingdom beneficiaries before the end of the transition period should be honoured until their closure. Such approach would also be in line with the financing rules of the RFCS, according to which the year N commitments are financed by revenues from the assets of the European Coal and Steel Community of the year N-2 (in other words, in 2020 projects are financed with revenue from 2018). By analogy with the MFF rule and taking into account the reimbursement of the assets to the United Kingdom from 30 June 2021, it is proposed to add as a cut-off date for signature the end of the transition period. A third paragraph should be added to Article 145 of the Agreement to reflect this.

3.2. 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. Eight acts which are essential for the application of the rules of the Internal Market for goods to Northern Ireland have by oversight not been listed in this annex. In addition, three notes that are necessary to further define the scope of application of certain specific acts listed in Annex 2 to the Protocol on Ireland/Northern Ireland have by oversight not been included in this annex.

3.2.1. *Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment*¹

Directive (EU) 2019/904 promotes circular approaches that give priority to sustainable and non-toxic re-usable products and re-use systems rather than to single-use products, aiming to reduce the quantity of waste generated. This Directive is complimentary to Directive 94/62/EC on packaging and packaging waste already included in annex 2 to the Protocol on Ireland/Northern Ireland. Applying both instruments on the territory of Northern Ireland is necessary to avoid the use of different approaches to waste, for example on labelling requirements, and ensure that products that could be placed on the Northern Irish market can be safely and legally be brought across the border in Ireland and in the rest of the single market.

In light of the above, and with the objective to preserve the integrity of the internal market as far as package and waste packaging is concerned, it is proposed to include Directive (EU) 2019/904 in the list of provisions of Union law which apply to Northern Ireland under “Waste” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.2. *Directive 2011/91/EU on indications or marks identifying the lot to which a foodstuff belongs*²

Directive 2011/91/EU sets rules of a general and horizontal nature in order to manage a common lot identification system. It establishes a general obligation to indicate the lot, provides exceptions to this obligation, allocates responsibility of compliance to operators and contains specifications for the content of the indication and its placement on foods.

The lot indication is a useful source of information when foods are the subject of dispute or constitute a health hazard for consumers. It facilitates food business operators’ management of withdrawal of unsafe foods from the market, both in terms of identifying rapidly the lot of unsafe foods and in terms of removing it timely from the market. It is an indispensable tool for the national authorities in the context of investigations of food frauds.

Although there is a general obligation to provide a reference to the manufacturing or packaging lot of pre-packaged food at international level (Codex Alimentarius General Standard for the Labelling of Pre-packaged Foods), the Directive sets out specific common requirements that go beyond this obligation. Finally, foods that enter the European Union from third countries must comply with the traceability requirements set in the Union legislation in order to be legally marketed in the Union.

Finally, Directive 2011/91/EU adds to the obligations set out by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety which is already included in Annex 2 to the Protocol on Ireland/Northern Ireland.

In light of the above, and with the objective to preserve the unity of the internal market as well as the health and safety of Union citizens, it is proposed to include Directive 2011/91/EU in the list of provisions of Union law which apply to Northern

¹ OJ L 155, 12.6.2019, p. 1.

² OJ L 334, 16.12.2011, p.1.

Ireland in terms of “Food – general” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.3. *Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed*³

Directive 66/401/EEC sets out rules concerning the marketing of fodder plant seed within the Union. It includes requirements concerning the identity, health and quality, as well as certification measures of those seeds, pursuant to which they may be freely marketed in the Union.

In light of the above, and with the objective to preserve the marketing of fodder plant in the Union, it is proposed to include Directive 66/401/EEC in the list of provisions of Union law, which apply to Northern Ireland in terms of “Plant reproductive material” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.4. *Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants*⁴

Directive 98/56/EC sets out rules concerning the marketing of propagating material of ornamental plants in the Union. It includes requirements concerning the quality and health of that material, pursuant to which it may be freely marketed in the Union.

In light of the above, and with the objective to preserve the marketing of propagating material of ornamental plants in the Union, it is proposed to include Directive 98/56/EC in the list of provisions of Union law, which apply to Northern Ireland in terms of “Plant reproductive material” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.5. *Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed*⁵

Council Directive 2008/72/EC sets out rules concerning the marketing of vegetable propagating and planting material in the Union. It includes requirements concerning the identity, health, and quality, as well as control measure of that material, pursuant to which it may be freely marketed within the Union.

In light of the above, and with the objective to preserve the marketing of vegetable propagating and planting material in the Union, it is proposed to include Directive 2008/72/EC in the list of provisions of Union law, which apply to Northern Ireland in terms of “Plant reproductive material” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.6. *Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors*⁶

Regulation (EC) No 111/2005 implements the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 19 December 1988, to which the Community is a party. Regulation (EC) No 111/2005 in particular aims at implementing in Union law Article 12 of this

³ OJ 125, 11.7.1966, p. 2298–2308

⁴ OJ L 226, 13.8.1998, p. 16–23

⁵ OJ L 205, 1.8.2008, p. 28–39

⁶ OJ L 22, 26.1.2005, p.1.

Convention by laying down Community rules on trade in substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances and by establishing a system to monitor trade between the Union and third countries in drug precursors.

In addition, Regulation (EC) No 111/2005 is inextricably connected to Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors, which is included in Annex 2 to the Protocol on Ireland/Northern Ireland: only the combination of these two instruments ensures a coherent and all-encompassing drug precursor control system. Applying only Regulation (EC) No 273/2004 as provided in the current Protocol to Ireland/Northern Ireland would create a loophole in the drug precursor control system as there would be no monitoring of and control on the import/transit/export of drug precursors via Northern Ireland, which would then become an attractive region for illegal drug manufacturing. Furthermore, in the absence of hard borders between Northern Ireland and the Republic of Ireland, drug precursors which are diverted via Northern Ireland could easily find their way into the Republic of Ireland (and from there, in other parts of the EU) where they could be used for illegal drug manufacture.

In light of the above, and with the objective to preserve the drug precursors control system in the Union, it is proposed to include Regulation (EC) No 111/2005 in the list of provisions of Union law which apply to Northern Ireland in terms of “Chemicals and related” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.7. Regulation 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods⁷

Regulation 2019/880 aims at preserving humanity’s cultural heritage and at preventing the illicit trade in non-EU cultural goods, especially when such trade may contribute to terrorist financing. For this purpose, the Regulation prohibits any introduction in the Union of cultural goods which were illegally exported from a third country. This general prohibition will apply from 28 December 2020. The Regulation also provides for systematic controls of non-EU cultural goods when these are imported into the Union. Since the system of documentary controls – import licences and importer statements – relies on a centralised electronic system, it will become applicable when that IT system becomes operational and by from 28 June 2025 at the latest.

If Regulation 2019/880 is not included in the list of provisions of Union law which apply to Northern Ireland, cultural goods pillaged or stolen from third countries, including the United Kingdom, could gain access to the Union’s internal market via Northern Ireland as there will be no hard borders between Northern Ireland and the Republic of Ireland, and thus no controls by customs or other law enforcement authorities there. This will undoubtedly be exploited by fraudulent operators to bypass the Union controls at import and thus render the Regulation ineffective.

In light of the above, and with the objective to preserve the integrity of the internal market as far as import of cultural goods is concerned, it is proposed to include Regulation (EU) No 2019/880 in the list of provisions of Union law which apply to Northern Ireland under “Other” in Annex 2 to the Protocol on Ireland/Northern Ireland.

⁷ OJ L 151, 7.6.2019, p.1.

3.2.8. *Regulation (EU) 2019/287 of the European Parliament and of the Council implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries*⁸

Regulation 2019/287 lays down provisions for the implementation of bilateral safeguards clauses and other mechanisms for the temporary withdrawal of tariff preferences or other preferential treatment contained in the trade agreements concluded between the Union and third countries. This Regulation applies in particular to the most recent trade agreements concluded by the Union with for example Japan or Singapore.

Annex 2 to the Protocol on Ireland/Northern Ireland contains a list of all Union regulations on bilateral safeguards. Regulation 2019/287 was not in force at the time the list in Annex 2 to the Protocol on Ireland/Northern Ireland was drawn up.

In light of the above, and with the objective to preserve the application of all EU trade measures to goods brought into Northern Ireland which are at risk of subsequently being moved into the Union, it is proposed to include Regulation (EU) 2019/287 in the list of provisions of Union law which apply to Northern Ireland under “Regulations on bilateral safeguards” in Annex 2 to the Protocol on Ireland/Northern Ireland.

3.2.9. *Explanatory note on the scope of application of Regulation (EU) 978/2012*⁹

Regulation (EU) 978/2012 applies the Union’s scheme of generalised tariff preferences (GSP). To ensure the proper functioning and integrity of the Union’s GSP and the Protocol on Ireland/Northern Ireland, the United Kingdom in respect of Northern Ireland should be excluded for certain elements of the scope of application of this act.

In light of the above, it is proposed to insert a note under the heading “4. General trade related aspects”, in the entry for Regulation (EU) 978/2012 that without prejudice to the fact that the tariff preferences for eligible countries pursuant to the Union’s GSP shall be applicable in the United Kingdom in respect of Northern Ireland:

- the references to “Member State” in Article 9(1)(c)(ii), and in Chapter VI [Safeguards and surveillance provisions] in Regulation (EU) 978/2012 shall not be read as including the United Kingdom in respect of Northern Ireland;
- the references to “Union market” in Article 2(k) and Chapter VI [Safeguards and surveillance provisions] in Regulation (EU) 978/2012 shall not be read as including the market of United Kingdom in respect of Northern Ireland; and
- the references to “Union producers” and “Union industry” in Regulation (EU) 978/2012 shall not be read as including the producers and industry, respectively, of the United Kingdom in respect of Northern Ireland.

3.2.10. *Explanatory note on the scope of application of the Union trade defence basic regulations and measures*

The Union trade defence basic regulations are included in Annex 2 of the Protocol on Ireland/Northern Ireland. To ensure the proper functioning and integrity of the

⁸ OJ L 53, 22.2.2019, p.1.

⁹ OJ L 303, 31.10.2012, p. 1.

Union's trade defence regulations and the Protocol on Ireland/Northern Ireland, the scope of application of certain acts in the United Kingdom in respect of Northern Ireland should be clarified.

In light of the above it is proposed to insert a note in the section "5. Trade defence instruments" that without prejudice to the fact that the Union's trade defence measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to "Member States" or "Union" in Regulation (EU) 2016/1036, Regulation (EU) 2016/1037, Regulation (EU) 2015/478 and Regulation 2015/755 shall not be read as including the United Kingdom in respect of Northern Ireland. In addition, importers that paid Union anti-dumping or countervailing duties on importation of goods customs cleared in Northern Ireland may ask for a refund of such duties exclusively pursuant to Article 11(8) of Regulation (EU) 2016/1036 or Article 21 of Regulation (EU) 2016/1037 respectively.

3.2.11. Explanatory note on the scope of application of the Union bilateral safeguard measures

The Union regulations on bilateral safeguard measures are included in Annex 2 of the Protocol on Ireland/Northern Ireland. To ensure the proper functioning and integrity of the Union's regulations and the Protocol on Ireland/Northern Ireland, the scope of application of certain acts in the United Kingdom in respect of Northern Ireland should be clarified.

Without prejudice to the fact that the Union's bilateral safeguard measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to "Member States" or "Union" in the regulations listed in the section 6 "Regulations on bilateral safeguards" shall not be read as including the United Kingdom in respect of Northern Ireland.

3.3. Annex I to the Withdrawal Agreement on social security coordination

Part I of Annex I to the Withdrawal Agreement contains the decisions and recommendations of the Administrative Commission for the Coordination of Social Security Systems of which the Union and the United Kingdom must take due account when applying the social security coordination rules (see Article 31 of the Withdrawal Agreement).

On 19 December 2018, the Administrative Commission for the Coordination of Social Security Systems approved Decision No F3¹⁰ concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 relating to the method of calculation of the differential supplement. This decision is applicable since 16 July 2019; it was however not listed in Part I of Annex I, and should be added.

On 27 June 2019, the Administrative Commission for the Coordination of Social Security Systems approved Decision No E7¹¹ that lays down the practical arrangements for cooperation and data exchange applicable since 3 July 2019 and until the Electronic Exchange of Social Security Information (EESSI) is fully implemented in the Member States. This decision was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

¹⁰ OJ C 215, 26.6.2019, p.2

¹¹ OJ C 73, 6.3.2020, p.5.

4. 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.

4.1. Conclusion

The legal basis of the proposed decision should be Article 50(2) of the Treaty on European Union, 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.

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union 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 as regards the adoption of a decision to amend the Agreement

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) 2020/135¹² 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, and 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 form an integral part of that Agreement.
- (3) Certain dates referred to in the Withdrawal Agreement had already passed at the moment of its entry into force, and should therefore be amended, together with corresponding adjustments, in the interest of legal certainty.
- (4) Article 145 of the Withdrawal Agreement does not contain provisions governing grants under the Research Fund for Coal and Steel granted to United Kingdom's beneficiaries before the end of the transition period, and should therefore be supplemented in this respect, to provide legal certainty as regards ongoing grants.
- (5) By oversight, two decisions of the Administrative Commission for the Coordination of Social Security Systems have not been listed in Part I of Annex I to the Withdrawal

¹² OJ L 29, 31.1.2020, p.1.

Agreement and eight acts which are essential for the application of the rules of the internal market for goods to Northern Ireland have not been listed in Annex 2 to the Protocol on Ireland/Northern Ireland. These decisions and acts should therefore be added to those annexes. In addition, three notes are also necessary to further define the scope of application of certain specific acts listed in Annex 2 to the Protocol on Ireland/Northern Ireland. These notes should therefore be added to Annex 2 to the Protocol on Ireland/Northern Ireland.

- (6) The Joint Committee should adopt a decision pursuant to Article 164(5)(d) of the Withdrawal Agreement to address these omissions and deficiencies.
- (7) 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:

- 1) In Article 135, in the title, the words “budgets for the years 2019 and 2020” shall be replaced by the words “budget for the year 2020” and, in paragraph 1, the words “years 2019 and” shall be replaced by the word “year”;
- 2) In Article 137, in the title and in the first subparagraph of paragraph 1, the words “2019 and” shall be deleted;
- 3) Article 143 (1) shall be amended as follows:
 - (a) in the second subparagraph, “31 July 2019” shall be replaced by “31 July 2020”;
 - (b) the third subparagraph shall be replaced by the following:

“In the consolidated accounts of the Union relating to 2020, the payments made out of the provisions referred to in point (b) of the second subparagraph from the date of entry into force of this Agreement until 31 December 2020, shall be disclosed for the same financial operations as referred to in this paragraph but which are decided upon on or after the date of entry into force of this Agreement.”;
- 4) In Article 144(1), in the second subparagraph, “31 July 2019” shall be replaced by “31 July 2020”;
- 5) In Article 145, the following paragraph shall be added:

“In respect of the projects under the Research Fund for Coal and Steel established by Protocol 37 to the Treaty on the European Union and to the Treaty on the Functioning of the European Union under grant agreements signed until the end of the transition period, the applicable Union law shall continue to apply to and in the United Kingdom after the end of the transition period and until the closure of the projects. The applicable Union law shall include in particular the following provisions, including any amendments to those provisions, irrespective of the date of adoption, entry into force or application of the amendment:

- (a) Council Decisions 2003/76/EC¹³, 2003/77/EC¹⁴ and 2008/376/EC¹⁵;
 - (b) the acts referred to in Article 138(2)(a) and (c)-(e).”;
- 6) Article 150 shall be amended as follows:
- (a) paragraph 4 shall be amended as follows:
 - (i) in the fourth sentence, “15 December” shall be replaced by “15 October” and “2019” shall be replaced by “2020”;
 - (ii) in the fifth sentence, “15 December 2030” shall be replaced by “15 October 2031”;
 - (b) paragraph 8 shall be amended as follows:
 - (i) in the first subparagraph, “2019” shall be replaced by “2020”;
 - (ii) in the first sentence of the second subparagraph, “2020” shall be replaced by “2021”.
- 7) In Annex 2 to the Protocol on Ireland/Northern Ireland, the following notes shall be inserted:
- (a) Under “4. General trade related aspects”, following the entry for “Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008”:
 “Without prejudice to the fact that the tariff preferences for eligible countries pursuant to the Union’s General Scheme of Preferences shall be applicable in the United Kingdom in respect of Northern Ireland:
 - the references to “Member State” in Article 9(1)(c)(ii) and in Chapter VI [Safeguards and surveillance provisions] in Regulation (EU) 978/2012 shall not be read as including the United Kingdom in respect of Northern Ireland;
 - the references to “Union market” in Article 2(k) and Chapter VI [Safeguards and surveillance provisions] in Regulation (EU) 978/2012 shall not be read as including the market of United Kingdom in respect of Northern Ireland; and
 - the references to “Union producers” and “Union industry” in Regulation (EU) 978/2012 shall not be read as including the producers and industry, respectively, of the United Kingdom in respect of Northern Ireland.”
 - (b) Under “5. Trade defence instruments” under the title of the section:

¹³ Council Decision 2003/76/EC of 1 February 2003 establishing the measures necessary for the implementation of the Protocol, annexed to the Treaty establishing the European Community, on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel (OJ L 29, 5.2.2003, p. 22).

¹⁴ Council Decision 2003/77/EC of 1 February 2003 laying down multiannual financial guidelines for managing the assets of the ECSC in liquidation and, on completion of the liquidation, the Assets of the Research Fund for Coal and Steel (OJ L 29, 5.2.2003, p. 25).

¹⁵ Council Decision 2008/376/EC of 29 April 2008 on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme (OJ L 130, 20.5.2008, p. 7).

“Without prejudice to the fact that the Union’s trade defence measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to “Member States” or “Union” in Regulation (EU) 2016/1036, Regulation (EU) 2016/1037, Regulation (EU) 2015/478 and Regulation 2015/755 shall not be read as including the United Kingdom in respect of Northern Ireland. In addition, importers that paid Union anti-dumping or countervailing duties on importation of goods customs cleared in Northern Ireland may ask for a refund of such duties exclusively pursuant to Article 11(8) of Regulation (EU) 2016/1036 or Article 21 of Regulation (EU) 2016/1037, respectively.”

- (c) Under “6. Regulations on bilateral safeguards” under the title of the section:

“Without prejudice to the fact that the Union’s bilateral safeguard measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to “Member States” or “Union” in the regulations listed below shall not be read as including the United Kingdom in respect of Northern Ireland.”

- 8) In Annex 2 to the Protocol on Ireland/Northern Ireland, the following acts are added:

- Under “6. Regulations on bilateral safeguards”: Regulation (EU) 2019/287 of the European Parliament and of the Council implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries¹⁶;
- Under “23. Chemicals and related”: Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors¹⁷;
- Under “25. Waste”: Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment¹⁸;
- Under “29. Food – general”: Council Directive 2011/91/EU on indications or marks identifying the lot to which a foodstuff belongs¹⁹;
- Under “42. Plant reproductive material”: Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed²⁰; Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants²¹; and Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed²²;

¹⁶ OJ L 53, 22.2.2019, p. 1.

¹⁷ OJ L 22, 26.1.2005, p. 1.

¹⁸ OJ L 155, 12.6.2019, p. 1.

¹⁹ OJ L 334, 16.12.2011, p.1.

²⁰ OJ 125, 11.7.1966, p. 2298–2308

²¹ OJ L 226, 13.8.1998, p. 16–23

²² OJ L 205, 1.8.2008, p. 28–39

- Under “47. Other”: Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods²³.
- 9) In Part I of Annex I to the Withdrawal Agreement, the following acts are added:
- Under “Electronic Data Exchange (E series)”: Decision No E7 of the Administrative Commission for the Coordination of Social Security Systems concerning practical arrangements for cooperation and data exchange until the Electronic Exchange of Social Security Information (EESSI) is fully implemented in the Member States²⁴;
 - Under “Family Benefits (F series)”: Decision No F3²⁵ of the Administrative Commission for the Coordination of Social Security Systems concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 relating to the method of calculation of the differential supplement

Article 2

The decision of the Joint Committee shall be published in the Official Journal of the European Union.

Article 3

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

Done at Brussels,

For the Council
The President

²³ OJ L 151, 7.6.2019, p.1.

²⁴ OJ C 73, 6.3.2020, p. 5.

²⁵ OJ C 215, 26.6.2019, p.2