



Brussels, 27.1.2021  
COM(2020) 833 final/2

2020/0369 (NLE)

COM(2020) 833 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 Union presence**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

The Commission proposes that the Council approves 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 concerning the practical working arrangements related to the exercise of the rights referred to in Article 12(2) of the Protocol on Ireland and Northern Ireland to the Withdrawal Agreement ('the Protocol').

### **2. CONTEXT OF THE PROPOSAL**

Article 12 of the Protocol makes, in its first paragraph, the authorities of the United Kingdom responsible for implementing and applying the provisions of Union law made applicable by the Protocol. According to the second paragraph of Article 12, representatives of the Union have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol, as well as activities related to the implementation and application of Article 5, and the United Kingdom shall provide, upon request, all relevant information relating to such activities, whereas the United Kingdom is obliged to facilitate such presence of Union representatives, provide them with the information and carry out control measures requested by Union representatives.

The Union presence established by Article 12 of the Protocol is supposed to ensure that the Union can effectively monitor the application and implementation of Union law made applicable in respect of Northern Ireland by authorities of the United Kingdom. Article 12(4) of the Protocol states explicitly that Union institutions and bodies, including in particular the European Court of Justice, have the same powers as those conferred upon them by Union law in this regard.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

#### **Practical working arrangements for the exercise of the rights pursuant to Article 12(2) of the Protocol**

In order to render the rights granted by Article 12(2) of the Protocol effective, the practical working arrangements set out in a Joint Committee Decision provide for

- privileges and immunities of Union representatives exercising those rights of the Union;
- modalities for requesting information
- general electronic access to the United Kingdom's IT systems relevant for the implementation of the Protocol; and the
- modalities of requesting control measures.

The exercise of the rights pursuant to Article 12(2) is notably not limited to the territory of Northern Ireland, but relates to any activities carried out by United Kingdom authorities in the implementation of the Protocol irrespective of their location.

#### **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 the Parties in accordance with Article 166 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.

##### **4.2. Substantive legal basis**

The decision on ‘Union presence’ lays down conditions for implementing the Withdrawal Agreement, which was concluded on the basis of Article 50 TEU. 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 concerns the implementation of substantive provisions of the Protocol, 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 207, in conjunction with 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) 2020/135<sup>1</sup> of 30 January 2020 and entered into force on 1 February 2020.
- (2) Article 166 of the Withdrawal Agreement empowers the Joint Committee to adopt decisions in respect of all matters for which the Withdrawal Agreement so provides. The Protocol on Ireland / Northern Ireland ('the Protocol') forms an integral part of the Withdrawal Agreement.
- (3) Article 12(2) of the Protocol establishes the right of the Union to be present during any activities of the United Kingdom related to the implementation and application of Union law provisions made applicable by the Protocol as well as of Article 5 of the Protocol. It specifically provides for the right to request information from the authorities of the United Kingdom relating to such activities and to request those authorities to carry out control measures.
- (4) Article 12(3) of the Protocol provides for a decision by the Joint Committee setting out the practical working arrangements relating to the exercise of the rights granted by the Protocol in this regard. Those working arrangements should ensure that Union representatives are able to exercise the rights laid down in Article 12(2) of the Protocol effectively.
- (5) The presence of the Union foreseen by the Protocol needs to take the unique circumstances on the island of Ireland into account, and rights of Union representatives should be exercised under due consideration of respect for foreign sovereignty as well as, in particular, of the Good Friday or Belfast Agreement of 10 April 1998.

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<sup>1</sup> OJ L 29, 31.1.2020, p.1.

- (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 Article 164 of the Withdrawal Agreement, on a decision to be taken in accordance with Article 12 of the Protocol shall be based on the draft decision of the Joint Committee attached to this Decision.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*