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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 540 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken 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 declaration to be made pursuant to Article 23(4)(a) of Decision No 1/2023 of the Joint Committee

Delegations will find attached document COM(2023) 540 final.

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Proposal for a

COUNCIL DECISION

establishing the position to be taken 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 declaration to be made pursuant to Article 23(4)(a) of Decision No 1/2023 of the Joint Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken 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 Community¹ ('the Withdrawal Agreement') in connection with the declaration by the Union to be made pursuant to Article 23(4)(a) of Decision No 1/2023 of 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 of 24 March 2023 laying down arrangements relating to the Windsor Framework² ('the Decision No 1/2023'). The Windsor Framework³ forms an integral part of the Withdrawal 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 and the Windsor Framework

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. On 27 February 2023, the European Commission and the Government of the United Kingdom reached a political agreement in principle on the Windsor Framework. The Joint Committee established by the Withdrawal Agreement held in London on 24 March 2023 adopted the new arrangements relating to the Windsor Framework and the two Parties agreed to work together intensively and faithfully to implement all elements of the Windsor Framework.

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;

¹ [OJ L 29, 31.1.2020, p. 7.](#)

² [OJ L 102, 17.4.2023, p. 61.](#)

³ Joint Declaration No 1/2023 of the Union and the United Kingdom 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 of 24 March 2023, [OJ L 102, 17.4.2023, p. 87.](#)

- preventing problems and resolving disputes that may arise regarding the interpretation and application of the Agreement.

2.3. The envisaged act of the Joint Committee

At the next meeting of the Joint Committee the Union is to make the declaration provided for in Article 23(4)(a) of the Windsor Framework.

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

3.1. Article 23(4) of Decision No 1/2023

According to Article 23(4) of Decision No 1/2023, most of the provisions of Section 2 of that Decision covering the movement of goods not at risk of subsequently being moved into the Union, that is, Articles 5 to 7 (except for Articles 7(1)(a)(iii)), 8, 10, 13, 14, 15(1), (2) and (4) and 16 will become applicable once the Union and the United Kingdom have made certain declarations within the Joint Committee. The Union declaration is to be made to the effect that the Union is satisfied:

- (i) with the implementation by the United Kingdom of Article 5 of Joint Committee Decision No 6/2020 through the provision of access to information contained in United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems referred to in Annex I to that Joint Committee Decision; and
- (ii) that all existing XI EORI registrations are correctly issued; and
- (iii) that the United Kingdom has issued new guidance for parcels in line with the arrangements set out in the Decision; and
- (iv) that the United Kingdom has issued its unilateral declaration on export procedures for goods exiting Northern Ireland to other parts of the United Kingdom.

The United Kingdom declaration is to be made to the effect that all importers wishing to operate under Article 7(1)(a)(ii) and Article 7(1)(b)(ii) of the Decision have been granted authorisations in accordance with Articles 9 and 11 of, and Annex III to, the Decision.

3.2. The Union declaration pursuant to Article 23(4)(a) of Decision No 1/2023

The Union declaration covers four items: (i) access by the Union representatives to United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems as set out in Decision No 6/2020 of 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 of 17 December 2020 providing for the practical working arrangements relating to the exercise of the rights of Union representatives referred to in Article 12(2) of the Protocol on Ireland/Northern Ireland⁴ ('Decision No 6/2020'); (ii) only correct XI EORI registrations being in place; (iii) the United Kingdom having issued updated guidance on parcels issued by the United Kingdom; and (iv) the United Kingdom having issued a unilateral declaration on export procedures for goods moved from Northern Ireland to other parts of the United Kingdom. These items are developed in detail hereinafter.

IT Access

⁴ [OJ L 443, 30.12.2020, p. 16.](#)

For the purpose of implementing Article 5 of Decision No 6/2020 the United Kingdom has created a system (EU Access System - EUAS) where the data from relevant United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems are made available for the Union representatives. The Union representatives were able to test the EUAS in November 2022. In December 2022, the Union representatives presented a test report with 22 recommendations addressing certain identified shortcomings of the EUAS. Of these 22 recommendations, 19 concern short and medium-term issues which can be solved by technical adjustments and modifications to the EUAS; on the other hand, the 3 remaining recommendations can only be addressed by implementing structural changes to the EUAS which require the long-term development of a new system.

For the purposes of Article 23(4)(a) of Decision No 1/2023, the Union needs to be satisfied with the implementation by the United Kingdom of Article 5 of Decision No 6/2020 in light of the short and medium-term recommendations. At the same time, the United Kingdom needs to have taken appropriate substantive preparatory steps in order to ensure that Union representatives have access to information contained in United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems referred to in point a) in accessible format and in such a way as to allow them to conduct risk analysis including identification of recent and historical trends patterns. The short and medium-term issues, as identified in 19 of the 22 recommendations presented in the report by the Union representatives of December 2022, have satisfactorily been addressed by the United Kingdom. The system is now functioning at an acceptable level and provides the Union representatives with relevant information to enable them to analyse the data efficiently and perform operational analysis to monitor the flow of goods between Great Britain and Northern Ireland and to select on the basis of operational risk analysis shipments for which controls can be requested from the UK authorities. For one short and medium-term issue (concerning the completeness of the data in the EUAS), the relevant recommendation has been addressed by the United Kingdom at a first stage; the United Kingdom has committed to a larger-scale technical improvement to address the presentation of data, which is under way and will be completed in the next few months. Since the question of completeness of data is broad and horizontal and issues may arise in future as the system evolves, the United Kingdom has committed to ensuring significant progress as regards the required data completeness, supported by a business continuity process. Concerning the long-term recommendations, the United Kingdom has already provided solutions to one of them that relates to workable access to the reporting tool of the EUAS. At the same time, the United Kingdom has taken appropriate substantive preparatory steps (i.e., within the framework of an existing contract, a timeline and a design plan with all necessary milestones and contingency planning have been set up) to ensure that the other long-term issues, as identified in the remaining 2 of the 22 recommendations presented in the report by the Union representatives of December 2022, are satisfactorily addressed in the future. The long-term solutions would need to significantly improve the latency of data of the Customs Declaration System, which requires major internal transformations and preparation of making data available in the TAXUD data hub for historical risk analysis. They will also allow the Union representatives to carry out risk analysis exercises on the basis of historical trends patterns.

Therefore, the Union is in a position to declare that it is satisfied, within the meaning of Article 23(4)(a)(i) of Decision No 1/2023, with the implementation by the United Kingdom of Article 5 of Decision No 6/2020 concerning the provision of access to information contained in United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems referred to in Annex I to that Joint Committee Decision,

whilst noting that the United Kingdom has committed to ensuring significant progress as regards the required data latency and completeness, supported by a business continuity process and that access by Union representatives to such information is still to be provided in an accessible format in such a way as to allow them Union representatives to conduct risk analysis including identification of recent and historical trends patterns.

XI EORI

Only businesses established in Northern Ireland can be registered under an Economic Operators Registration and Identification (EORI) number starting with XI (international code for Northern Ireland; hereinafter: “XI EORI number”), except for business involved in certain limited customs operations taking place in connection with Northern Ireland, according to Articles 5(31)(b), (5)(32) and 9(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. In April 2023, the United Kingdom authorities contacted businesses which did not appear to have an establishment in Northern Ireland, requesting them to prove that they were entitled to be registered under the XI EORI number. Where that was not the case, the United Kingdom authorities have invalidated the registrations of such businesses, a process that is now completed.

Therefore, the Union is in a position to declare that it is satisfied, within the meaning of Article 23(4)(a)(ii) of Decision No 1/2023, that all existing registrations under the XI EORI number have been correctly issued by the United Kingdom authorities.

Guidance on parcels

On 9 June 2023, the United Kingdom published online⁵ further details and publications concerning the Windsor Framework, including as regards parcels. On 8 September 2023, the United Kingdom issued an updated detailed guidance concerning the movement of parcels from other parts of the United Kingdom to Northern Ireland⁶.

Therefore, the Union is in a position to declare that it is satisfied, within the meaning of Article 23(4)(a)(iii) of Decision No 1/2023, that the United Kingdom has issued new guidance for parcels in line with the arrangements set out in Decision No 1/2023.

Export procedures for goods moved from Northern Ireland to other parts of the United Kingdom

On 24 March 2023, the United Kingdom issued within the Joint Committee a Unilateral Declaration on export procedures for goods moving from Northern Ireland to other parts of the United Kingdom⁷. The Union took note of this Unilateral Declaration⁸.

Therefore, the Union is in a position to declare that it is satisfied, within the meaning of Article 23(4)(a)(iv) of Decision No 1/2023, that the United Kingdom has issued the unilateral declaration referred to in that provision.

⁵ <https://www.gov.uk/government/collections/the-windsor-framework-further-detail-and-publications>.

⁶ <https://www.gov.uk/government/publications/moving-parcels-from-great-britain-to-northern-ireland-under-the-windsor-framework-from-30-september-2024>.

⁷ [OJ L 102, 17.4.2023, p. 96.](#)

⁸ [OJ L 102, 17.4.2023, p. 97.](#)

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for Council 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.*’

In addition, the concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’⁹.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Withdrawal Agreement.

The Union and the United Kingdom can make unilateral declarations in the Joint Committee. The envisaged unilateral declaration by the Union to be made within the Joint Committee pursuant to Article 23(4)(a) of the Decision No 1/2023 constitutes act having legal effects, within the meaning of Article 218(9) TFEU.

The envisaged act does not supplement or amend the institutional framework of the Withdrawal Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The unilateral declaration to be made by the Union within the Joint Committee relates to the Windsor Framework, which forms an integral part of the Withdrawal Agreement, which was concluded on the basis of Article 50(2) of the Treaty on European Union (TEU).

Therefore, the substantive legal basis of the proposed decision is Article 50(2) TEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 50(2) TEU, in conjunction with Article 218(9) TFEU.

⁹ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

5. PUBLICATION OF THE ENVISAGED ACT

In the interest of legal certainty and transparency, it is appropriate to publish the unilateral declaration by the Union in the *Official Journal of the European Union* after it has been made within the Joint Committee. Additionally, a notice in the *Official Journal of the European Union* should be envisaged, to the effect that the unilateral declaration to be made by the United Kingdom within the Joint Committee pursuant to Article 23(4)(b) of Decision No 1/2023 has been made.

Proposal for a

COUNCIL DECISION

establishing the position to be taken 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 declaration to be made pursuant to Article 23(4)(a) of Decision No 1/2023 of the Joint Committee

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) 2020/135¹⁰ of 30 January 2020 and entered into force on 1 February 2020.
- (2) Pursuant to Article 23(4) of the Decision No 1/2023 of 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 of 24 March 2023 laying down arrangements relating to the Windsor Framework¹¹ ('Decision No 1/2023'), certain provisions of Decision No 1/2023 shall apply as from 30 September 2023, provided that the declarations referred to in Article 23(4) letters (a) and (b) have been made within the Joint Committee.
- (3) In accordance with Article 182 of the Withdrawal Agreement, the Windsor Framework¹² forms an integral part of that Agreement.
- (4) The Union is expected to make a declaration within the Joint Committee pursuant to Article 23(4)(a) of Decision No 1/2023. That declaration is to be made to the effect that the Union is satisfied: (i) with the implementation by the United Kingdom of Article 5 of Joint Committee Decision No 6/2020 through the provision of access to information contained in United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems referred to in

¹⁰ [OJ L 29, 31.1.2020, p.1.](#)

¹¹ [OJ L 102, 17.4.2023, p. 61.](#)

¹² Joint Declaration No 1/2023 of the Union and the United Kingdom 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 of 24 March 2023, [OJ L 102, 17.4.2023, p. 87.](#)

Annex I to that Joint Committee Decision; and (ii) that all existing XI EORI registrations are correctly issued; and (iii) that the United Kingdom has issued new guidance for parcels in line with the arrangements set out in Decision No 1/2023; and (iv) that the United Kingdom has issued its unilateral declaration on export procedures for goods exiting Northern Ireland to other parts of the United Kingdom.

- (5) It is 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(1) of the Withdrawal Agreement ('the Joint Committee') in relation to the Unilateral Declaration to be made by the Union within the Joint Committee pursuant to Article 23(4)(a) of Decision No 1/2023 shall be based on the draft Unilateral Declaration attached in the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President