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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 322 final
Subject:	Proposal for a COUNCIL DECISION on 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 adoption of a decision to amend Part I of Annex I of the Agreement

Delegations will find attached document COM(2023) 322 final.

Encl.: COM(2023) 322 final



EUROPEAN
COMMISSION

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COM(2023) 322 final

2023/0186 (NLE)

Proposal for a

COUNCIL DECISION

on 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 adoption of a decision to amend Part I of Annex I of the Agreement

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 Community ('the Withdrawal Agreement') in connection with the envisaged adoption of a Joint Committee Decision to amend Part I of Annex I of 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 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 act of the Joint Committee

At its next meeting, the Joint Committee is to adopt a decision amending Part I of Annex I on social security coordination of the Withdrawal Agreement ('the envisaged act'). The Joint Committee adopts a decision amending the Withdrawal Agreement, pursuant to Article 36(4) of the Withdrawal Agreement, to reflect any new Decision or Recommendation approved by the Administrative Commission for the Coordination of Social Security Systems.

The purpose of the envisaged act is to list in Part I of Annex I two new Decisions approved by the Administrative Commission for the Coordination of Social Security Systems and to remove the previous Decisions that have been replaced by the two new Decisions.

The envisaged act 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 TAKEN ON THE UNION'S BEHALF

3.1. Part I of 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 (Article 31(1) of the Withdrawal Agreement).

On 19 October 2021, the Administrative Commission for the Coordination of Social Security Systems approved Decision No H12 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council. This Decision should be added in Annex I to the Withdrawal Agreement. This Decision replaces Decision No H3 of 15 October 2009 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council, as amended by the Decision No H7 of 25 June 2015 on the revision of the Decision No H3 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council. Decisions No H3 and No H7 will therefore be removed from Part I of Annex I to the Withdrawal Agreement.

On 30 March 2022, the Administrative Commission for the Coordination of Social Security Systems approved Decision No H13 concerning the composition and working methods of the Audit Board of the Administrative Commission for the Coordination of Social Security Systems. This Decision should be added in Annex I to the Withdrawal Agreement. This Decision replaces Decision No H4 of 22 December 2009 concerning the composition and working methods of the Audit Board of the Administrative Commission for the Coordination of Social Security Systems. Decision No H4 will therefore be removed from Part I of Annex I to the Withdrawal Agreement.

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 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 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’*¹.

¹ 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.

4.1.2. Application to the present case

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

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

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.

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.’

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 sole objective and content of the envisaged act is to amend Part I of Annex I of the Withdrawal Agreement to list two new Decisions approved by the Administrative Commission for the Coordination of Social Security Systems and to remove the previous Decisions that have been replaced by the two new Decisions.

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

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) TEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend Part I of Annex I of 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

on 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 adoption of a decision to amend Part I of Annex I of the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) TEU 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) 2020/135² of 30 January 2020 and entered into force on 1 February 2020.
- (2) Pursuant to Article 36(4) of the Withdrawal Agreement, the Joint Committee shall adopt decisions to amend Part I of Annex I of the Withdrawal Agreement to reflect any new Decision or Recommendation approved by the Administrative Commission for the Coordination of Social Security Systems.
- (3) The Joint Committee, during its next meeting, is to adopt a decision pursuant to Article 36(4) of the Withdrawal Agreement to amend Part I of Annex I thereof to add two new Decisions approved by the Administrative Commission for the Coordination of Social Security Systems to the list set out therein and to remove three Decisions that have been replaced by the two new Decisions from that list.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision to amend Part I of Annex I of the Withdrawal Agreement will be binding on the Union.

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 shall be based on the draft decision of the Joint Committee attached to this Decision.

² [OJ L 29, 31.1.2020, p.1.](#)

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*