



Council of the
European Union

Brussels, 12 October 2021
(OR. en)

12369/21

LIMITE

UK 220
EMPL 404
SOC 554

Interinstitutional File:
2021/0303 (NLE)

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL DECISION (EU) 2021/...

of ...

**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) 2020/135¹, 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.
- (3) By oversight, one decision and one recommendation of the Administrative Commission for the Coordination of Social Security Systems have not been listed in Part I of Annex I to the Withdrawal Agreement. Four other decisions and one recommendation were adopted before the end of the transition period. Those decisions and recommendations should therefore be added to that annex.

¹ OJ L 29, 31.1.2020, p. 1.

- (4) The Joint Committee should adopt a decision pursuant to Article 164(5)(d) of the Withdrawal Agreement to address those omissions and deficiencies.
- (5) 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 behalf of the Union in the Joint Committee established by Article 164(1) of the Withdrawal Agreement, on a decision to be taken in accordance with Article 164(5)(d) thereof shall be based on the draft decision of the Joint Committee attached to this Decision.

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 ...,

For the Council

The President

DRAFT

**DECISION No [...] /2021 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 ...

**amending 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 JOINT COMMITTEE,

Having regard to 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'), and in particular Article 164(5)(d) thereof,

¹ OJ EU L 29, 31.1.2020, p. 7.

Whereas:

- (1) Article 164(5) point (d) of the Withdrawal Agreement enables the Joint Committee established under Article 164(1) thereof ('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 such decisions, which shall have the same legal effect as the Withdrawal Agreement.
- (2) In the interests of legal certainty, Part I of Annex I to the Withdrawal Agreement should be amended by adding five decisions and two recommendations of the Administrative Commission for the Coordination of Social Security Systems which were not previously listed therein, and by removing and replacing two decisions,

HAS ADOPTED THIS DECISION:

Article 1

The Withdrawal Agreement shall be amended as follows:

- (1) In Part I of Annex I to the Withdrawal Agreement, Recommendation No A1 of the Administrative Commission for the Coordination of Social Security Systems concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council¹ is added under ‘Applicable legislation (A series)’;
- (2) In Part I of Annex I to the Withdrawal Agreement, Decision No. E6 of the Administrative Commission for the Coordination of Social Security Systems concerning the determination of when an electronic message is considered legally delivered in the Electronic Exchange of Social Security Information (EESSI) system² is added under ‘Electronic Data Exchange (E series)’;
- (3) In Part I of Annex I to the Withdrawal Agreement, Decision No. H9 of the Administrative Commission for the Coordination of Social Security Systems regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 of the European Parliament and of the Council as well as in Decision No S9 due to the COVID-19 Pandemic³, is added under ‘Horizontal issues (H series)’;

¹ OJ EU C 183, 29.5.2018, p. 5.

² OJ EU C 355, 4.10.2018, p. 5.

³ OJ EU C 259, 7.8.2020, p. 9.

- (4) In Part I of Annex I to the Withdrawal Agreement, Decision No. H10 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems¹ shall be added under ‘Horizontal issues (H series)’;
- (5) In Part I of Annex I to the Withdrawal Agreement, Decision No. H11 of the Administrative Commission for the Coordination of Social Security Systems regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 as well as in Decision No S9 due to the COVID-19 Pandemic² shall be added under ‘Horizontal issues (H series)’;
- (6) In Part I of Annex I to the Withdrawal Agreement, Recommendation No. H2 of the Administrative Commission for the Coordination of Social Security Systems concerning the inclusion of authentication features to Portable Documents issued by the institution of a Member State and showing the position of a person for the purpose of the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council³ shall be added under ‘Horizontal issues (H series)’;

¹ OJ EU C 89, 16.3.2021, p. 6.

² OJ EU C 170, 6.5.2021, p. 4.

³ OJ EU C 147, 29.4.2019, p. 6.

- (7) In Part I of Annex I to the Withdrawal Agreement, Decision S11 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004¹ shall be added under ‘Sickness (S series)’;
- (8) In Part I of Annex I to the Withdrawal Agreement, the following acts shall be removed and replaced:
- (a) Decision No. H8 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for data processing of the Administrative Commission for the Coordination of Social Security Systems², which is replaced by Decision No. H10 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems³;

¹ OJ EU C 236, 18.6.2021, p. 4.

² OJ EU C 263, 20.7.2016, p. 3.

³ OJ EU C 89, 16.3.2021, p. 6.

- (b) Decision No. S9 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004¹, which is replaced by Decision No. S11 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004².

Article 2

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

Done at ...,

For the Joint Committee

The Co-chairs

¹ OJ EU C 279, 27.9.2013, p. 8.

² OJ EU C 236, 18.6.2021, p. 4.