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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(2024) 57 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 amendment of the Decision No 1/2023 of the Joint Committee of 24 March 2023 laying down arrangements relating to the Windsor Framework

Delegations will find attached document COM(2024) 57 final.

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2024/0032 (NLE)

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 amendment of the Decision No 1/2023 of the Joint Committee of 24 March 2023 laying down arrangements relating to the Windsor Framework

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 amending 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 Framework[1] ('Decision No 1/2023'). The Windsor Framework[2] 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, including Decision No 1/2023, 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:

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[1] 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 Framework, OJ L 102, 17.4.2023, p. 61–83.

[2] 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.

- 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 Decision No 1/2023 ('the envisaged act'), pursuant to Article 164(4)(e) of the Withdrawal Agreement as well as Article 5(2) of the Windsor Framework.

The purpose of the envisaged act is to allow operators in Northern Ireland to import by direct transport products originating in third countries and subject to tariff rate quotas in the United Kingdom, on the condition that those products are not at risk of entering the Union internal market.

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 of the Joint Committee and Specialised Committees, 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

The United Kingdom withdrew from the Union on 1 February 2020. The Windsor Framework applies from the end of the transition period, i.e. as of 1 January 2021. The bilateral arrangements between the Union and the United Kingdom under the Windsor Framework do not give rise to rights and obligations for third countries.

Consequently, any imports pursuant to Union import tariff rate quotas or other import quotas applying to goods originating in a third country brought into Northern Ireland could not be counted towards that third country's rights vis-à-vis the Union.

On the basis of the above considerations, on 16 December 2020, the European Parliament and the Council adopted Regulation (EU) 2020/2170 on the application of Union tariff rate quotas and other import quotas[3]. Article 1 of that Regulation provides that goods imported from outside the Union are eligible for treatment pursuant to Union import tariff rate quotas or other import quotas only if they are released for free circulation in the Union's customs territory.

In addition, the relevant provisions of Joint Committee Decision No 4/2020[4] ('Decision No 4/2020'), in force from 1 January 2021 until 24 March 2023, and of Decision 1/2023, notably Article 3(1)(b) of Decision No 4/2020 and Article 7(1)(b) of Decision 1/2023, do not allow

[3] OJ L432 of 21.12.2020, p.1

[4] Decision No 4/2020 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 on the determination of goods not at risk, OJ L 443, 30.12.2020, p. 6–12.

operators in Northern Ireland to import goods pursuant to the United Kingdom tariff rate quotas directly from third countries by paying the applicable in-quota tariff rate. Since for products subject to Union or United Kingdom import tariff rate quotas the out-of-quota tariff rates are generally very high, operators in Northern Ireland are in a disadvantageous position concerning the importation from third countries of products subject to either Union or United Kingdom tariff rate quotas.

The United Kingdom has shown the need for certain agri-food commodities originating in third countries, notably meat products, to be released for free circulation in Northern Ireland for local consumption and processing. The United Kingdom has also provided evidence that transfer of such products has taken place between other parts of the United Kingdom and Northern Ireland and has expressed the wish that operators in Northern Ireland be allowed to use the United Kingdom tariff rate quotas applicable to these goods for direct importation in Northern Ireland from third countries on the condition that the goods do not enter the Union internal market.

It is therefore appropriate to amend Decision No 1/2023 to create a specific category of goods not at risk of entering the Union covering goods originating in third countries imported directly into Northern Ireland and subject to the United Kingdom import tariff rate quotas. To this effect, a specific category of non-commercial processing for sale and end consumption in the United Kingdom of goods listed in a new Annex to Decision No 1/2023 should be created by amending Article 6 of that Decision. In addition, Article 7 of that Decision should be amended to set out the specific conditions which need to be fulfilled for the goods listed in the relevant new Annex and processed non-commercially on the basis of Article 6 of Decision No 1/2023 to be considered not at risk of being moved to the Union. Such conditions are the following:

(a) The relevant goods need to be imported by operators authorised in accordance with Articles 9 to 11 of Decision No 1/2023 (which are to be amended accordingly);

(b) Both the in-quota and out-of-quota duty rates determined on the basis of the Union and of the United Kingdom applicable rules are set out in the relevant Annex to Decision 1/2023;

(c) The operator needs to apply for access to a relevant tariff rate quota of the United Kingdom; and

(d) The maximum annual quantity of the good being imported is set out in the relevant Annex to Decision No 1/2023.

On the basis of point (b) above, no duty comparison mechanism as provided in Decision No 1/2023 for direct importation into Northern Ireland of goods originating from third countries is applicable to the relevant goods; therefore, Article 7 of Decision No 1/2023 should be amended accordingly.

Since the goods covered by these arrangements are particularly sensitive and subject to generally high out-of-quota duty rates, additional monitoring and reporting mechanisms should be included in Decision No 1/2023 to ensure that the relevant goods do not enter the Union's internal market. To this effect, Article 9 of Decision No 1/2023 should be amended to introduce specific conditions for operators authorised to import goods listed in the relevant Annex to that Decision. These conditions stipulate that when operators apply for the authorisations foreseen in Articles 9 to 11 of Decision No 1/2023 and declare their intention

to import goods listed in the relevant Annex, they will have to provide information concerning the planned annual quantities to be imported and the category of customers within the United Kingdom to whom the goods are to be sold; for traders importing goods listed in the relevant Annex, this information is to be provided annually. In addition, traders authorised to import such goods are required to provide, also annually, ex-post information on the quantities that were imported and on the category of customers to whom the goods were sold.

A further reporting obligation is added by amending Article 14 of Decision No 1/2023. This amendment provides that, at the request of the Union representatives, and at least once a year at the end of each annual quota period, the competent authorities of the United Kingdom are to provide to these representatives, per authorisation and per quota order number, information on the quantity utilised during the annual quota period and the quantity still available at the end of that period, as well as aggregated information on sale or use of such goods with reference to relevant categories of buyers within the United Kingdom.

Article 15 of Decision No 1/2023 should be amended to introduce the possibility for the Joint Committee to review and amend the relevant Annex as well as the obligation for each Party to inform the other without delay about planned changes in the tariffs listed in the relevant Annex.

The envisaged decision includes an Annex which is to become Annex V to Decision No 1/2023. This Annex lists in detail the goods covered by the arrangements set out above. The goods are listed in the Annex on the basis of the relevant order numbers for the United Kingdom tariff rate quotas. For each quota order number, the table included in the Annex contains the following data: relevant products (indicated with reference to the respective commodity codes); country of origin; maximum annual quantity; Union and United Kingdom in- and out-of-quota duty rates; and the annual quota period. In case of changes to one or several of these data, without the Joint Committee confirming such changes in a new Decision, the reference to these goods will become obsolete.

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's 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*'[5].

[5] 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.

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 act which the Joint Committee is called upon to adopt, and whose sole objective and content is to amend Decision No 1/2023, 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.

5. PUBLICATION OF THE ENVISAGED ACT

As the envisaged act will amend Decision No 1/2023, 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 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[6] of 30 January 2020 and entered into force on 1 February 2020.

(2) Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee established under Article 164(1) thereof ('the Joint Committee') are binding on the Union and the United Kingdom. The Union and the United Kingdom are to implement such decisions, which have the same legal effect as the Withdrawal Agreement.

(3) Under Article 182 of the Withdrawal Agreement, the Windsor Framework[7] forms an integral part of that Agreement.

(4) As regards the movement of goods, Article 5(2) of the Windsor Framework empowers the Joint Committee to adopt decisions establishing the conditions under which processing is not to be considered as commercial processing and the criteria for

[6] OJ L 29, 31.1.2020, p.1.

[7] 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. 87–87.

considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union.

(5) It is desirable to improve the operation of the schemes set out in 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 Framework, in relation to the application of UK tariff rate quotas as regards the importation of the goods specified in the proposed Annex V into Northern Ireland.

(6) The Joint Committee, during its next meeting, should adopt a decision pursuant to Article 164(4)(e) of the Withdrawal Agreement as well as Article 5(2) of the Windsor Framework to amend 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 Framework.

(7) 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 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