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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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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 adoption of a decision adding a newly adopted Union act to Annex 2 to the Windsor Framework

Delegations will find attached document COM(2025) 118 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 adoption of a decision adding a newly adopted Union act to Annex 2 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 Annex 2 to the Windsor Framework[1], which 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. On 24 March 2023, the Joint Committee established by the Withdrawal Agreement 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;
- 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 adding a newly adopted Union act that falls within the scope of the Windsor Framework to Annex 2 to the Windsor Framework ('the envisaged act'), pursuant to its Article 13(4).

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[1] 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.

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

3.1. Annex 2 ('Provisions of Union law referred to in Article 5(4)') to the Windsor Framework

Annex 2 to the Windsor Framework contains the provisions of Union law referred to in Article 5(4) thereof.

On 13 June 2024, the Union adopted a Regulation laying down harmonised rules on artificial intelligence (Regulation (EU) 2024/1689[2]).

The purpose of Regulation (EU) 2024/1689 is to: (i) improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems in the European Union, in accordance with European Union values; (ii) promote the uptake of human centric and trustworthy artificial intelligence (AI) while ensuring a high level of protection of health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, including democracy, the rule of law and environmental protection; (iii) protect against the harmful effects of AI systems in the Union; and (iv) support innovation. Regulation 2024/1689 ensures the free movement, cross-border, of AI-based goods and services, thus preventing Member States from imposing restrictions on the development, marketing and use of AI systems, unless explicitly authorised by the Regulation.

This newly adopted Union act, insofar as the free movement of products is concerned, relates to the internal market for goods and therefore falls within the scope of the Windsor Framework. It should therefore, with the exception of Articles 102, 108 and 110, be added to Annex 2 to the Windsor Framework, under point 47 "Other", with the following note, "*as regards conditions and technical specifications for the placing on the market of products, and for their putting into service insofar as the free movement of products is concerned, and with the exception of Articles 102, 108 and 110*".

Articles 103-107 and 109 of the Regulation are already applicable to and in the United Kingdom in respect of Northern Ireland pursuant to Article 13(3) of the Windsor Framework as these provisions amend existing legislation listed in Annex 2 to the Framework.

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*

[2] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj.

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*'[3].

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 sole objective and content of the envisaged act is to add a newly adopted Union act to Annex 2 to the Windsor Framework.

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 Annex 2 to the Windsor Framework, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

[3] 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.

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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[4] and entered into force on 1 February 2020.

(2) Pursuant to Article 13(4) of the Windsor Framework[5], which forms an integral part of the Withdrawal Agreement, the Joint Committee established under Article 164(1) thereof ('the Joint Committee') is empowered to adopt decisions to amend the relevant Annexes to the Windsor Framework by adding newly adopted Union acts that fall within the scope of the Windsor Framework, but which neither amend nor replace Union acts listed in the Annexes to the Windsor Framework.

(3) Articles 103-107 and 109 of Regulation (EU) 2024/1689 of the European Parliament and of the Council[6] are applicable pursuant to Article 13(3) of the Windsor Framework. The remainder of the provisions of that Regulation, provided they contain conditions and technical specifications for the placing on the market of products or relate to the provision of services that may affect the free movement of products, are provisions of a newly adopted Union act falling within the scope of the Windsor Framework which should be added to Annex 2 to the Windsor Framework. This does not apply to Articles 102, 108 and 110 of that Regulation.

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4 Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion 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 Community, OJ L 29, 31.1.2020, ELI: http://data.europa.eu/eli/dec/2020/135/oj.

5 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.

6 OJ L, 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj.

(4) The Joint Committee, at its next meeting, should adopt a decision pursuant to Article 13(4) of the Windsor Framework adding this newly adopted Union act, as regards provisions which contain conditions and technical specifications for the placing on the market of products or relate to the provision of services that may affect the free movement of products, and with the exception of Articles 102, 108 and 110 thereof, to Annex 2 to the Windsor Framework.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee as regards the adoption of a decision adding the newly adopted Union act to Annex 2 to the Windsor Framework.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Joint Committee established by Article 164(1) 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 Community ('Joint Committee') 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