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2025/0069 (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 declaration to be made pursuant to Article 23(5)(a) of Decision No 1/2023 of the Joint Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns 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') as regards a declaration by the Union to be made pursuant to Article 23(5)(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 ('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. 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.

¹ OJ L 29, 31.1.2020, ELI: http://data.europa.eu/eli/treaty/withd_2020/sign.

² OJ L 102, 17.4.2023, ELI: <http://data.europa.eu/eli/dec/2023/819/oj>.

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](http://data.europa.eu/eli/dec/2023/819/oj).

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(5)(a) of Decision No 1/2023.

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

3.1. Article 23(5) of Decision No 1/2023

According to Article 23(5) of Decision No 1/2023, following the entry into force on 29 June 2023 of the Commission Delegated Regulation (EU) 2023/1128 of 24 March 2023 amending Delegated Regulation (EU) 2015/2446 to provide for simplified customs formalities for trusted traders and for sending parcels into Northern Ireland from another part of the United Kingdom⁴ (that is, the Union act providing for facilitations relating to the movement of goods referred to in Article 7(1)(a)(ii) and Article 7(1)(a)(iii) of Decision No 1/2023), Article 7(1)(a)(iii), Article 13 and Article 15(3) of the same Decision shall apply as from the first day of the month following that in which the last of the following declarations has been made within the Joint Committee:

- (a) a declaration by the Union to the effect that it is satisfied that the United Kingdom has set up the networks, information systems and databases in relation to the data referred to in Article 141(1)(d)(vii) of Commission Delegated Regulation (EU) 2015/2446 that are to be provided to the United Kingdom competent authority and is satisfied with the implementation by the United Kingdom of Article 5 of Joint Committee Decision No 6/2020⁵ ('Decision No 6/2020') through the provision of access to information contained in these networks, information systems and databases; and
- (b) a declaration by the United Kingdom to the effect that all authorised carriers are able to comply with the obligations set out in Article 13 of Decision No 1/2023.

It is to be noted that Commission Delegated Regulation (EU) 2023/1128 is also to apply as from the first day of the month following that in which the last of the above-mentioned declarations has been made within the Joint Committee.

3.2. The Union's declaration pursuant to Article 23(5)(a) of Decision No 1/2023

The declaration by the Union covers two items: (i) the setting up by the United Kingdom of the networks, information systems and databases in relation to the data referred to in Article 141(1)(d)(vii) of Commission Delegated Regulation (EU) 2015/2446 that are to be provided to the United Kingdom competent authority; and (ii) the implementation by the United Kingdom of Article 5 of Decision No 6/2020 through the provision of access to information contained in these networks, information systems and databases.

Setting up of the relevant networks, information systems and databases

For the purposes of complying with the obligation referred to as item (i) above, the United Kingdom has created a system ("the system") to collect the relevant data for Business to Consumer ('B2C') parcels shipped by authorised carriers from another part of the United Kingdom to Northern Ireland. This data is to be submitted by the authorised carriers to the United Kingdom customs authorities prior to the delivery of the goods to the private individual.

⁴ OJ L 149, 9.6.2023, ELI: http://data.europa.eu/eli/reg_del/2023/1128/oj.

⁵ OJ L 443, 30.12.2020, ELI: <http://data.europa.eu/eli/dec/2020/2250/oj>.

The system was first put in place in April 2024, before the United Kingdom opened the possibility for carriers to apply for the authorised carrier scheme ('UK Carrier Scheme') on 1 May 2024⁶. Since then, the system has been developed and has been used on a voluntary basis by the operators registered under the UK Carrier Scheme to share data on B2C parcels sent from a business in the United Kingdom (other than Northern Ireland) to a private individual residing in Northern Ireland. The data provided in the system by the authorised carriers registered under the UK Carrier Scheme are the data set out in Annex 52-03 of Commission Delegated Regulation (EU) 2015/2446.

On this basis, the Union is in a position to declare that it is satisfied, within the meaning of the first part of Article 23(5)(a) of Decision No 1/2023, with the setting up by the United Kingdom of the networks, information systems and databases in relation to the data referred to in Article 141(1)(d)(vii) of Commission Delegated Regulation (EU) 2015/2446.

Access to the information included in the relevant networks, information systems and databases

For the purposes of implementing Article 5 of Decision No 6/2020 in relation to the system, the United Kingdom has ensured in its legal system to give access to the information put in the system by the operators registered under the UK Carrier Scheme to relevant officials in the European Commission, including the Union representatives referred to in Article 12(2) of the Windsor Framework. The Commission officials have tested the functioning of the system, and the data submitted so far. The results of the testing phase show that the system complies with the required technical parameters.

Therefore, the Union is in a position to declare that it is satisfied, within the meaning of the second part of Article 23(5)(a) 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 the networks, information systems and databases set up by the United Kingdom in relation to the data referred to in Article 141(1)(d)(vii) of Commission Delegated Regulation (EU) 2015/2446.

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'*⁷.

4.1.2. Application to the present case

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

⁶ See [Check if you can apply for the UK Carrier Scheme - GOV.UK](#).

⁷ 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.

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(5)(a) of the Decision No 1/2023 constitutes an 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.

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(5)(b) of Decision No 1/2023 has been made.

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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) 2020/135⁸ of 30 January 2020 and entered into force on 1 February 2020.
- (2) In accordance with Article 182 of the Withdrawal Agreement, the Windsor Framework⁹ forms an integral part of that Agreement.
- (3) Pursuant to Article 23(5) of Decision No 1/2023 of the Joint Committee established by the Withdrawal Agreement of 24 March 2023 laying down arrangements relating to the Windsor Framework¹⁰ ('Decision No 1/2023'), Article 7(1)(a)(iii), Article 13 and Article 15(3) of Decision No 1/2023 shall apply as from the first day of the month following that in which the last of the declarations, to be made respectively by the Union and by the United Kingdom and referred to in Article 23(5)(a) and (b), have been made within the Joint Committee.

⁸ 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>.

⁹ 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](https://eur-lex.europa.eu/eli/dec/2023/819/oj).

¹⁰ 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, ELI: <http://data.europa.eu/eli/dec/2023/819/oj>.

- (4) From the first day of the month following that in which the last of the declarations mentioned in the previous recital has been made within the Joint Committee, the simplified customs formalities provided for in Commission Delegated Regulation (EU) 2023/1128 of 24 March 2023 amending Delegated Regulation (EU) 2015/2446 will become applicable.
- (5) Pursuant to Article 23(5)(a) of Decision No 1/2023, the Union is expected to make a declaration within the Joint Committee to the effect that it is satisfied that the United Kingdom has set up the networks, information systems and databases in relation to the data referred to in Article 141(1)(d)(vii) of Commission Delegated Regulation (EU) 2015/2446¹¹ that are to be provided to the United Kingdom competent authority and is satisfied with the implementation by the United Kingdom of Article 5 of Decision No 6/2020 of the Joint Committee¹² through the provision of access to information contained in these networks, information systems and databases.
- (6) In April 2024, the United Kingdom created a system (“the system”) to collect from the authorised carriers the relevant data for Business to Consumer (‘B2C’) parcels that they ship from another part of the United Kingdom to Northern Ireland. Since then, the system has been developed and has been used during the testing phase on a voluntary basis by the operators registered under the UK Carrier Scheme to provide data on B2C parcels sent from a business in the United Kingdom (other than Northern Ireland) to a private individual residing in Northern Ireland. The data provided in the system by the authorised carriers registered under the UK Carrier Scheme are the data set out in Annex 52-03 of Commission Delegated Regulation (EU) 2015/2446.
- (7) For the purposes of implementing Article 5 of Decision No 6/2020 in relation to the system, the United Kingdom has ensured in its legal system to give access to the information put in the system by the operators registered under the UK Carrier Scheme to relevant officials in the European Commission, including the Union representatives referred to in Article 12(2) of the Windsor Framework. The Commission officials have tested the functioning of the system, and the data submitted so far. The results of the testing phase show that the system complies with the required technical parameters.
- (8) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

¹¹ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, ELI: http://data.europa.eu/eli/reg_del/2015/2446/oj.

¹² 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 Ireland, OJ L 443, 30.12.2020, ELI: <http://data.europa.eu/eli/dec/2020/2250/oj>.

HAS ADOPTED THIS DECISION:

Sole Article

The position to be taken on the Union's behalf within 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(5)(a) of Decision No 1/2023 shall be based on the draft Unilateral Declaration attached to this Decision.

Done at Brussels,

*For the Council
The President*