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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
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Consultative Working Group 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 its rules of procedure

Delegations will find attached document COM(2023) 120 final.

Encl.: COM(2023) 120 final



EUROPEAN
COMMISSION

Brussels, 27.2.2023
COM(2023) 120 final

2023/0065 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Consultative Working Group 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 its rules of procedure

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be adopted on the Union's behalf in the Joint Consultative Working Group established by the Protocol on Ireland/Northern Ireland ('the Protocol') 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 Community ('the Withdrawal Agreement') on a Joint Consultative Working Group decision to amend its rules of procedure.

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 Withdrawal Agreement sets out the arrangements for the orderly withdrawal of the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') from the European Union ('Union') and the European Atomic Energy Community. This Agreement entered into force on 1 February 2020.

2.2. The Joint Consultative Working Group

The Joint Consultative Working Group ('working group') was established under Article 15(1) of the Protocol to serve as a forum for the exchange of information and mutual consultation on the implementation of the Protocol.

The working group is composed of representatives of the Union and the United Kingdom and carries out its functions under the supervision of the Specialised Committee on issues related to the implementation of the Protocol, established under Article 165 of the Withdrawal Agreement, to which it reports.

The working group has no power to take binding decisions other than the power to adopt its own rules of procedure. The working group has adopted its own rules of procedure at its first meeting on 29 January 2021 (the 'Rules of Procedure').

Within the working group:

- (a) the Union and the United Kingdom exchange, in a timely manner, information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to the Protocol;
- (b) the Union informs the United Kingdom about planned Union acts within the scope of this Protocol, including Union acts that amend or replace the Union acts listed in the Annexes to the Protocol;
- (c) the Union provides to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and

- (d) the United Kingdom provides to the Union all information that Member States are required to provide to one another or to the institutions, bodies, offices or agencies of the Union pursuant to the Union acts listed in the Annexes to the Protocol.

The working group is co-chaired by the Union and the United Kingdom. The working group in principle meets on a monthly basis as from the end of the transition period, unless otherwise decided by the co-chairs by mutual consent. Where necessary, the Union and the United Kingdom exchange information referred to in points (c) and (d) above between meetings.

The Union ensures that all views expressed by the United Kingdom in the working group and all information provided by the United Kingdom in the working group, including technical and scientific data, are communicated to the relevant institutions, bodies, offices and agencies of the Union without undue delay.

2.3. The envisaged decision of the working group

The purpose of the envisaged decision for which the Union's position should be established is for the working group to adopt amendments to its own Rules of Procedure to provide for structured sub-groups, which will assist the working group in carrying out its functions as an effective forum for the exchange of information and mutual consultation.

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

The proper functioning of the working group requires rules of procedure covering, among others, the exchange of information regarding the composition of the delegations and participation in meetings, meetings of the working group, the drawing up of the agenda and the minutes, decisions, as well as the confidentiality and working language.

In view of the purpose of the working group and proposal to create structured sub-groups to assist the working group in carrying out its functions as an effective forum for the exchange of information and mutual consultation, the existing Rules of Procedure must be amended.

The position of the Union should therefore be to support the adoption of a decision by the working group amending its Rules of Procedure, in line with the draft decision attached to this proposal.

4. LEGAL BASIS

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 decision, which the working group is called upon to adopt, constitutes an act having legal effects.

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.

The sole objective and content of the envisaged act relates to establishing the Union's position on the amendment to the Rules of Procedure of a body established under the Withdrawal Agreement.

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

The legal basis of the proposed decision should therefore be Article 50(2) of the Treaty on European Union, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the purpose of the decision of the working group is to amend its Rules of Procedure, it is appropriate to publish the decision of the working group, including the amended Rules of Procedure, 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 the Functioning of the 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 Council Decision (EU) 2020/135 of 30 January 2020¹. The Protocol on Ireland/Northern Ireland (the ‘Protocol’) forms an integral part of the Withdrawal Agreement, pursuant to Article 182 thereof.
- (2) The Joint Consultative Working Group (the ‘working group’) was established by Article 15(1) of the Protocol, to serve as a forum for the exchange of information and mutual consultation on the implementation of that Protocol.
- (3) Pursuant to Article 15(2) of the Protocol, the working group is composed of representatives of the Union and the United Kingdom and is to carry out its functions under the supervision of the Specialised Committee on issues related to the implementation of the Protocol, established by Article 165(1), point (c) of the Withdrawal Agreement, to which it should report.
- (4) Pursuant to Article 15(6) of the Protocol, the working group is to adopt its own rules of procedure by mutual consent. The working group adopted its own rules of procedure at its first meeting on 29 January 2021 (the ‘Rules of Procedure’).

¹ 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, p.1)

- (5) It is necessary to amend the Rules of Procedure to allow the working group to be supported by structured sub-groups in order to improve the manner in which the working group carries out its tasks as defined in Article 15 of the Protocol.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the working group.
- (7) In order to allow for the prompt application of the measures provided for in this Decision, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the Joint Consultative Working Group established by Article 15(1) of the Protocol (the 'working group'), on a decision amending the rules of procedure of the working group, shall be based on the draft Decision of the working group attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President