



Council of the
European Union

044604/EU XXVII.GP
Eingelangt am 15/12/20

Brussels, 15 December 2020
(OR. en)

13917/20

Interinstitutional File:
2020/0369 (NLE)

UK 116

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union within 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 practical working arrangements relating to the exercise of the rights of Union representatives

COUNCIL DECISION (EU) 2020/...

of ...

**on the position to be taken on behalf of the European Union
within 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 practical working arrangements relating to the exercise
of the rights of Union representatives**

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 means of Council Decision (EU) 2020/135¹ on 30 January 2020 and entered into force on 1 February 2020.
- (2) Article 166 of the Withdrawal Agreement empowers the Joint Committee established by Article 164 of the Withdrawal Agreement ('the Joint Committee') to adopt decisions in respect of all matters for which the Withdrawal Agreement so provides. The Protocol on Ireland/Northern Ireland ('the Protocol') forms an integral part of the Withdrawal Agreement.
- (3) Article 12(2) of the Protocol establishes the right of the Union to be present during any activities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by the Protocol as well as activities related to the implementation and application of Article 5 of the Protocol. It specifically provides for the right to request information from the authorities of the United Kingdom relating to such activities and to request those authorities to carry out control measures.

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).

- (4) Article 12(3) of the Protocol provides for a decision by the Joint Committee setting out the practical working arrangements relating to the exercise of the rights granted by the Protocol in this regard. Those working arrangements should ensure that Union representatives are able to exercise the rights laid down in Article 12(2) of the Protocol effectively.
- (5) The presence of the Union provided for by the Protocol needs to take into account the unique circumstances on the island of Ireland, and rights of Union representatives should be exercised while giving due consideration to respect for foreign sovereignty as well as, in particular, to the Good Friday or Belfast Agreement of 10 April 1998.
- (6) 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 within the Joint Committee established by Article 164 of the Withdrawal Agreement as regards the practical working arrangements relating to the exercise of the rights of Union representatives referred to in Article 12(2) of the Protocol 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 .../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 ...

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

THE JOINT COMMITTEE

Having regard to the Protocol on Ireland/Northern Ireland annexed 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, and in particular Article 12(3) thereof,

HAS ADOPTED THIS DECISION:

Article 1
Subject matter

1. This Decision sets out the practical working arrangements relating to the exercise of the rights of Union, through its representatives, referred to in Article 12(2) of the Protocol on Ireland/Northern Ireland ('the Protocol').
2. For the purposes of this Decision, "covered activities" means any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by the Protocol, as well as activities related to the implementation and application of Article 5 of the Protocol, including of Joint Committee decisions adopted thereunder, pursuant to Article 12(2) of the Protocol.

Article 2
Union representatives

1. The Union shall ensure that its representatives exercising the rights under Article 12(2) of the Protocol act in good faith and closely cooperate with the authorities of the United Kingdom carrying out covered activities, and that they keep in close communication with them.
2. Union representatives exercising the rights under Article 12(2) of the Protocol shall not engage in any activities which do not relate to the exercise of those rights.

3. Union representatives shall take into account the guidance communicated to them by the authorities of the United Kingdom concerning their safety and the safety of others when exercising their right to be present. They shall respect any requirement lawfully imposed by the authorities of the United Kingdom responsible for law enforcement, subject to Title XII and Title XIII (Articles 120 and 121) of Part Three of the Withdrawal Agreement.
4. The Union shall ensure that its representatives may not disclose information of which they have knowledge by reason of exercising the rights under Article 12(2) of the Protocol other than to the institutions, bodies, offices and agencies of the Union as well as the authorities of the United Kingdom, unless they have been authorised by the competent institution, body, office or agency of the Union.
5. Union representatives have the right to be present during covered activities in the United Kingdom, including at all places where goods or animals enter or exit Northern Ireland through ports or airports. Union representatives may only access facilities referred to in Article 3(1) when the representatives of the authorities of the United Kingdom are present and using them for the purpose of carrying out covered activities, or when a facility is otherwise to be operational for that purpose. Union representatives may accompany any representatives of the authorities of the United Kingdom whenever the latter is carrying out any of the covered activities, including for inspections of sites other than those referred to in the previous sentence.

6. The United Kingdom shall facilitate the presence of the Union representatives exercising the rights under Article 12(2) of the Protocol and shall provide any equipment, amenities and other facilities, such as adequately equipped work stations and adequate IT connections, necessary to carry out their tasks.
7. The archives of the Union concerning any information related to any covered activities shall be inviolable.
8. Union representatives present in the United Kingdom shall not be hindered from moving freely in the United Kingdom for the purpose of exercising the rights under Article 12(2) of the Protocol.
9. When exercising the rights under Article 12(2) of the Protocol, Union representatives shall carry a photographic identification card certifying their name, function, and institution, body, office or agency of the Union. The Union shall issue such identification cards using a specimen which the Union shall share with the United Kingdom within one month of the entry into force of this Decision.
10. Upon arrival at the places where rights under Article 12(2) of the Protocol are exercised, the Union representative shall produce the identification card referred to in paragraph 9. Subject to paragraph 3, once duly identified, that Union representative shall immediately be granted access to the facility.

11. Union representatives shall be entitled to travel to the United Kingdom without prior notification or approval for the purpose of exercising the rights under Article 12(2) of the Protocol. They may travel to the United Kingdom using the laissez-passer issued by the Union.
12. Union representatives in the United Kingdom for the purpose of exercising the rights under Article 12(2) of the Protocol shall, together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens.
13. While in the United Kingdom for the purpose of exercising the rights under Article 12(2) of the Protocol, Union representatives shall be accorded the same facilities in respect of currency or exchange regulations as are customarily accorded to officials of international organisations residing in the United Kingdom and shall be exempt from national taxation on their salaries, wages and emoluments paid by the Union or the member states. Such privileges and immunities from taxation shall not apply to a Union representative if they are a British national (other than a British national who is also a national of a Member State of the Union and not resident in the United Kingdom at the time of appointment) or a permanent resident of the United Kingdom.

14. While in the United Kingdom for the purpose of exercising the rights under Article 12(2) of the Protocol, Union representatives shall enjoy the right to import and re-export free of duty their furniture and effects, including motor vehicles.
15. The activities of the Union representatives in the United Kingdom pursuant to Article 12(2) of the Protocol shall be considered, for the purposes of Title XII and Title XIII (Articles 120 and 121) of Part Three of the Withdrawal Agreement, to be activities of the Union pursuant to the Withdrawal Agreement.

Article 3
Contact points

1. The United Kingdom shall provide the Union with a list of authorities carrying out covered activities and their facilities.

The United Kingdom shall designate a contact point for each of the authorities referred to in the first subparagraph, and provide the Union with relevant contact details.
2. The United Kingdom shall communicate any amendments to the list referred to in the first subparagraph of paragraph 1, or any change of contact point or details, to the Union expeditiously.
3. The Union shall designate a contact point for the purpose of paragraph 2.

Article 4
Modalities of requesting information

1. The United Kingdom representative or contact point, as the case may be, shall respond to any request for information expeditiously, thereby giving the Union representative sufficient time to assess the information for the purposes of exercising the rights under Article 12(2) of the Protocol.
2. If the authorities of the United Kingdom consider that a request for information or the relevance of such request is not clear, or that the scope of information requested would make compliance with a request excessively burdensome, they may ask the Union representative who made the request to clarify or refine its scope.
3. When exercising the rights under Article 12(2) of the Protocol, and with due consideration of their obligations referred to in Article 2(1) of this Decision, Union representatives shall have the right to examine and, where necessary, copy documents and records in the possession of the authorities of the United Kingdom which contain information relevant to the covered activities. The Union shall protect this information in accordance with Article 2(4).
4. Union representatives may request that authorities of the United Kingdom carrying out covered activities provide relevant information about those activities.

Article 5

Electronic access to applicable information systems, databases and networks

1. Upon request from the Union, the United Kingdom shall grant Union representatives ongoing and continuous electronic access on a real-time basis to relevant information contained in the United Kingdom networks, information systems and databases and United Kingdom national modules of Union systems (hereinafter: 'IT systems') listed in Annex 1, to the extent necessary for Union representatives there to exercise the rights under Article 12(2) of the Protocol. The Union shall ensure that its representatives protect such information in accordance with paragraphs 3 and 4.
2. Upon request from the Union, the United Kingdom shall also grant Union representatives electronic access to relevant information contained in the IT systems referred to in Annex 2, to the extent necessary for Union representatives to exercise the rights under Article 12(2) of the Protocol. The Union shall ensure that its representatives protect such information in accordance with paragraphs 3 and 4.
3. The access granted, which can also be exercised remotely, is subject to adherence by Union representatives to the security and other user requirements of each of these IT systems.

4. The Union shall ensure that its representatives may use information as referred to in paragraphs 1 and 2 only for the purpose of exercising the rights under Article 12(2) of the Protocol. The Union shall ensure that its representatives do not disclose information accessed pursuant to paragraphs 1 and 2 other than to the institutions, bodies, offices and agencies of the Union as well as the authorities of the United Kingdom, unless they have been so authorised by the customs authorities of the United Kingdom and by the competent institution, body, office or agency of the Union. The customs authorities of the United Kingdom may not decline to authorise such disclosure except for duly stated reasons.
5. The United Kingdom shall communicate any change as regards the existence, scope or operation of the IT systems listed in Annex 1 and 2 to the Union, in good time before such changes become effective.

Article 6

Modalities of requesting control measures

1. Union representatives may request control measures in individual cases, both orally and in writing. Such requests shall duly state the reasons for requesting the specific control measure. Requests shall ordinarily be directed at the relevant United Kingdom authority's contact person, but oral requests may also be directed at a representative of the authorities of the United Kingdom.

2. The United Kingdom authorities shall carry out the requested control measure expeditiously.
3. If the authorities of the United Kingdom consider that the reasons given by Union representatives for their request are insufficient or unclear, the authorities of the United Kingdom may ask Union representatives to clarify or explain their reasons in greater detail.

Article 7

The Joint Committee shall review this Decision at the latest [three] years after its entry into force and following a request from the Union or the United Kingdom.

Article 8

Entry into force

This Decision shall enter into force on 1 January 2021.

Done at ...,

For the Joint Committee

The Co-chairs

ANNEX 1

IT systems containing information required for the implementation of Union legislation referred to in the first sentence of Article 5(3) of the Protocol and of Article 5(1) and (2) of the Protocol

- Customs Declarations Service (CDS), including risk profiles and information on presentation and temporary storage of the goods where available
- Goods Vehicle Movement Service (GVMS)
- Freight Targeting System, including information collected by alternative means in relation to the UK declaration on export declarations
- National domain of Northern Ireland Import Control System (ICS), including risk profiles
- National domain of Northern Ireland New Computerised Transit System (NCTS)

Other systems used by UK authorities to implement Articles 5(2) and (4) and 6(1) of the Protocol, including information regarding authorisations (UCC and Protocol relevant authorisations and decisions).

ANNEX 2

Other IT systems containing information required for carrying out covered activities

- National Domain Excise Movement and Control System (EMCS)
 - National Domain VAT Information Exchange System (VIES) and any directly relevant UK database, in order to consult registration data of NI traders and the information provided by NI traders to the UK Tax administration on taxable transactions in respect of intra-EU acquisitions of goods taking place in NI and that need to be declared by NI traders.
 - National Domain (Import) One Stop Shop (IOSS and OSS)
 - National Domain VAT Refund
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