

COUNCIL DECISION (EU) 2021/2**of 17 December 2020**

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 the adoption of a decision to amend the Protocol on Ireland/Northern Ireland

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) 2020/135 ⁽¹⁾ on 30 January 2020 and entered into force on 1 February 2020.
- (2) Point (d) of Article 164(5) of the Withdrawal Agreement empowers the Joint Committee established by Article 164 of the Withdrawal Agreement ('the Joint Committee') to adopt decisions amending the Withdrawal Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Agreement was signed, and provided that such decisions do not amend the essential elements of the Withdrawal Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom. The Union and the United Kingdom are to implement those decisions, which are to have the same legal effect as the Withdrawal Agreement. The Protocol on Ireland/Northern Ireland ('the Protocol') forms an integral part of the Withdrawal Agreement.
- (3) On 10 June 2020 the Council adopted Decision 2020/769 ⁽²⁾, which established the position to be taken on the Union's behalf in the Joint Committee as regards certain amendments to the Withdrawal Agreement. It remains necessary for seven acts which are essential for the application of the rules of the internal market for goods to Northern Ireland to be listed in Annex 2 to the Protocol. It is also necessary to insert three notes in order to further define the scope of application of certain specific acts listed in Annex 2 to the Protocol.
- (4) Two legal acts on the CO₂ emission performance of new cars and vans registered in the Union have been mistakenly listed in point 9 of Annex 2 to the Protocol. Unlike other legislation listed in Annex 2 to the Protocol and made applicable by Article 5(4) of the Protocol, those two acts do not relate to the placing on the market of goods in the Union. They should therefore be removed from that Annex.
- (5) One legal act on single-use plastics relates to the placing on the market of such goods and to the free movement of goods, albeit only partially. Only those provisions that are essential for the application of the rules of the internal market in respect of Northern Ireland should be included in Annex 2 to the Protocol.

⁽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).

⁽²⁾ Council Decision (EU) 2020/769 of 10 June 2020 establishing the position to be adopted 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 Agreement (OJ L 187, 12.6.2020, p. 12).

- (6) The Joint Committee should adopt a decision pursuant to point (d) of Article 164(5) of the Withdrawal Agreement to address those errors.
- (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 within the Joint Committee established by Article 164 of the Withdrawal Agreement as regards the amendment 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 Brussels, 17 December 2020.

For the Council
The President
S. SCHULZE

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 ...****amending the Protocol on Ireland and Northern Ireland 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 JOINT COMMITTEE,

Having regard 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'), and in particular point (d) of Article 164(5) thereof,

Whereas:

- (1) Point (d) of Article 164(5) of the Withdrawal Agreement enables the Joint Committee established under Article 164(1) thereof ('the Joint Committee') to adopt decisions amending the Withdrawal Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Agreement was signed, and provided that such decisions do not amend essential elements of that Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom. The Union and the United Kingdom must implement such decisions, which have the same legal effect as the Withdrawal Agreement.
- (2) Under Article 182 of the Withdrawal Agreement, the Protocol on Ireland/Northern Ireland ('the Protocol') forms an integral part of that Agreement.
- (3) Two legal acts on the CO₂ emission performance of new cars and vans registered in the Union which are listed under heading 9 of Annex 2 to the Protocol and made applicable to and in the United Kingdom in respect of Northern Ireland by Article 5(4) of that Protocol, do not relate to the placing on the market of such vehicles in the Union. They should therefore be removed from Annex 2 to the Protocol;
- (4) Eight legal acts which are essential for the application of the rules of the internal market for goods in respect of Northern Ireland and which were omitted at the time of adoption, should be added to Annex 2 to the Protocol.
- (5) In order to clarify the scope of application of certain acts already listed in Annex 2 to the Protocol, three notes should be added to that Annex,

HAS ADOPTED THIS DECISION

Article 1

Annex 2 to the Protocol shall be amended as follows:

1. under the heading '9. Motor vehicles, including agricultural and forestry tractors', the following entries shall be deleted:
 - Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emissions performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles
 - Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles;

2. under the heading ‘6. Regulations on bilateral safeguards’, the following entry shall be added:

‘– Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries ⁽¹⁾’;

3. under the heading ‘23. Chemicals and related’, the following entry shall be added:

‘– Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors ⁽²⁾’;

4. under the heading ‘25. Waste’, the following entry shall be added:

‘– Articles 2 to 7, Articles 14 and 17 and Parts A, B, C, D and F of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment ⁽³⁾’;

5. under the heading ‘29. Food – general’, the following entry shall be added:

‘– Directive 2011/91/EU of the European Parliament and of the Council of 13 December 2011 on indications or marks identifying the lot to which a foodstuff belongs ⁽⁴⁾’;

6. under the heading ‘42. Plant reproductive material’, the following entries shall be added:

‘– Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed ⁽⁵⁾

– Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants ⁽⁶⁾

– Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed ⁽⁷⁾’;

7. under the heading ‘47. Other’, the following entry shall be added:

‘– Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods’;

8. under the heading ‘4. General trade related aspects’, following the entry for ‘Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008’, the following note shall be inserted:

‘Without prejudice to the fact that the tariff preferences for eligible countries pursuant to the Union’s General Scheme of Preferences shall be applicable in the United Kingdom in respect of Northern Ireland:

— the references to “Member State” in Article 9(1)(c)(ii) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the United Kingdom in respect of Northern Ireland,

— the references to “Union market” in Article 2(k) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the market of United Kingdom in respect of Northern Ireland, and

— the references to “Union producers” and to “Union industry” in Regulation (EU) No 978/2012 shall not be read as including the producers or industry of the United Kingdom in respect of Northern Ireland.’;

⁽¹⁾ OJ L 53, 22.2.2019, p. 1.

⁽²⁾ OJ L 22, 26.1.2005, p. 1.

⁽³⁾ OJ L 155, 12.6.2019, p. 1.

⁽⁴⁾ OJ L 334, 16.12.2011, p. 1.

⁽⁵⁾ OJ L 125, 11.7.1966, p. 2298.

⁽⁶⁾ OJ L 226, 13.8.1998, p. 16.

⁽⁷⁾ OJ L 205, 1.8.2008, p. 28.

9. under the heading ‘5. Trade defence instruments’, directly under the heading, the following note shall be inserted:

‘Without prejudice to the fact that the Union’s trade defence measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to “Member States” or “Union” in Regulation (EU) 2016/1036, Regulation (EU) 2016/1037, Regulation (EU) 2015/478 and Regulation (EU) 2015/755 shall not be read as including the United Kingdom in respect of Northern Ireland. In addition, importers that paid Union anti-dumping or countervailing duties on the importation of goods that were customs cleared in Northern Ireland may only ask for a refund of such duties pursuant to Article 11(8) of Regulation (EU) 2016/1036 or Article 21 of Regulation (EU) 2016/1037, respectively.’;

10. under the heading ‘6. Regulations on bilateral safeguards’, directly under the heading, the following note shall be inserted:

‘Without prejudice to the fact that the Union’s bilateral safeguard measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to “Member States” or “Union” in the regulations listed below shall not be read as including the United Kingdom in respect of Northern Ireland.’;

11. under the heading ‘25. Waste’, following the entry for ‘Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment’, the following note shall be inserted:

‘In relation to the application of those Articles and Parts to and in the United Kingdom in respect of Northern Ireland, any reference to “3 July 2021” in Articles 4 (1), 14 and 17 (1) is to be read as “1 January 2022”. Articles 2, 3, 14 and 17, and Part F of the Annex, shall only apply insofar as they relate to Articles 4 to 7.’.

Article 2

This Decision shall enter into force on the day following the date of its adoption.

Done at ...,

*For the Joint Committee
The Co-chairs*
