

**JOINT DECLARATION 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

on the application of Article 10(1) of the Windsor Framework ⁽¹⁾

The provisions of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part govern the subsidy control obligations between the United Kingdom and the Union generally and ensure a level playing field between the United Kingdom and the Union.

Article 10(1) of the Windsor Framework exists separately from those provisions. The Windsor Framework reflects both Northern Ireland's unique access to the Union's internal market and its integral place in the United Kingdom's internal market. In this context, Article 10(1) of the Windsor Framework should be understood as only relevant for trade in goods or on the electricity market (hereafter referred to as goods) between Northern Ireland and the Union which is subject to the Windsor Framework.

On 17 December 2020, the Union made the following unilateral declaration in the Joint Committee established under Article 164 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: 'When applying Article 107 TFEU to situations referred to in Art. 10(1) of the Protocol, the European Commission will have due regard to Northern Ireland's integral place in the United Kingdom's internal market. The European Union underlines that, in any event, an effect on trade between Northern Ireland and the Union which is subject to this Protocol cannot be merely hypothetical, presumed, or without a genuine and direct link to Northern Ireland. It must be established why the measure is liable to have such an effect on trade between Northern Ireland and the Union, based on the real foreseeable effects of the measure.'

This Joint Declaration on the application of Article 10(1) of the Windsor Framework builds upon the Union Unilateral Declaration, affirming Northern Ireland's place in the United Kingdom's internal market, and at the same time ensuring that the Union internal market is protected. It clarifies the conditions of application of Article 10(1) of the Windsor Framework setting out the particular circumstances in which it is likely to be engaged when subsidies are granted in the United Kingdom, and can be used to interpret that provision.

For a measure to be considered to have a genuine and direct link to Northern Ireland and thus to have an effect on the trade between Northern Ireland and the Union that is subject to the Windsor Framework, that measure needs to have real foreseeable effects on that trade. The relevant real foreseeable effects should be material, and not merely hypothetical or presumed.

For measures granted to any beneficiary that is located in Great Britain, factors relevant to materiality may include the size of the undertaking, the size of the subsidy, and the market presence of the undertaking in the relevant market in Northern Ireland. While the mere placement of goods on the Northern Ireland market is not sufficient, on its own, to represent a direct and genuine link engaging Article 10(1) of the Windsor Framework, measures that are granted to beneficiaries located in Northern Ireland are more likely to have material effects.

For measures granted to any beneficiary that is located in Great Britain that have a material effect, it must be further demonstrated that the economic benefit of the subsidy would be wholly or partially passed on to an undertaking in Northern Ireland, or through the relevant goods placed on the market in Northern Ireland, for example through selling below market price, for there to be a direct and genuine link engaging Article 10(1) of the Windsor Framework.

⁽¹⁾ See Joint Declaration No 1/2023.

The European Commission and the United Kingdom will set out in their respective guidance the circumstances in which Article 10 of the Windsor Framework will apply, providing further detail to enable both granters and businesses across the United Kingdom to operate with greater certainty.
