EUROPEAN
COMMISSION

Brussels, 23.9.2021
COM(2021) 593 final

2021/0303 (NLE)

Proposal for a

COUNCIL DECISION

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 adoption of a decision to amend the Agreement

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 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 ('the Withdrawal Agreement') on a Joint Committee Decision to amend that 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

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.

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.

2.3. The envisaged decision of the Joint Committee

The Joint Committee can adopt a decision amending the Withdrawal Agreement, pursuant to Article 164(5)(d) of the Agreement, to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Withdrawal Agreement was signed, provided that the modifications do not amend the essential elements of the Agreement.

The purpose of the envisaged decision is to address omissions and deficiencies, which do not amend the essential elements of the Withdrawal Agreement.

The envisaged decision will become binding on the Parties in accordance with Article 166(2) of the Withdrawal Agreement. In accordance with Rule 9 of the Rules of Procedure, decisions adopted by the Joint Committee will specify the date at which they take effect.

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

3.1. Part I of Annex I to the Withdrawal Agreement on social security coordination

Part I of Annex I to the Withdrawal Agreement contains the decisions and recommendations of the Administrative Commission for the Coordination of Social Security Systems of which the Union and the United Kingdom must take due account when applying the social security coordination rules (see Article 31 of the Withdrawal Agreement).

On 18 October 2017, the Administrative Commission for the Coordination of Social Security Systems approved Recommendation No A1 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council. This Recommendation was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

On 19 October 2017, the Administrative Commission for the Coordination of Social Security Systems approved Decision No E6 concerning the determination of when an electronic message is considered legally delivered in the Electronic Exchange of Social Security Information (EESSI) system. This Decision was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

On 17 June 2020, the Administrative Commission for the Coordination of Social Security Systems approved Decision No H9 regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 of the European Parliament and of the Council as well as in Decision No S9 due to the COVID-19 Pandemic. This Decision was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

On 21 October 2020, the Administrative Commission for the Coordination of Social Security Systems approved Decision No H10 concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems. This Decision was, however, not listed in Annex I to the Withdrawal Agreement, and should be added. This Decision replaces Decision No H8 concerning the methods of operation and the composition of the Technical Commission for data processing of the Administrative Commission for the Coordination of Social Security Systems. Decision No H8 will therefore be removed from Part I of Annex I to the Withdrawal Agreement.

On 9 December 2020, the Administrative Commission for the Coordination of Social Security Systems approved Decision No H11 of the Administrative Commission for the Coordination of Social Security Systems regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 as well as in Decision No S9 due to the COVID-19 Pandemic. This Decision was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

On 10 October 2018, the Administrative Commission for the Coordination of Social Security Systems approved Recommendation No H2 concerning the inclusion of authentication features to Portable Documents issued by the institution of a Member State and showing the position of a person for the purpose of the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council. This Recommendation was, however, not listed in Annex I to the Withdrawal Agreement, and should be added.

On 9 December 2020, the Administrative Commission for the Coordination of Social Security Systems approved Decision No S11 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004. This Decision replaces Decision No S9 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004. Decision No S9 will therefore be removed from Part I of Annex I to the Withdrawal Agreement.

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 Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on the law of the Parties in accordance with Article 166(2) of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the 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, on one hand, amending the Agreement to address errors, omissions and deficiencies, while not amending the essential elements therein, and, on the other, amending the Agreement in a case specifically foreseen by the latter.

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

Therefore, and in accordance with the basic principle that an act can be amended only by an act of the same type, the substantive legal basis of the proposed decision is Article 50(2) of the Treaty on European Union.

4.1. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the decision of the Joint Committee will amend the Withdrawal Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

2021/0303 (NLE)

Proposal for a

COUNCIL DECISION

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 adoption of a decision to amend the Agreement

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) 2020/135[1] of 30 January 2020 and entered into force on 1 February 2020.

(2) Article 164(5)(d) of the Withdrawal Agreement empowers the Joint Committee to adopt decisions amending that 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 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, and the Union and the United Kingdom must implement those decisions, which shall have the same legal effect as the Withdrawal Agreement.

(3) By oversight, one decision and one recommendation of the Administrative Commission for the Coordination of Social Security Systems have not been listed in Part I of Annex I to the Withdrawal Agreement. Four other decisions and one recommendation were adopted before the end of the transition period. These decisions and recommendations should therefore be added to this annex.

(4) The Joint Committee should adopt a decision pursuant to Article 164(5)(d) of the Withdrawal Agreement to address these omissions and deficiencies.

(5) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

[1] OJ L 29, 31.1.2020, p.1.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee established by Article 164(1) of the Withdrawal Agreement, on a decision to be taken in accordance with Article 164(5)(d) thereof, 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,

For the Council
The President