EUROPEAN
COMMISSION

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2020/0285 (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 adoption 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 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 adopt 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

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 on Ireland/Northern Ireland to the Withdrawal Agreement ('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.

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 meets at least once a month as from the end of the transition period, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, the Union and the United Kingdom may 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

Pursuant to Article 15(6) of the Protocol, the working group shall adopt its own rules of procedure by mutual consent.

The purpose of the envisaged decision for which the Union's position should be established is for the working group to adopt its rules of procedure.

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 designation of the co-chairs, the composition of the secretariat, the exchange of information regarding the composition of the delegations, the place where the meeting should take place, the handling of documents and correspondence, the drawing up of the agenda and the minutes, the confidentiality and the working language of the meeting, as well as the expenses to be borne by the delegations.

In view of the purpose and composition of the working group and its relation with the Specialised Committee on issues related to the implementation of the Protocol, these rules should be similar, to the extent possible, to the rules of procedure provided for in Annex VIII to the Withdrawal Agreement as regards the Specialised Committees established under Article 165 of the Withdrawal Agreement.

The position of the Union should therefore be to support the adoption of a decision by the working group pursuant to Article 15(6) of the Protocol establishing such rules of procedure to govern its work, 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 Council 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 rules of procedure of a body established under the Withdrawal Agreement, and which pursuant to that same agreement, shall adopt its own rules of procedure by mutual consent.

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 adopt its rules of procedure, similarly to rules of procedure of the Joint Committee and the Specialised Committees provided for in the Withdrawal Agreement, it is appropriate to publish the decision of the working group, including the 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 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[1] and entered into force on 1 February 2020.

(2) The Joint Consultative Working Group (the 'working group') was established by Article 15(1) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ('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 to be 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)(c) of the Withdrawal Agreement, to which it should report.

(4) Pursuant to Article 15(6) of the Protocol, the working group adopts its own rules of procedure by mutual consent.

(5) In view of the purpose and composition of the working group and its relation with the Specialised Committee on issues related to the implementation of the Protocol, the rules of procedure should be similar to the rules of procedure provided for in Annex VIII to the Withdrawal Agreement as regards the Specialised Committees established by Article 165(1) of the Withdrawal Agreement.

(6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the working group.

[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 (Text with EEA relevance) (OJ L 29, 31.1.2020, p.1).

(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 working group established by Article 15(1) of the Protocol, on a decision to be taken in accordance with Article 15(6) thereof, shall be based on the draft decision of the working group attached to this Decision.

Article 2

The decision of the working group 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

ANNEX

Decision No …/2020 of 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

of …

adopting its rules of procedure

THE JOINT CONSULTATIVE WORKING GROUP,

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[2] (the 'Withdrawal Agreement'), and in particular Article 15(6) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ('the Protocol'),

Whereas:

(1) Pursuant to Article 15(6) of the Protocol, the Joint Consultative Working Group (the 'working group') is to adopt its own rules of procedure by mutual consent.

(2) In view of the purpose and composition of the working group and its relation with the Specialised Committee on issues related to the implementation of the Protocol, the rules of procedure of the working group should be similar to the rules of procedure provided for in Annex VIII to the Withdrawal Agreement as regards the Specialised Committees established under Article 165 of the Withdrawal Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The work of the Joint Consultative Working Group established by Article 15(1) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement shall be governed by the rules of procedure set out in the Annex to this Decision.

Article 2

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

Done at …,

For the Joint Consultative Working Group

The Co-chairs

[2] OJ L 29, 31.1.2020, p.7.

ANNEX

RULES OF PROCEDURE OF THE JOINT CONSULTATIVE WORKING GROUP

Rule 1

Chair

1. The Joint Consultative Working Group (the “working group”) shall be co-chaired by a representative designated by the European Commission and by a representative designated by the Government of the United Kingdom. The European Union and the United Kingdom shall notify each other in writing of the designated representatives.

2. A co-chair who is unable to attend a meeting may be replaced for that meeting by a designated alternate. An alternate designated by the European Commission or an alternate designated by the Government of the United Kingdom shall inform the other co-chair and the Secretariat of the working group in writing of the designation as early as possible.

3. The designated alternate of the co-chair shall exercise the rights of that co-chair to the extent of the designation. Any reference in these Rules of Procedure to the co-chairs shall be understood to include a designated alternate.

Rule 2

Secretariat

The Secretariat of the working group (the "Secretariat") shall be composed of an official of the European Commission and an official of the Government of the United Kingdom. The Secretariat shall, under the authority of the co-chairs, perform the tasks conferred on it by these Rules of Procedure.

Rule 3

Participation in meetings

1. Before each meeting, the Union and the United Kingdom shall inform each other through the Secretariat of the intended composition of the delegations.

2. Where appropriate and by decision of the co-chairs, experts or other persons who are not members of delegations may be invited to attend meetings of the working group in order to provide information on a particular subject.

Rule 4

Meetings

1. The working group shall hold its meetings alternately in Brussels and the United Kingdom, unless the co-chairs decide otherwise.

2. By way of derogation from paragraph 1, the co-chairs may decide that a meeting of the working group be held by videoconference or teleconference.

3. Each meeting of the working group shall be convened by the Secretariat at a date and place decided by the co-chairs. Where either the Union or the United Kingdom has made a request for a meeting, the working group shall endeavour to meet within 15 days of such request. In cases of urgency it shall endeavour to meet sooner.

Rule 5

Documents

Written documents exchanged formally within the working group, whether at or in between meetings, shall be numbered and circulated to the Union and the United Kingdom by the Secretariat as documents of the working group.

Rule 6

Correspondence

1. The Union and the United Kingdom shall send their correspondence addressed to the working group to the Secretariat. Such correspondence may be sent in any form of written communication, including by electronic mail.

2. The Secretariat shall ensure that correspondence addressed to the working group is forwarded to the co-chairs and is circulated, where appropriate, in accordance with Rule 5.

3. All correspondence from or addressed directly to the co-chairs shall be forwarded to the Secretariat and shall be circulated, where appropriate, in accordance with Rule 5.

Rule 7

Agenda for the meetings

1. For each meeting a draft provisional agenda shall be drawn up by the Secretariat. It shall be transmitted, together with the relevant documents, to the co-chairs no later than 5 days before the date of the meeting.

2. The provisional agenda shall include those items, the inclusion of which in the agenda has been requested by the Union or the United Kingdom. Any such request, together with any relevant document, shall be submitted to the Secretariat no later than 7 days before the beginning of the meeting.

3. No later than 3 days before the date of the meeting, the co-chairs shall decide on the provisional agenda for a meeting. They may decide to make that provisional agenda, or any part thereof, public before the beginning of the meeting.

4. The agenda shall be adopted by the working group at the beginning of each meeting. On request by the Union or the United Kingdom an item other than those included in the provisional agenda may be included in the agenda by decision of the working group.

5. The co-chairs may decide to derogate from the time limits specified in paragraphs 1 to 3.

Rule 8

Minutes

1. Draft minutes of each meeting shall be drawn up by the Secretariat, within 5 days from the end of the meeting, unless the co-chairs decide otherwise. The Secretariat shall also prepare a summary of the minutes.

2. The minutes shall, as a rule, summarise each item on the agenda, specifying where applicable:

   (a) the documents submitted to the working group;

   (b) any statement that one of the co-chairs requested to be entered in the minutes; and

   (c) and operational conclusions adopted on specific items.

3. The minutes shall include a list of the names, titles and capacity of all individuals who attended the meeting.

4. Co-chairs may request an amendment to the draft minutes or summary within 5 days of their circulation by the Secretariat in accordance with paragraph 1. The minutes and summary shall be considered as approved by the co-chairs upon expiry of that period if no amendments were requested. If a co-chair requests an amendment within that period, the minutes and summary shall be considered as approved once the other co-chair has agreed to the requested amendment.

5. Once approved, electronic copies of the minutes shall be signed by the members of the Secretariat and transmitted to the Union and the United Kingdom, as well as to the Specialised Committee on issues related to the implementation of the Protocol on Ireland / Northern Ireland. The co-chairs may then decide to make the summary of the minutes public.

Rule 9

Decisions

1. The decisions of the co-chairs provided for by these rules of procedure shall be taken by mutual consent.

2. In the period between meetings, the co-chairs may take such decisions by written communication through an exchange of electronic notes between the co-chairs. The Secretariat shall inform the parties of any such decisions of the co-chairs.

Rule 10

Confidentiality

1. Unless otherwise decided by the co-chairs, the meetings of the working group shall be confidential.

2. Where the Union or the United Kingdom submits information considered as confidential or protected from disclosure under its laws and regulations to the working group, the other party shall treat that information received as confidential.

Rule 11

Working language

The working language of the working group shall be English. Unless otherwise decided by the co-chairs, the working group shall base its deliberations on documents prepared in English.

Rule 12

Expenses

1. The Union and the United Kingdom shall each meet any expenses they incur as a result of participating in the meetings of the working group.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Union for meetings held in Brussels, and by the United Kingdom for meetings held in the United Kingdom.

3. Expenditure in connection with interpretation to and from the working language of the working group at meetings shall be borne by the party requesting such interpretation.

Rule 13

Annual report to the Specialised Committee

1. The Secretariat shall draw up a report on the work of the working group each calendar year. The report shall be drawn up by 1 February of the following year.

2. Each report shall be adopted and signed by the co-chairs and shall be sent to the Specialised Committee on issues related to the implementation of the Protocol on Ireland / Northern Ireland immediately after the signature.