Council Decision (EU) 2020/2186 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 practical working arrangements relating to the exercise of the rights of Union representatives

COUNCIL DECISION (EU) 2020/2186

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 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) 2020/135[(1)] 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.

(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

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/2186. (See end of Document for details)*

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 Brussels, 17 December 2020.

For the Council

The President

S. SCHULZE

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

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:

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/2186. (See end of Document for details)*

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 though 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.