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I am writing to draw your attention to the Explanatory Memorandum we have laid in Parliament today on a European Commission proposal to the Council on the EU position to be adopted in the Joint Consultative Working Group (JCWG) regarding the decision on its rules of procedure.

While the proposal itself does not require a UK response as it concerns the Union position to be taken in respect of the JCWG agreeing its rules of procedure, I am aware that your Committee has a keen interest in the JCWG and its operation. The rules of procedure set out the technical arrangements for the meetings of the Group and are in line with the Rules of Procedure under the Withdrawal Agreement. As set out in Article 15 of the Northern Ireland Protocol, the Group will adopt its own rules of procedure so once the Council decision process has concluded, the Group will meet and adopt the rules of procedure.

Officials will continue to work with your, and the other Parliamentary scrutiny committees, and the Northern Ireland Executive and Assembly as we design the overall governance process for the Withdrawal Agreement and Protocol post-transition period.

With every good wish,



Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
and Minister for the Cabinet Office

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

11643/20

COM(20)636 Final

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

Submitted by the Cabinet Office on 23 October 2020.

SUBJECT MATTER

1. The European Commission's proposal seeks a Council decision on the position to be adopted on the Union's behalf in the Joint Consultative Working Group (JCWG) established by Article 15 of the Protocol on Ireland/Northern Ireland ('the Protocol') 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 JCWG decision adopting its rules of procedure.

2. Article 15 of the Protocol establishes a JCWG on implementation of the Protocol to '*serve as a forum for the exchange of information and mutual consultation*'. It is composed of representatives of the UK and the Union and sits under the supervision of, and reports to, the Ireland/Northern Ireland Specialised Committee, established under Article 165 of the Withdrawal Agreement.

3. The JCWG has the power to adopt its own rules of procedure by mutual consent, under Article 15(6). Article 15 also sets out the role of the JCWG as follows:

- It shall have no power to take binding decisions other than the power to adopt its own rules of procedure.
- Within the working group, the Union and the UK shall exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes.
- Within the working group, the Union shall inform the UK about planned Union acts within the scope of the Protocol, including Union acts that amend or replace the Union acts listed in the Annexes.

- Within the working group, the Union shall provide to the UK all information the Union considers relevant to allow the UK to fully comply with its obligations under the Protocol.
- Within the working group the UK shall provide 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.
- It shall be co-chaired by the Union and the UK.
- It shall meet at least once a month, unless otherwise decided by the Union and the UK by mutual consent. Where necessary, the Union and the UK may exchange information between meetings.

4. The proposal does not require a UK response as it is concerned with the Union's position to be taken in respect of the JCWG adopting its rule of procedure. The proposed rules of procedure provide for the mechanics of the meeting of the JCWG, including the designation of the co-chairs, the composition of the secretariat, the exchange of information regarding the composition of the delegations, 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, and expenses.

SCRUTINY HISTORY

5. None since this is a new proposal concerning the Union's position in respect of the rules of procedure for a new Joint Consultative Working Group established under the Northern Ireland Protocol.

MINISTERIAL RESPONSIBILITY

6. The Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office has oversight of transition period activity and the UK's future relations with the EU.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. Northern Ireland Executive Ministers have an interest in the ongoing governance of the Northern Ireland Protocol and officials will be invited as part of the UK delegation of the Joint Consultative Working Group. The Northern Ireland Executive has been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU)

ii. Voting Procedure

Qualified majority voting

iii.. Timetable for adoption and implementation (or expected next steps for non-legislative documents)

After the Council has adopted this Decision, [the UK and EU Commission will appoint the respective co-chairs who will then agree a date for the first meeting of the Joint Consultative Working Group where the rules of procedure contained in this Decision will be adopted.]

iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?

Not applicable as this is a non-legislative document.

v. Do JHA opt-in, Schengen opt-out issues arise?

No

POLICY IMPLICATIONS

8. These rules of procedure which the UK supports are proportionate, providing for the mechanics of the meetings of the JCWG and are in line with the rules of procedure set out in the Withdrawal Agreement for the Joint Committee and the Ireland/Northern Ireland Specialised Committee.

9. The JCWG will provide the forum at working level that facilitates the operation of the Protocol. It will have an important role to play in being the body through which the EU informs the UK about amendments to Union law listed in the Annexes to the Protocol, and through which the UK has a formal opportunity to influence the development of EU law where it is relevant to the Protocol.

10. The proposed rules of procedure focus on the mechanics of the meetings of the JCWG but it is worth noting the obligation on the Secretariat to produce an annual report on the work of the JCWG to be sent to the Ireland/Northern Specialised Committee.

11. The UK Government has committed to inviting officials from the Northern Ireland Executive as part of the UK delegation to the JCWG, in line with the commitments made in *New Decade, New Approach* for the Withdrawal Agreement Joint Committee and the Ireland/Northern Ireland Specialised Committee.

12. Officials will continue to work with the Parliamentary scrutiny committees and the Northern Ireland Executive and Assembly as we design the overall governance process for the Withdrawal Agreement and Protocol post-transition period.

CONSULTATION

13. None

FINANCIAL IMPLICATIONS

14. There are no financial implications arising from the proposal. However, the adoption of the rules of procedure by the JCWG will impact on how the expenditure in connection with the organisation of meetings is determined. The rules of procedure state, at Rule 12, that the expenses incurred as a result of participating in the meetings of the Joint Consultative Working Group shall be borne by the UK and the Union, and any expenditure in connection with the organisation of meetings held in the UK shall be borne by the UK.

A handwritten signature in black ink that reads "Michael Gove". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

Rt Hon Michael Gove MP

Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office

Cabinet Office
