



Brussels, 14.11.2022  
COM(2022) 589 final

2022/0366 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union within the Partnership Council established by 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, as regards the adoption of a decision establishing a list of individuals who are willing and able to serve as members of an arbitration tribunal under 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 Partnership Council established by 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 ('the Trade and Cooperation Agreement') on a Partnership Council decision to establish a list of individuals who are willing and able to serve as members of an arbitration tribunal under the Agreement.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Trade and Cooperation Agreement**

The Trade and Cooperation Agreement concluded between the EU and the United Kingdom sets out preferential arrangements in areas such as trade in goods and in services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in Union programmes. It is underpinned by provisions ensuring a level playing field and respect for fundamental rights.

#### **2.2. The Partnership Council**

The Partnership Council established under Article 7(1) of the Trade and Cooperation Agreement comprises representatives of the Union and of the United Kingdom. It is co-chaired by the Union and the United Kingdom. Annex I to the Trade and Cooperation Agreement lays down the rules of procedure of the Partnership Council. The tasks of the Partnership Council are laid down in Article 7 of the Trade and Cooperation Agreement and consist principally of:

- overseeing the attainment of the objectives of this Agreement and any supplementing agreement;
- adopting decisions and recommendations, including amendments to the Agreement in the cases provided therein.

#### **2.3. The envisaged act of the Partnership Council**

In accordance with Article 752(1) of the Trade and Cooperation Agreement, the Partnership Council shall, no later than 180 days after the date of entry into force of the Trade and Cooperation Agreement, establish a list of at least 15 individuals with expertise in specific sectors covered by this Agreement or its supplementing agreements who are willing and able to serve as members of an arbitration tribunal. The list shall be composed of three sub-lists:

- (a) one sub-list of individuals established on the basis of proposals by the Union;
- (b) one sub-list of individuals established on the basis of proposals by the United Kingdom; and

- (c) one sub-list of individuals who are not nationals of either Party who shall serve as chairperson to the arbitration tribunal.

The purpose of the envisaged decision is to establish the list of persons who are willing and able to serve as members of arbitration tribunals under the Trade and Cooperation Agreement.

The envisaged decision will become binding on the Parties in accordance with Article 10(1) of the Trade and Cooperation Agreement. In accordance with Rule 9(3) of the Annex 1 to the Trade and Cooperation Agreement, decisions adopted by the Partnership Council shall specify the date at which they take effect.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

In accordance with Article 783 of the Trade and Cooperation Agreement, the Agreement entered into force on 1 May 2021.

Based on their respective proposals, the Union and the United Kingdom should jointly agree on

- the sub-list of individuals established on the basis of proposals by the Union;
- the sub-list of individuals established on the basis of proposals by the United Kingdom;
- the sub-list of individuals who are not nationals of either Party and who should serve as chairperson to the arbitration tribunal.

The position of the Union should therefore be to support the adoption of a decision by the Partnership Council pursuant to Article 752(1) of the Trade and Cooperation Agreement establishing a list of individuals willing and able to serve as arbitrators under the Agreement, in line with the draft decision attached to this proposal.

### **4. LEGAL BASIS**

The legal bases in the Treaty on the Functioning of the European Union are those that govern the areas in which dispute settlement procedure may arise, namely

- Article 43(2) TFEU (fisheries);
- Articles 91(1) and 100(2) TFEU (transport);
- Articles 173(3), 182(5), 188, 189(2) TFEU (Union programmes);
- Article 207(2) (common commercial policy),

in conjunction with Article 218(9) TFEU that 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 Partnership Council is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding on Parties law in accordance with Article 10(1) of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

The objective and content of the envisaged act relates to establishing the Union's position on the list of persons who are willing and able to serve as members of arbitration tribunals under the Trade and Cooperation Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the purpose of the decision of the Partnership Council is to establish a list of individuals who are willing and able to serve as members of arbitration tribunals under the Trade and Cooperation Agreement, it is appropriate to publish the decision of the Partnership Council 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 the Functioning of the European Union, and in particular Articles 43(2), 91(1), 100(2), 173(3), 182(5), 188, 189(2) and 207(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 ('the Trade and Cooperation Agreement'), was concluded by Council Decision (EU) 2021/689<sup>1</sup> and entered into force on 1 May 2021.
- (2) Pursuant to Article 752(1) of the Trade and Cooperation Agreement, the Partnership Council is to establish a list of individuals who are willing and able to serve as members of an arbitration tribunal. The list should be composed of three sub-lists: (a) one sub-list of individuals established on the basis of proposals by the Union; (b) one sub-list of individuals established on the basis of proposals by the United Kingdom; and (c) one sub-list of individuals who are not nationals of either Party who should serve as chairperson to the arbitration tribunal.
- (3) Each sub-list should include at least five individuals.
- (4) Pursuant to Article 741(2) of the Trade and Cooperation Agreement, all arbitrators should be persons whose independence is beyond doubt, who possess the qualifications required for appointment to high judicial office in their respective countries or who are jurisconsults of recognised competence. They should have demonstrated expertise in law and international trade, including on specific matters covered by Titles I to VII, Chapter 4 of Title VIII, Titles IX to XII of Heading One or Heading Six of Part Two, or in law and any other matter covered by the Trade and

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<sup>1</sup> Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 149, 30.4., p. 2.

Cooperation Agreement or by any supplementing agreement and, in the case of a chairperson, also have experience in dispute settlement procedures.

- (5) In accordance with Article 752(3) of the Trade and Cooperation Agreement, the list is not to comprise persons who are members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom.
- (6) On the basis of the proposals of the Union and the United Kingdom the Partnership Council should agree on a sub-list of eight persons for the position of chairperson of the arbitration tribunal, and on two sub-lists of six persons for the position of members of the arbitration tribunal.
- (7) The establishment of the position to be taken on behalf of the European Atomic Energy Community in the Partnership Council as regards matters falling under the Treaty establishing the European Atomic Energy Community is subject to a separate procedure.
- (8) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Council,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf within the Partnership Council established by Article 7(1) of the Trade and Cooperation Agreement shall be based on the draft Decision of the Partnership Council attached to this Decision.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*