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European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a COUNCIL DECISION 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 the amendment of the decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement
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Delegations will find attached document COM(2021) 594 final.

Encl.: COM(2021) 594 final



Brussels, 23.9.2021
COM(2021) 594 final

2021/0304 (NLE)

Proposal for a

COUNCIL DECISION

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 the amendment of the decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel 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 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 amending Decision No 7/2020 establishing a list of 25 persons who are willing and able to serve as members of the an arbitration panel under the 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 act of the Joint Committee

In accordance with Article 171(1) of the Withdrawal Agreement, the Joint Committee established by the end of the transition period a list of 25 persons who were willing and able to serve as members of an arbitration panel. According to the last sentence of Article 171(1), the Joint Committee shall ensure that this list complies with the specific requirements established by the Withdrawal Agreement at any moment in time.

The purpose of the envisaged decision is to update the list, as one of the arbitrators on the list, due to an appointment as a member of a Union institution, no longer complies with the requirements established by the Withdrawal Agreement in its Article 171(2).

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 TAKEN ON THE UNION'S BEHALF

The Joint Committee established, in accordance with the Withdrawal Agreement, a list of arbitrators in the event of a dispute on the interpretation of the Withdrawal Agreement, that took effect on 1 January 2021.

This list contains five persons agreed upon jointly by the Union and the United Kingdom to act as chairperson of the arbitration panel. The list further contains 20 persons for the function of ordinary members of the arbitration panel, 10 put forward by the Union and 10 put forward by the United Kingdom.

One person on the Union's list of 10 members of the arbitration panel has been appointed as advocate general to the Court of Justice starting 7 October 2021. In accordance with Article 171(2) of the Withdrawal Agreement, the list cannot comprise persons who are members, officials or other servants of the Union institutions and must therefore be amended.

Annex II to Council Decision (EU) 2020/2232 of 22 December 2020 establishes a reserve list of candidates who are willing and able to serve as Union members of an arbitration panel under the Withdrawal Agreement and who can be contacted as needed by the Union when the Joint Committee must update the list of 25 persons in accordance with the last sentence of Article 171(1).

The position of the Union should therefore be to support the adoption of a decision by the Joint Committee amending its decision establishing a list of 25 persons willing and able to serve as arbitrators under the Agreement, by replacing the person that no longer fulfils the requirement for being an arbitrator by a candidate from the reserve list.

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 a position 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. The envisaged act will be binding on Parties law 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 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 panels under the Withdrawal Agreement. 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 Joint Committee is to amend the list of persons who are willing and able to serve as members of arbitration panels under the Withdrawal Agreement,

it is appropriate to publish the decision of the Joint Committee in the Official Journal of the European Union after its adoption.

Proposal for a

COUNCIL DECISION

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 the amendment of the decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under 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 means of Council Decision (EU) 2020/135¹ and entered into force on 1 February 2020.
- (2) Pursuant to Article 171(1) of the Withdrawal Agreement, the Joint Committee established by the end of the transition period set under the Withdrawal Agreement, a list of 25 persons who are willing and able to serve as members of an arbitration panel. The Joint Committee is to ensure that the list complies with the requirements at any moment in time.
- (3) Pursuant to Article 171(2) of the Withdrawal 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.
- (4) One of the persons on the list that have been proposed by the Union has been appointed as Advocate General of the Court of Justice and therefore no longer fulfils the requirements for being an arbitrator under the Withdrawal Agreement.
- (5) It is therefore necessary to replace that person by a candidate from the reserve list of candidates who are willing and able to serve as Union members of an arbitration panel under the Withdrawal Agreement, as contained in Annex II of Council Decision (EU) 2020/2232 of 22 December 2020.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Joint Committee established by Article 164(1) of the Withdrawal Agreement as regards the amendment of the list of 25 persons who are willing and able to serve as members of an arbitration panel under the Withdrawal Agreement 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 is addressed to the Commission.

Done at Brussels,

*For the Council
The President*