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Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Union 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, as regards a joint declaration of the Union and the United Kingdom in the Partnership Council of that Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken 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 Agreement', or 'the Trade and Cooperation Agreement'). The position relates to a joint declaration to be made by the Union and the United Kingdom in the Partnership Council of that Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

The Trade and Cooperation Agreement was signed on 30 December 2020, applied provisionally since 1 January 2021 and entered into force on 1 May 2021. It establishes the basis for a broad relationship between the Union and the United Kingdom involving reciprocal rights and obligations, common actions and special procedures.

2.2. The Partnership Council

Article 7(1) of the Trade and Cooperation Agreement establishes the Partnership Council. Its main tasks, defined in accordance with Article 7(3) of the Agreement, are to oversee the attainment of the objectives of the Agreement, to supervise and to facilitate the implementation and application of the Agreement. The European Union and the United Kingdom may refer to it any issue relating to the implementation, application and interpretation of the Agreement.

2.3. The envisaged act of the Partnership Council

The Parties to the Trade and Cooperation Agreement are to make a joint declaration in the Partnership Council established by Article 7(1) of that Agreement on their political understanding that the objectives of Part Two, Heading One, Title VIII of the Trade and Cooperation Agreement should be pursued and that therefore, it would be appropriate to extend the application of Title VIII.

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

The position to be taken on the Union's behalf is to endorse the adoption of a joint declaration to be made by the Union and the United Kingdom in the Partnership Council established by the Trade and Cooperation Agreement.

In the context of the full implementation of the Trade and Cooperation Agreement as part of an ambitious, wide-ranging and balanced economic partnership between the Union and the United Kingdom, which produces mutual benefits, the joint declaration would express the political understanding of the Union and United Kingdom that it would be appropriate to pursue the objectives of Part Two, Heading One, Title VIII on energy of the Trade and Cooperation Agreement ('Title VIII') and to extend the application of the Title VIII. This would be undertaken in accordance with Article 331(2) of the Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

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.*”

4.1.2. Application to the present case

The Partnership Council is a body set up by an agreement, namely the Trade and Cooperation Agreement.

The joint declaration that the Union and the United Kingdom envisage to make in the Partnership Council will be made by mutual consent.

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

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) of the TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) of the TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) of the TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The objective and the content of the envisaged act relate to energy. Therefore, the substantive legal basis of the proposed decision is Article 194(2) of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 194(2) of the TFEU, in conjunction with 218(9) of the TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the purpose of the decision of the Partnership Council is to adopt a Decision 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 Article 194(2) thereof, 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' or 'the Agreement') was concluded by the Union by means of Council Decision (EU) 2021/689¹ and entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.
- (2) The objectives of Part Two, Heading One, Title VIII on energy of the Trade and Cooperation Agreement ('Title VIII') are to facilitate trade and investment between the European Union and the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') in the areas of energy and raw materials, and to support security of supply and environmental sustainability, notably in contributing to the fight against climate change in those areas.
- (3) In accordance with Article 331(1) of the Trade and Cooperation Agreement, Title VIII shall cease to apply on 30 June 2026.
- (4) In accordance with Article 331(2) of the Trade and Cooperation Agreement, between 1 July 2026 and 31 December 2026, the Partnership Council may decide to extend the application of Title VIII until 31 March 2027. Between 1 April 2027 and 31 December 2027, as well as at any point of time in any subsequent year, the

¹ 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, 30.4.2021, p. 2](#)).

Partnership Council may furthermore decide to extend the application of Title VIII until 31 March of the following year.

- (5) To achieve the objectives of Title VIII, it is appropriate for the Union and the United Kingdom to make a joint declaration in the Partnership Council expressing their political understanding that it would be appropriate to extend the application of the Title VIII.
- (6) The Union and the United Kingdom are to adopt a joint declaration in the Partnership Council of the Trade and Cooperation Agreement.
- (7) It is appropriate to establish the position to be taken on the Union's behalf as regards a joint declaration by the Union and the United Kingdom in the Partnership Council expressing their political understanding that it would be appropriate to extend the application of the Title VIII. This would be undertaken in accordance with Article 331(2) of the Agreement, on the basis of the overall balance of rights and obligations being maintained in a sustainable manner

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf as regards a joint declaration by the Union and the United Kingdom 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, is set out in the draft Joint Declaration of the Union and the United Kingdom in the Partnership Council attached in Annex I to this Decision.

Article 2

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

Done at Brussels,

*For the Council
The President*