



EUROPEAN  
COMMISSION

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2022/0034 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on 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, on the adoption of the guidelines of the Civil Society Forum**

## **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")<sup>1</sup>, in connection with the envisaged adoption of the Guidelines for the conduct of the Civil Society Forum under that agreement.

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

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

The Trade and Cooperation Agreement establishes the basis for a broad relationship between the European Union and the United Kingdom. It entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.

The Trade and Cooperation Agreement establishes an institutional framework, including mechanisms for the Parties to consult civil society on the implementation of the Agreement and any supplementing agreement, in particular through interaction with the domestic advisory groups and the Civil Society Forum referred to in Articles 13 and 14.

Article 14 of the Trade and Cooperation Agreement establishes that the Parties shall facilitate the organisation of a Civil Society Forum to conduct a dialogue on the implementation of Part Two of this Agreement. The Partnership Council shall adopt operational guidelines for the conduct of the Forum.

The Civil Society Forum shall be composed by representatives of the civil society of the European Union and the United Kingdom and will meet at least once a year, unless otherwise agreed by the Parties.

#### **2.2. The envisaged decision of the Partnership Council**

The purpose of the envisaged act of the Partnership Council is to set the main guidelines for the organisation of the Civil Society Forum. These operational guidelines should be adopted by the Partnership Council before the first meeting of the Civil Society Forum.

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

The purpose of the proposed decision of the Council is to establish the position to be taken on behalf of the European Union in the Partnership Council established by the Trade and Cooperation Agreement on the adoption of the guidelines for the Civil Society Forum.

It is proposed to set up a Civil Society Forum, composed of representatives of the civil society of the EU and the UK, which would gather a limited number of physical participants on each side as well as wider participation by electronic means. It will be organised yearly in close proximity to a Trade Partnership Committee and allow for physical and digital participation. The organisation would be the responsibility of the Party organising the meeting and would rotate yearly. The agenda will be set by agreement of the Parties and would cover issues related to the implementation of Part II of the Trade and Cooperation Agreement (Trade, Aviation, Road Transport, Social Security Coordination and Visas for Short-term Visits,

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<sup>1</sup> OJ L 149, 30.4.2021, p. 10.

Fisheries and Other Provisions). The Parties will endeavour to consult their respective Domestic Advisory Groups provided for in Article 13 of the Trade and Cooperation Agreement on possible agenda items before agreeing on an agenda.

#### **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 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 concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*.<sup>2</sup>

###### *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 act which the Partnership Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 14 of the Trade and Cooperation Agreement.

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

Therefore, the procedural legal basis for the proposed decision is Article 218(9) of the Treaty on the Functioning of the European Union (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.

###### *4.2.2. Application to the present case*

The objective and content of the envisaged act relate to the common commercial policy, fisheries and transport. Therefore, the substantive legal basis of the proposed decision is Article 207, Articles 91 and 100 and Article 43 of the TFEU.

##### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207, Article 91 and 100 and Article 43 of the TFEU, in conjunction with Article 218(9) of the TFEU.

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<sup>2</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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, 91, 100 and 207 of the TFEU, 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 the Union by Council Decision (EU) 2021/689<sup>3</sup> of 29 April 2021 and entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.
- (2) Article 14 of the Trade and Cooperation Agreement requires the Partnership Council to adopt the guidelines for the conduct of the Civil Society Forum, which shall meet at least once a year, unless otherwise agreed by the Parties.
- (3) The Partnership Council is to adopt the guidelines for the conduct of the Civil Society Forum.
- (4) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Partnership Council.
- (5) In order to allow for the timely adoption of the guidelines for the Civil Society Forum, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be taken on the Union's behalf in the Partnership Council established by the Trade and Cooperation Agreement, on a decision to be taken in accordance with Article 14 thereof, shall be based on the draft guidelines of the Civil Society Forum attached to this Decision.

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<sup>3</sup> OJ L 149, 30.4.2021, p. 2.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*