



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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 adoption of a decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement and on a reserve list of persons who are willing and able to serve as Union members of an arbitration panel under the Agreement

COUNCIL DECISION (EU) 2020/...

of ...

**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 adoption of a decision establishing a list of 25 persons
who are willing and able to serve as members of an arbitration panel
under the Agreement and on a reserve list of persons who are willing and able
to serve as Union 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 on 30 January 2020 and entered into force on 1 February 2020.
- (2) Pursuant to Article 171(1) of the Withdrawal Agreement, the Joint Committee established by Article 164 of the Withdrawal Agreement (‘the Joint Committee’) is to establish, no later than 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 to only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence, and who possess specialised knowledge or experience of Union law and public international law. 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.

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).

- (4) The Union and the United Kingdom have jointly proposed five persons for the position of chairperson of the arbitration panel, and have each proposed ten persons for the position of member of the arbitration panel,
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee.
- (6) It is also appropriate to establish a reserve pool of experts who are willing and able to serve as arbitrators under the Withdrawal Agreement and who can be contacted in order to keep the list of 25 persons up to date from the Union side,

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 establishment of a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Withdrawal Agreement shall be:

- (a) based on the draft Decision of the Joint Committee attached to this Decision; and
- (b) to support the attachment to the minutes of the meeting of the Joint Committee of a note setting out procedures to nominate in the future chairpersons in the list of chairpersons for the Withdrawal Agreement arbitration panel, as attached to this Decision.

Article 2

A reserve list of persons who may be proposed by the Union in the future to fill vacancies in the list of 25 persons referred to in Article 1 is established as set out in the Annex.

Article 3

The Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 4

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

Done at ...,

For the Council

The President

DRAFT

Decision No .../2020
of 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

of ...

establishing a list of 25 persons who are willing and able to serve
as members of an arbitration panel under the Agreement

THE JOINT COMMITTEE,

Having regard 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 Community¹ (the ‘Withdrawal Agreement’), and in particular Article 171(1) thereof,

¹ OJ L 29, 31.1.2020, p.7.

Whereas:

- (1) Pursuant to Article 171(1) of the Withdrawal Agreement, the Joint Committee shall, no later than by the end of the transition period set under that Agreement, establish a list of 25 persons who are willing and able to serve as members of an arbitration panel,
- (2) Pursuant to Article 171(2) of the Withdrawal Agreement, the list shall only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence, and who possess specialised knowledge or experience of Union law and public international law. These persons shall not be members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom,
- (3) In view of the joint proposal by the Union and the United Kingdom of five persons for the function of chairperson of the arbitration panel, and the respective proposals by the Union and the United Kingdom of ten persons each for the function of members of the arbitration panel,

HAS ADOPTED THIS DECISION:

Article 1

The list of 25 persons willing and able to serve as arbitrators under the Withdrawal Agreement is set out in Annex I.

Article 2

This Decision shall enter into force on 1 January 2021.

Done at ...,

For the Joint Committee

The Co-chairs

ANNEX I

to Decision No .../2020 of the Joint Committee

Chairpersons for the Withdrawal Agreement Arbitration Panel

Ms Corinna Wissels

Ms Angelika Helene Anna Nussberger

Mr Jan Klucka

Sir Daniel Bethlehem

Ms Gabrielle Kaufmann-Kohler

Ordinary members for the Withdrawal Agreement Arbitration Panel

EU:

Mr Hubert Legal

Ms Helena Jäderblom

Ms Ursula Kriebaum

Mr Jan Wouters

Mr Christoph Walter Hermann

Mr Javier Diez-Hochleitner

Ms Alice Guimaraes-Purokoski

Mr Barry Doherty

Ms Tamara Capeta

Mr Nico Schrijver

UK:

Sir Gerald Barling

Sir Christopher Bellamy

Mr Zachary Douglas

Sir Patrick Elias

Dame Elizabeth Gloster

Sir Peter Gross

Mr Toby Landau QC

Mr Dan Sarooshi QC

Ms Jemima Stratford QC

Sir Michael Wood

DRAFT NOTE TO ATTACH TO WAJC MEETING MINUTES,
XX DECEMBER 2020,
SETTING OUT PROCEDURES TO NOMINATE IN THE FUTURE CHAIRPERSONS
IN THE LIST OF CHAIRPERSONS FOR THE WITHDRAWAL AGREEMENT
ARBITRATION PANEL

The Joint Committee has today adopted the list of 25 persons who are willing and able to serve as members of an arbitration panel in accordance with Article 171 of the Withdrawal Agreement. The Parties recall that the fifth person on the list of chairpersons was selected after a lot drawing that took place on 9 December 2020 in the presence of representatives of both Parties.

In order to ensure balance over time, a rotation should apply whereby when a position held by a chairperson presented by the Party whose candidates occupy three places on the list of five becomes vacant, the other Party will present three candidates from among whom the first Party will select within three working days a chairperson to fill that vacancy.

If a position held by a chairperson presented by the Party whose candidates occupy two places on the list of five becomes vacant, there will be no rotation and that Party will present three candidates from among whom the other Party will select within three working days a chairperson to fill that vacancy.

Accordingly, the list of chairpersons will at no time have fewer than two chairpersons on it that were presented by each Party.

After each replacement as set out above, the Joint Committee should amend the list of 25 persons by decision adopted in accordance with Article 171 of the Withdrawal Agreement.

In any event, the Joint Committee will review the list of 25 persons two years from the entry into force of the Joint Committee Decision adopted today. The Parties will do their utmost to propose jointly a list of five chairpersons during this review, as set out in the Withdrawal Agreement. This list should replace the previous list no later than six months from the start of the review.

If agreement cannot be reached on the fifth chairperson during the review process, the Party whose candidates occupy two places on the list of five at that point in time will present three candidates from among whom the other Party will select within three days a chairperson to fill that place on the list. Following the review process, the Joint Committee should amend the list of 25 persons by Decision adopted in accordance with Article 171 of the Withdrawal Agreement.

All candidates proposed by a Party for selection by the other Party according to the procedure set out in this Note must satisfy the criteria set out in Article 171 of the Withdrawal Agreement, and, where a Party reasonably considers that this is not the case, it reserves the right to object to the inclusion or appointment of such candidate.

ANNEX

Reserve list of candidates who are willing and able to serve as Union members
of an arbitration panel under the Withdrawal Agreement

Mr Myron Nicolatos

Mr Ezio Perillo

Mr Vilenas Vadapalas

Mr Andreas Müller

Mr Pierre d'Argent

Mr Radostin Georgiev Petrov

Mr Costas Clerides

Mr Antonin Mokry

Mr Carri Ginter

Mr Nikolaos Markopoulos

Mr Jukka Snell

Mr Janos Martonyi

Ms Alessandra Pietrobon

Mr Ignas Vegele

Ms Anita Kovalevska

Mr Kaj I. Hober

Mr Matej Avbelj

