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COMMISSION DECISION

of 16.12.2020

setting up a panel to assist the Commission in the selection of candidates to perform the duties of members of international investment courts and tribunals

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) With a view to ensuring a rigorous process for selecting candidates to be appointed as members of international investment courts and tribunals established pursuant to bilateral or multilateral treaties with third countries to which the Union is a party, and with the aim of guaranteeing the independence and impartiality, as well as the highest degree of competence of the individuals selected, it is appropriate to establish an independent selection panel.
- (2) The panel should assist the Commission in the selection of suitable candidates to perform the duties of members of international investment courts and tribunals established pursuant to bilateral or multilateral treaties with third countries to which the Union is a party. The panel should give opinions on the suitability of candidates on the basis of their merits and compile a list of such candidates from which the Commission should propose individuals to be appointed as members of international investment courts and tribunals by a Council decision pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).
- (3) With regard to nominees of the Union, the panel should also ensure that the richness of the European legal traditions is reflected, above all over the long term. Gender balance should be ensured both at the stage of nomination of candidates for the selection and during the decision-making process leading to the adoption of a decision pursuant to Article 218(9) TFEU to appoint members of the investment courts and tribunals pursuant to a specific agreement.
- (4) The panel should also be available, upon request by the Commission, to perform other tasks relating to the selection of candidates to perform the duties of members of international courts and tribunals, and, as appropriate, to be consulted by the Commission on any question or matters related to the selection of candidates.
- (5) The panel should be composed of four members, of whom one should be nominated by the the European Parliament , one by the Council, one by the Commission and one by the Member States
- (6) The panel should be composed of individuals of recognised competence and independence, chosen from among former judges, including, where applicable, former members of international tribunals in bilateral or multilateral treaties with third countries to which the Union is a party, members of national or international courts, lawyers and academics of high standing. The composition of the panel should reflect in a balanced manner over the long term the different legal traditions of the Union. In nominating and appointing members of the panel, the Commission should ensure

gender balance and expects the European Parliament and the Council to assist it in ensuring gender balance.

- (7) Rules on disclosure of information by members of the panel should be laid down.
- (8) Personal data should be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council¹.
- (9) Access to documents drawn up or received by the panel and in its possession should be granted in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council²,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment of the panel

A panel to assist the Commission in the selection of candidates to perform the duties of members of international investment courts and tribunals established pursuant to bilateral or multilateral treaties with third countries to which the Union is a party (the "panel"), is set up. [The panel may also assist the Commission in the selection of candidates as members of rosters or other tribunals established pursuant to trade and investment agreements to which the Union is a party.

Article 2

Tasks

1. The task of the panel shall be to establish a list of suitable candidates to perform the duties of members of international investment courts and tribunals established pursuant to bilateral or multilateral treaties with third countries to which the Union is a party, after having verified the candidates' suitability on the basis of the qualification requirements provided for in the relevant treaties. Such verification shall ensure the candidates' independence and impartiality, as well as the highest degree of competence. As regards the Union members in particular, the selection process shall also ensure that the richness of European legal traditions is reflected, above all over the long term. In assessing whether candidates fulfil the criteria set out in the relevant treaties, the panel shall take into account all relevant elements, including, as appropriate: legal expertise; professional experience; ability to perform the duties of adjudicators; guarantees of independence and impartiality; aptitude to work in an international environment; relevant language skills.
2. In particular, the tasks of the panel shall include:
 - (a) review and examination of the candidatures by screening the applications of each candidate and taking into account publicly available and objective information which concerns the candidate, as well as any other information or material which the panel considers necessary for its deliberations;

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- (b) conducting interviews with candidates to supplement the examination under point (a). The interviews shall take place *in camera*;
 - (c) assessing the candidates' profiles and suitability, including their independence and impartiality and providing opinions on whether each candidate meets the selection criteria and requirements. Such opinions shall be made available upon request to the European Parliament, the Council and the Commission, in a manner to ensure protection of confidential information and personal data;
 - (d) establishing a list of suitable candidates on the basis of the examinations and assessments carried out in accordance with points (a), (b) and (c);
 - (e) identifying those candidates in the list under point (d) that are suitable to serve as members of appellate tribunals of international investment courts and tribunals established pursuant to bilateral or multilateral treaties with third countries to which the Union is a party;
 - (f) establishing rules of procedure for the selection process, including specifying formal and substantive selection criteria and requirements for the candidatures and the conduct of the interviews;
 - (g) publishing reports of its activities.
3. The panel may also be called to review and examine the applications of candidates who are proposed by other parties to the bilateral or multilateral investment treaties with third countries to which the Union is a party. In such case, the panel may carry out as appropriate the tasks listed under points (a), (b) and (c) of paragraph 2.
4. Upon request by the Commission, the panel may also be called to perform the necessary tasks to assist the Commission in the selection of candidates to perform the duties of members of rosters or other international courts and tribunals.

Article 3

Consultation

The Commission may consult the panel on any question or matter related to the selection of the individuals forming part of the list of selected candidates referred to in point (d) of Article 2(2) or that may arise in the context of the procedure for the appointment of members of the international investment courts and tribunals, or other tribunals or rosters established pursuant to trade and investment agreements, to which the Union is a party.

Article 4

Membership

1. The panel shall be composed of four members appointed by the Commission, of which one shall be nominated by the European Parliament, one by the Council, one by the Commission, and one by the Member States.
2. The members of the panel shall be individuals of recognised competence and independence, chosen from among former judges, including former members of international tribunals in bilateral or multilateral treaties with third countries to which the Union is a party, current or former members of national or international courts, lawyers or academics of high standing. The composition of the panel shall reflect in a balanced manner over the long term the different legal traditions of the Union. In appointing members of the panel, the Commission shall ensure gender balance

3. Members of the panel shall be appointed in their personal capacity and act independently and in the public interest.
4. The position of the member of the panel to be nominated by the Commission shall be advertised through an open call for candidatures published on the website of the Directorate General for Trade (“DG Trade”). The member to be nominated by the Commission shall be chosen on the basis of the applications received.
5. Individuals applying to be appointed as members of the panel as well as the individuals nominated or proposed by, respectively, the European Parliament, the Council and the Member States, shall disclose any circumstances that could give rise to a conflict of interest. In particular they shall submit a declaration of interests on the basis of a standard form to be published on the website of DG Trade, together with an updated *curriculum vitae*, as part of their application to become members of the panel. The conflict of interest assessment shall be performed by officials of the department in DG Trade responsible for the management of the panel. Officials of other departments of the Commission may also be associated with the conflict of interest assessment, as appropriate. The rules applicable to conflict of interest of members of expert groups as set out in Article 11 of Commission Decision C(2016)3301³, shall apply *mutatis mutandis*. Members of the panel shall consistently make all efforts to become aware of and disclose any conflict of interest throughout the performance of their duties at the earliest time they become aware of it. Members of the panel shall not participate as candidates in any selection procedure under the scope of this Decision. For a period of three years from the end of the mandate or from the resignation of a member of the panel, that person shall not be nominated as a candidate for a selection procedure under the scope of this Decision.
6. Members of the panel shall be appointed for a non-renewable period of six years. However, the terms of two of the first four members appointed pursuant to this Article, to be determined by lot by the Commission, shall be appointed for a non-renewable period of nine years. Members of the panel shall remain in office until the end of their term of office. Vacancies in the panel shall be filled as they arise.

Article 5

Chair

The panel shall be chaired by one of its members who shall be appointed by consensus of the members of the panel. If the members of the panel cannot reach consensus on the appointment of the chair, the chair shall be drawn by lot from among the members of the panel. The chair shall serve for three years.

Article 6

Operation

1. The panel shall act at the request of DG Trade.
2. Meetings of the panel shall, in principle, be held on the premises of the Commission.
3. DG Trade shall provide the necessary administrative support for the effective functioning of the panel.

³ Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups (C(2016) 3301 final).

4. The deliberations shall take place *in camera*.
5. The panel shall endeavour to adopt any opinions, recommendations or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by a majority of the members, with the chair having the casting vote.
6. The opinions of the panel shall contain a statement of reasons setting out the grounds on which the panel's opinion is based.
7. The lists of suitable candidates referred to in point (d) of Article 2(2) shall be published on the website of DG Trade.

Article 7

Working procedures

On a proposal by and in agreement with DG Trade, the panel shall adopt its working procedures by simple majority of its members. The working procedures of the panel shall be in compliance with this Decision.

Article 8

Professional secrecy and handling of classified information

The members of the panel are subject to the obligation of professional secrecy as laid down in Article 339 TFEU, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443⁴ and 2015/444⁵. Should they fail to respect these obligations, the Commission may take all appropriate measures.

Article 9

Transparency

The composition of the panel shall be made public on the website of DG Trade.

Article 10

Meeting expenses

1. Travel and subsistence expenses incurred by members of the panel shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the departments of the Commission under the annual procedure for the allocation of resources.

⁴ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁵ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. The members of the panel shall also be entitled to a daily allowance for work performed.

Done at Brussels, 16.12.2020

*For the Commission
Valdis DOMBROVSKIS
Executive Vice-President*