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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In November 2004, the Council authorised the Commission to negotiate individual Framework Agreements on Partnership and Cooperation (PCA) with Thailand, Indonesia, Singapore, the Philippines, Malaysia and Brunei. The PCA with Thailand was first initialled in March 2013 but its signature was put hold in 2014 following the military take-over in the country. In light of political normalisation in Thailand, in October 2019, the Council considered it appropriate for the EU to take steps towards broadening its engagement with Thailand by preparing for the timely signature of the PCA. The negotiations on the Agreement were resumed on 13 July 2021 and were concluded following the 7th round on 11 June 2022.

The European External Action Service and the Commission services have been involved in the negotiating process. Member States have been consulted throughout the negotiating process at meetings of the relevant Council Working Parties. The European Parliament has been informed about the outcome of the negotiations.

The Commission considers that the objectives set by the Council in its directives on the negotiation of the Agreement have been met and that the draft Agreement can be submitted for signature and conclusion.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. The aim and content of the agreement

The PCA is the first-ever bilateral agreement between the EU and Thailand and goes beyond the current legal framework of the 1980 Cooperation Agreement between the European Economic Community and member countries of the Association of South-East Asian Nations.

The PCA contains legally binding commitments which are central to the EU's foreign policy, including provisions on human rights, non-proliferation, counter-terrorism, the International Criminal Court, but also migration and taxation.

The PCA broadens considerably the scope for mutual engagement in several areas, including justice and home affairs as well as dialogue in the economic and trade domain. The Agreement strengthens the cooperation across a wide spectrum of policy fields, including human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education, agriculture, culture, etc. It also includes provisions to protect the EU's financial interests.

Politically, the PCA with Thailand marks an important step towards strengthening the EU's role in South-East Asia, based on shared universal values such as democracy and human rights. It paves the way for enhancing political, regional and global cooperation between two like-minded partners. The implementation of the PCA will entail practical benefits for both sides, forming a basis for the promotion of the EU's broader political interests.

The Agreement establishes a Joint Committee that will monitor the development of the bilateral relationship between the Parties. The Agreement includes a non-execution clause that provides for the possibility of suspending the application of the Agreement in case of violation of essential elements.

2.2. The legal basis for the proposed decision

Article 218(5) TFEU provides for the adoption of a decision authorising the signing of an agreement.

The substantive legal basis for a decision under Article 218(6) TFEU depends primarily on the objective and content of the Agreement. According to the case-law, if examination of an EU measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component. Exceptionally, if it is established, on the other hand, that the measure simultaneously pursues a number of objectives, or has several components, which are inextricably linked without one being incidental to the other, so that various provisions of the Treaty are applicable, the measure must be founded on the various corresponding legal bases (see, to that effect, judgments of 10 January 2006, *Commission v Parliament and Council*, C-178/03, EU:C:2006:4, paragraphs 42 and 43; of 11 June 2014, *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 34; of 14 June 2016, *Parliament v Council*, C-263/14, EU:C:2016:435, paragraph 44; and of 4 September 2018, *Commission v Council (Kazakhstan)*, C-244/17, ECLI:EU:C:2018:662, paragraph 40).

The Agreement's main aim or component fall within the area of development cooperation.

The legal basis of the proposed decision should therefore be Article 209 TFEU read in conjunction with Article 218(5) TFEU.

2.3. Legal nature

The analysis of the scope of the PCA indicates that the Treaties conferred power upon the EU to act in all areas falling under the scope of the PCA. On the basis of this legal analysis, the new draft of the agreement was first negotiated as an 'EU-only' agreement. Moreover, the High Representative and the Commission considered that the shorter and more predictable ratification procedure for the entry into force of the PCA as an 'EU-only' agreement responded to the interests of the Union to proceed quickly with the implementation of the Agreement.

However, Member States in the Council during the COREPER meeting of 20 July 2022 unanimously requested the Commission and the High Representative to turn the Agreement into a mixed one with provisional application. To avoid that the signature and conclusion by the European Union are delayed in the Council, the Commission and the High Representative decided to negotiate an adjustment to the Agreement ahead of submitting the Commission's proposal for signature and provisional application of the Agreement.

The attached draft therefore proposes the signing of the Agreement as a mixed agreement.

2.4. The necessity of the proposed decision

Article 216 TFEU provides that the Union may conclude an agreement with one or more third country where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as the PCA, namely in Article 209 TFEU. Moreover, the conclusion of the PCA is necessary for the purpose of achieving, within the framework of the Union's policies, objectives referred to in the Treaties.

The Agreement must be signed before it can be concluded on behalf of the Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 209, read in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In November 2004, the Council authorised the Commission to open negotiations with Thailand on a Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part ('the Agreement').
- (2) The negotiations on the Agreement were successfully concluded by the initialling of the Agreement on [...] in [...].
- (3) The objective of the Agreement is to strengthen the cooperation across a wide spectrum of policy fields including human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education and agriculture.
- (4) The Agreement should therefore be signed on behalf of the Union, subject to its conclusion at a later date.
- (5) In view of the need to apply this agreement ahead of its entry into force following ratifications by the Member States, certain provisions of the Agreement should be applied provisionally.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part ('the Agreement'), is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

1. Pending its entry into force, in accordance with Article 59 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the European Union and the Kingdom of Thailand, only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a Common Foreign and Security Policy:
 - Title I
 - Title II
 - Title III
 - Title IV: Articles 20, 21, 22, 23, 25, 26, 27, 28, 29
 - Title V: Articles 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49
 - Title VI
 - Title VII
 - Title VIII
 - Joint declaration on Article 5
 - Joint declaration on Article 23
2. The date from which the part of the Agreement is to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 4

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

Done at Brussels,

For the Council
The President