



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 April 2012**

**7004/12**

**LIMITE**

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**NOTE**

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from : General Secretariat of the Council  
to : Permanent Representatives Committee

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Subject : Council Decisions related to Partnership and Cooperation Agreements - new arrangements

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1. On 20 December 2011, Coreper decided that a group of legal experts from the Member States should meet to find a solution to the question whether the splitting of Council Decisions relating to mixed Partnership and Cooperation Agreements would be justified by the application of Protocols 21 and 22 annexed to the Treaties.
2. At meetings on 13 and 25 January and 16 March 2012, the legal experts met in the format of Friends of the Presidency Group to discuss this issue. The Presidency also had numerous bilateral contacts with delegations in order to find a solution. On 30 March 2012, the Presidency launched a silence procedure regarding the arrangements set out in the Annex, including text for two recitals for inclusion in the abovementioned Council Decisions and text to be included in the Notes accompanying those Decisions. The silence procedure was broken by one delegation.

3. In light of the above Coreper is invited to agree on the arrangements as set out in the Annex.

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**Arrangements for the adoption of Council Decisions on mixed Partnership and Cooperation  
Agreements concluded by the Union  
containing provisions pursuant to Part 3, Title V TFEU**

1. The present arrangements only apply where, on the basis of Article 218 TFEU, the Council adopts a Decision on signature or a Decision on conclusion of mixed Partnership and Cooperation Agreements which contain provisions pursuant to Part 3, Title V, TFEU in the area of Freedom, Security and Justice. The purpose of the present arrangements is to provide clarity and to reflect a common understanding with regard to the procedure in the Council for the adoption of such Decisions on signature or conclusion of mixed Partnership and Cooperation Agreements which contain provisions pursuant Part 3, Title V, TFEU.
2. The choice of the legal bases for Council Decisions must be made in accordance with the criteria laid down by the case-law of the Court of Justice of the European Union. Council Decisions might, in accordance with these criteria, in exceptional cases be based on multiple substantive legal bases, some of which may be legal bases under Part 3, Title V, TFEU. In such cases, owing to the specific nature of the decision-making process for mixed Partnership and Cooperation Agreements, a separate Council Decision as regards provisions pursuant to Part 3, Title V, TFEU is not considered necessary. Hence the Council may adopt the Decision referred to in paragraph 1 through one single Decision, based on all appropriate legal bases.
3. In such cases, the following two recitals will be included in the preamble of the said Decision:

Standard recital 1:

*“The provisions of the Agreement that fall within the scope of Part Three, Title V of the Treaty on the Functioning of the European Union bind the United Kingdom and Ireland as separate Contracting Parties, and not as part of the European Union, unless the European Union together with the United Kingdom and/or Ireland have jointly notified [the concerned third Party] that the United Kingdom or Ireland is bound as part of the European Union in accordance with Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. If the United Kingdom and/or Ireland ceases to be bound as part of the European Union in accordance with Article 4a of Protocol No 21, the European Union together with the United Kingdom and/or Ireland shall immediately inform [the concerned third Party] of any change in their position in which case they shall remain bound by the provisions of the agreement in their own right. The same applies to Denmark in accordance with Protocol No 22 on the position of Denmark, annexed to those Treaties.”*

Standard recital 2:

*“Where the United Kingdom and/or Ireland have not provided the notification required under Article 3 of Protocol No.21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, they do not take part in the adoption by the Council of this Decision to the extent that it covers provisions pursuant to Part Three, Title V of the Treaty on the Functioning of the European Union. The same applies to Denmark in accordance with the Protocol No. 22 on the position of Denmark, annexed to those Treaties.”*

4. In the course of the adoption of a Council Decision on signature or conclusion of a mixed Partnership and Cooperation Agreement, the procedure corresponding to legal bases pertaining to Part 3, Title V, TFEU will be followed to the extent that it relates to provisions pursuant to that Title. The Note accompanying the Decision will contain a statement of the reasons why any Title V legal bases appear. The procedure relevant for the adoption of the remainder of the Council Decision will be applied for the other provisions of the Agreement.

5. It must be kept in mind that, owing to the mixed nature of such Partnership and Cooperation Agreements, common accord between all Member States is required for the signature and the conclusion of those Agreements.
6. The Note accompanying that Decision will specify the procedure, following the template below:
- "To the extent that the Decision relates to provisions of the Agreement that are pursuant to Part 3, Title V, TFEU [unanimity/QMV] will be applied indicatively. With respect to those provisions, UK, Ireland and Denmark [to be adapted in cases where the notification required under Article 3 of Protocol No. 21 is provided] do not participate;
  - All Member States will participate to the extent that the Decision relates to the other provisions of the Agreement. [Unanimity/QMV] will be applied indicatively;
  - Owing to the mixed nature of the Agreement, common accord of all Member States is required to adopt the decisions concerning the signature and conclusion of the Agreement."

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