



**COUNCIL OF
THE EUROPEAN UNION**

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REV 1**

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**Interinstitutional File:
2013/0120 (NLE)**

"I/A" ITEM NOTE

From: General Secretariat of the Council
To: COREPER/Council
No. Cion prop.: Doc. 8949/13 - COM(2013) 230 final
Subject: Draft Council Decisions on the conclusion of the "Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part"
- Request by the Council for the consent of the European Parliament

1. On 25 April 2013, the Commission submitted to the Council a proposal¹ for a Council Decision on the conclusion of the "Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part".

¹ Doc. 8949/13 - COM (2013) 230 final

2. The Council Decision on the signing² of the Framework Agreement was adopted by the Council on 27 October 2009. The Agreement³ was signed with Indonesia on 9 November 2009, subject to its conclusion at a later date.
3. According to Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU), the conclusion of the Agreement requires the consent of the European Parliament.
4. The Asia Oceania Working Party examined the proposal for a Council Decision concluding this Agreement at its meetings of 15 May 2013 and 4 June 2013. The proposal contained Articles 207 TFEU and 209 TFEU as substantive legal bases and Article 218(6)(a) TFEU as a procedural legal basis.
5. In light of the Council Legal Service opinion⁴ issued on 18 April 2013 as regards the addition of substantive legal bases and in accordance with the legal bases added to the Council Decision on the signing of the Partnership and Cooperation Agreement with the Philippines⁵, the Asia Oceania Working Party agreed to include three additional legal bases in the draft Council Decision on the conclusion of the Framework Agreement with Indonesia as follows: Article 79(3) TFEU - readmission; Article 91 and 100 TFEU - transport; Article 191(4) TFEU - environment.
6. The first consequence of indicating a substantive legal basis such as Article 79(3) TFEU, falling under Title V of Part Three of the TFEU, is that it will trigger the application of Protocols No 21 and No 22 which provide that, where a proposed measure is adopted pursuant to Title V, the United Kingdom, Ireland and Denmark shall not take part in the adoption of such a decision. However, Articles 3 and 4 of Protocol No 21 give the United Kingdom and Ireland the possibility of notifying within three months of the proposal, that they wish to take part in adoption of the draft Decision.

² Doc. 14028/09

³ Doc. 14032/09 + COR 1

⁴ Doc. 8566/13

⁵ Doc. 15615/1/12

7. The second consequence is that if the draft decision concerns areas falling within both Title V and other titles of the Treaties, and has a legal basis taken from those titles, then it should be split into two decisions, one pursuant to Title V and the other pursuant to the Union's other competences.
8. On 23 May 2013, the Permanent Representatives Committee addressed the key issues of the inclusion of substantive legal bases and the consequent split of the draft Decision, as regards the Recommendation⁶ for a Council Decision authorising the European Commission to participate, on behalf of the EU, in the negotiations for an international convention of the Council of Europe to combat the manipulation of sports results. The Committee agreed to split the recommendation with a view to the finalisation of two draft Decisions which should include additional substantive legal bases.
9. In light of the above, on 27 September 2013, the Asia Oceania Working Party reached agreement on two draft Council Decisions on the conclusion of the Framework Agreement with Indonesia: a) with the exception of matters related to readmission and b) as regards matters related to readmission.
10. In preparation for the conclusion of the Agreement, the Permanent Representatives Committee is invited to suggest that the Council:
 - = as an "A" item at a forthcoming meeting, decides to forward the draft Council Decisions on the conclusion of the Agreement, as set out following finalisation by the Legal/Linguistic experts in documents 11250/13 + COR 1 (fr) + COR 2 (en) and 11313/13 + COR 1 (fr) + COR 2 (en), as well as the text of the Agreement as contained in document 14032/09 + COR 1 (en) + COR 2 (fr) + COR 3 (hu), to the European Parliament for consent.
 - = enter into its minutes the declarations set out at annex.

⁶ Doc. 9223/13 and 9186/13.

Declaration by the Commission to be entered into the minutes of the Council

The Commission disagrees with the addition of Articles 79(3), 91, 100 and 191(4) TFEU as legal bases for the conclusion of the PCA with Indonesia. This issue is already pending before the Court of Justice with relation to the PCA with the Philippines.

Declaration to be entered into the minutes of the Council

Statement by Austria

on the Council Decision(s) on the conclusion of the Framework Agreement on Comprehensive Partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part

Austria holds the view that Council decisions in accordance with Article 218 TFEU always concern an agreement in its entirety. A splitting into several decisions which refer to individual articles of an agreement is legally not viable.

Declaration to be entered into the minutes of the Council

Statement by the Czech Republic

on the Council Decision(s) on the conclusion of the Framework Agreement on Comprehensive Partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part

The Czech Republic holds the view that Council decisions adopted in accordance with Article 218 TFEU throughout the process of concluding the so-called mixed agreements should relate to individual agreements in their entirety. A splitting into two decisions, each of them referring to different articles of an agreement, does not seem to be necessary and could lead to cumbersome procedures.

The Czech Republic notes that the established practice is to conclude only one Council decision relating to an agreement as a whole. With respect to the Case C-377/12 *European Commission against Council of the European Union*, pending before the Court of Justice of the European Union, we consider the modification of this practice as premature.
