



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 February 2010

5962/10

LIMITE

**CATS 12
JAIEX 15
RELEX 108**

NOTE

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| from: | Presidency |
| to: | CATS |
| Subject: | Transmission of Article 24-38 TEU Agreements to the European Parliament for consent |

1. The objective of this note is to inform delegations of the procedure that has been followed with regard to the transmission of seven Article 24-38 TEU Agreements to the European Parliament.

Legal basis

2. Eight international agreements based on Articles 24 and 38 TEU have been signed but have not yet been concluded¹. Some of these Agreements provide for provisional application, subject to their conclusion. Three of those Agreements are already applied on a provisional basis (EU-US PNR and EU-AUS PNR since the date of signing, EU-US TFTP as from 1 February 2010).

¹ It concerns the seven Agreements referred to in the Annex to this note, as well as the 2008 Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein on the Accession of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederations Association with the implementation, application and development of the Schengen acquis.

3. After the entry into force of the Lisbon Treaty, the rules for conclusion of these Agreements are governed by Article 218 § 6 of the TFEU, which provides that "the Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement". In cases where agreements cover fields to which either the ordinary legislative procedure applies, or the special procedures where consent of the European Parliament is required, the Council can adopt the Decision to conclude only after obtaining the consent of the European Parliament (Article 218 § 6(v) TEU).

Timeline

4. Article 218(6) TFEU provides that "the Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement". At a meeting of JHA Counsellors on 8 December 2009, it was concluded that the Council should take a pragmatic approach to the question of who should be considered as the "negotiator" of agreements signed before the entry into force of the Lisbon Treaty. The majority of delegations accepted the Commission's proposal that it would propose the Decisions on conclusion of these Agreements, notwithstanding the fact that for all these Agreements the Presidency had been the "negotiator" appointed by the Council.
5. On 17 December 2009, Coreper decided in principle to transmit seven Agreements to the Parliament as soon as possible. On 18 December 2009 the Council received the Commission proposal for a Council decision on conclusion of seven Agreements. The 21 other language versions were received on 15 January 2010.
6. These documents were submitted to lawyer-linguist scrutiny on 15 January 2010 with the deadline of the Coreper meeting of 3 February 2010 (in view of the usual ten-working-days time limit for lawyer-linguist scrutiny). In view of the political urgency of the Decision on conclusion of the TFTP Agreement, the time limit for lawyer-linguist scrutiny was shortened and the lawyer-linguist version of that Decision was submitted to Coreper on 21 January 2010 as a I-point. On 25 January 2010 the Council approved the transmission to the Parliament of the TFTP Agreement of 30 November 2009 and the draft Council decision on conclusion thereof. The transmission took place on the same day.

7. Regarding the six other Agreements, the draft decisions on conclusion were submitted to Coreper on 3 February 2010 as I-points. On 15 February 2010, the transmission to the Parliament of these six other Agreement and the draft Council decisions on conclusion thereof will be submitted to the Council as an A-point. The list of these draft Council decisions on conclusion is set out in the Annex to this document.
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List of draft Council decisions on conclusion (to be) submitted to the European Parliament for conclusion

- Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program
 - Request by the Council for the consent of the European Parliament
5366/10 JAI 50 USA 11 RELEX 45 DATAPROTECT 10 ECOFIN 24 + COR 1
5305/1/10 REV 1 JAI 34 USA 8 RELEX 32 DATAPROTECT 6 ECOFIN 18
- Council Decision on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto
 - Request by the Council for the consent of the European Parliament
5371/10 JAI 54 ENFOPOL 15 RELEX 46
5309/10 JAI 38 ENFOPOL 12 RELEX 33
- Council Decision on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto
 - Request by the Council for the consent of the European Parliament
5367/10 JAI 51 COPEN 11
5306/10 JAI 35 COPEN 7

- Council Decision on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway
 - Request by the Council for the consent of the European Parliament
 - 5368/10 JAI 52 COPEN 12
 - 5307/10 JAI 36 COPEN 8

- Proposal for a Council Decision on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters
 - Request by the Council for the consent of the European Parliament
 - 5369/10 JAI 53 COPEN 13 COASI 7
 - 5308/10 JAI 37 COPEN 9 COASI 6

- Council Decision on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service
 - Request by the Council for the consent of the European Parliament
 - 5364/10 JAI 48 AUS 3 RELEX 43 DATAPROTECT 8 + COR 2 REV 1
 - 5303/10 JAI 32 AUS 2 RELEX 30 DATAPROTECT 4

- Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR agreement)
 - Request by the Council for the consent of the European Parliament
 - 5365/10 JAI 49 USA 10 RELEX 44 DATAPROTECT 9
 - 5304/10 JAI 33 USA 7 RELEX 31 DATAPROTECT 5
