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NOTE

from:	The Netherlands delegation
to:	Customs Cooperation Working Party
Subject:	Report of the project group on Action 15 - "To examine the impact of changes in the legal framework for the CCWP and the cooperation of the relevant authorities in the Member States in Customs matters (e.g. Council decision on Europol, "Swedish Framework decision", "Prüm Decisions", Framework Decision on Data Protection)" and to carry out a study on the effects of the Lisbon Treaty on the CCWP

Introduction

The Customs Cooperation Working Party (CCWP) implements the Strategy for Customs Cooperation in the Third Pillar (for the work of this project group: Council Resolution of 2 October 2003, OJ C 247, 15.10.2003, p.1) by means of Action Plans. The Action Plan for the period 1.7.2008 to 31.12. 2009 (8284/1/08 REV 1 ENFOCUSTOM 48) includes Action 15: "To examine the impact of changes in the legal framework for the CCWP and the cooperation of the relevant authorities in the Member States in Customs matters (e.g. Council decision on Europol, "Swedish Framework decision", "Prüm Decisions", Framework Decision on Data Protection)".

In February 2009 the CCWP mandated the project group to carry out Action 15 (doc. 5852/1/09 REV 1 ENFOCUSTOM 18). The project group initially comprised Austria, the Czech Republic, Italy, the Commission (OLAF and JLS) and The Netherlands (chair), and was later joined by other members (see below).

The mandate of the project group (PG) was:

- A) to examine the impact of recent changes in the legal framework for the CCWP and the cooperation of the relevant authorities in the Member States in third pillar related customs matters,
- B) to carry out the examination with a more strategic approach (looking at the future work of the CCWP) rather than a limited impact assessment, and
- C) to focus the examination on third pillar developments, but when first pillar issues have a direct bearing on third pillar customs cooperation they would be taken into consideration as well.

When the mandate was accepted it was suggested by CCWP that the impact of the Lisbon Treaty on the customs would be addressed. The Working Party agreed to come back to the possibility of extending the mandate in an interim report of the work of the project group.

In July the project group presented an interim report (doc. 11890/09 ENFOCUSTOM 74) to inform the CCWP of the progress of the work of the PG, including the request to extend the mandate to carry out a study of the consequences of the Lisbon Treaty on the CCWP. This mandate was given in the CCWP meeting of 15 July 2009. For this part of the project group's work the United Kingdom, France, Spain, Germany and Belgium joined the group.

Identification of actions

The project group started its work by identifying the following actions to be undertaken:

1. Inventory of the current CCWP tasks according to the Strategy for customs cooperation;
2. Inventory of the current legal framework for customs cooperation and information exchange;

3. Analyses of the impact of the post-Hague programme and the Community Risk Management Framework on the CCWP;
4. Report with recommendations and conclusions to the CCWP;
5. Contributions for a new or update of Strategy for customs cooperation, and
6. Discuss the possibility to extend the mandate to study the consequences of the Lisbon Treaty on the CCWP.

As the points 3-5 are very much in line with the mandate of the project group 1 of the current Action Plan that is chaired by the Czech Republic, it was suggested during one of the meetings of that project group that the two project groups be merged after the first actions had been finalised. This suggestion was welcomed by the participants of the project group on action 15 and implementation commenced in June 2009.

Therefore the report and the Annexes are limited to the group's findings on the points 1 and 2 above and the outcome of the project group's discussions on the consequences of the Lisbon Treaty for the CCWP. The project group points the attention to the fact that this analysis was made when the Lisbon Treaty was not into force and that it finished the work just before 1 December 2009, the date of entry into force of the Lisbon Treaty. Therefore all references to the Lisbon Treaty are prescribed as a future situation.

Inventory on the current CCWP tasks according the Strategy for customs cooperation

Legal background

Customs cooperation in the third pillar is based on the provisions of Title VI of the TEU (in particular, Articles 29 and 30 which describe the objectives of law enforcement cooperation and thus provide the fundamental basis for the Strategy for customs cooperation in the third pillar) and on legal instruments such as the Convention on mutual assistance and cooperation between customs administrations (Naples II Convention) and Convention on the use of information technology for customs purposes (Customs Information System (CIS) Convention).

The TEU makes specific reference to operational cooperation between the competent authorities including police, customs and other specialised law enforcement services of the Member States, in relation to:

- a) the prevention, detection and investigation of criminal offences;
- b) the collection, storage, processing, analysis and exchange of relevant information;
- c) cooperation and joint initiatives in training, the exchange of liaison officers, secondments and the use of equipment; and
- d) the joint evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.

CCWP tasks¹

Under the working period of this project group, according to the Strategy for customs cooperation in the third pillar², the CCWP is the coordinating group within the Council structure with responsibility for taking forward initiatives in the field of customs cooperation. Its main tasks are to:

- a) coordinate and forward proposals to improve customs cooperation in the Third Pillar, including discussions on initiatives for new legislation;
- b) encourage the operational implementation of the legal basis needed for operational European cooperation and for the exchange of information, including the Naples II and CIS Conventions;
- c) review the development of working methods, in particular risk analysis and targeted inspection techniques; and adapt to new methods and modes of transport, such as electronic commerce and express freight transport³;
- d) develop assistance by Member States' customs administrations to acceding countries and third countries;

¹ Council Resolution of 2 October 2003, OJ C 247, 15.10.2003

² 11167/5/03 REV 5 ENFOCUSTOM 29 ENFOPOL 84, 18.12.2003

³ **DELETED** End of 2009 the Strategy of the CCWP is changed and this task is no longer part of the work of the CCWP.

- e) agree strategic and tactical objectives for operational cooperation between the EU's customs administrations, including the development of Joint Customs Operations (JCO). The benefits of these include the development of intelligence about trans-national crimes, the seizure of contraband and the identification of organisations conducting the activities;
- f) promote closer cooperation with other law enforcement agencies both directly and through the European Police Office (Europol); and
- g) promote closer cooperation with the Anti-Fraud Office (OLAF) within the terms of its mandate.

The overall aims of the Strategy of customs cooperation are:

- a) to consider new forms of cooperation,
- b) to take practical steps towards implementing these new forms of cooperation,
- c) to improve and make more flexible the existing cooperation process, and
- d) to enhance public confidence in customs.

Inventory of the current legal framework for customs cooperation and information exchange

The project group made a table of legal acts that can have an impact on the legal framework of the CCWP and that were drawn up after the Strategy was published. Those legal acts were analysed on the basis of the following criteria:

- does the legal act address the customs, other law enforcement authorities or both;
- does it concern administrative or criminal law;
- the scope of the act;
- does it concern customs enforcement/cooperation, information exchange or both;
- the technical framework/tools for its implementation.

The findings of the analysis are in Annex I to this report.

The study on the consequences of the Lisbon Treaty on the CCWP

The group has carried out a study on the consequences of the Lisbon Treaty for the CCWP and customs cooperation within the Council structure. This part of the report contains a preliminary outcome of this study.

The CCWP is responsible for implementing the Strategy for customs cooperation in the third pillar (Council Resolution of 2 October 2003, OJ C 247, 15.10.2003, p.1). A new Resolution (doc 11267/2/09 REV 2 ENFOCUSTOM 65) was approved by the CCWP on 14 September 2009 and adopted by the Council on 23 October and published in the Official Journal on 30 October 2009. A new Strategy (document 12936/1/09 REV 1 ENFOCUSTOM 85) was adopted by the CCWP on 21 October 2009 and by the Article 36 Committee on 10 November 2009.

By the term 'customs cooperation' in this report, the PG refers to all activities carried out within the framework of the CCWP on these documents. The term "framework of the CCWP" refers to a plenary meeting as well as to all other meetings, project groups and actions taken under its supervision.

The relation between customs cooperation as defined in this report on the basis of Article 87 (Chapter III of Title V) of the TFEU and other forms of customs cooperation (as mentioned in the Articles 33 and ~~325~~ TFEU) was not analysed in this report as this is beyond the mandate of the PG. Nevertheless this issue will have to be further considered within the framework of the CCWP.

The PG is convinced that it is necessary to have a body at Council level to discuss and deal with customs cooperation matters. The structure of such a body should be part of a decision to be taken by Coreper and not by this PG or the CCWP. Nevertheless the PG recommends the customs administrations to monitor all discussions on law enforcement within the Council that might have consequences for the position of Customs and customs cooperation in general.

The PG confined itself to listing the topics regarding customs cooperation that need to be covered at Council level. In Annex II to this report you will find an overview of the relevant provisions in the Lisbon Treaty that influence the decision-making powers and decision rules on customs cooperation and, as far as available, the outlines for new structures and procedures within the EU after the Lisbon Treaty enters into force.

The outcome of the PG's analyses of the customs cooperation tasks to be covered at Council level:

1. Drawing up an Action Plan is the main instrument for customs authorities and the Commission to agree on the goals to be achieved to enhance customs cooperation within the EU. The CCWP is an excellent platform for drawing up, carrying out and monitoring this plan. The existing tools of the CCWP should be further developed to better coordinate the activities of customs with other related developments, such as the developments concerning the implementation of the Stockholm Programme.
2. The CCWP is considered a forum that can take forward the shared or common interests of customs authorities to other decision-making bodies and agencies that deal with customs related matters (e.g. in the case of the contributions on the Stockholm Programme). In other words: the Presidency, where appropriate, should be the voice of the CCWP for taking forward the views of the group.
3. Within the framework of the CCWP, the MS or the Commission can discuss, prepare and initiate, according to the legal requirements (see Annex II), proposals for (amending) legislation to improve customs cooperation, including legal initiatives for customs cooperation with third countries.
4. The CCWP is a platform for coordinating and evaluating the implementation of EU legislation in the field of customs cooperation. It creates awareness of the need to implement the EU legislation and provides an opportunity for MS to exchange views.

5. The framework of the CCWP offers an opportunity for operational services to exchange practical experience and working methods with a view to collecting them into ‘Handbooks’ or ‘Best Practice Guides’ and it provides an open forum for discussing matters that need to be further explained.
6. The CCWP is a platform where MS can exchange information on their relations with third countries relating to customs cooperation and a forum where programmes on technical assistance and development for third countries on customs cooperation can be discussed and prepared.
7. In the framework of the CCWP, MS agree on strategic and tactical objectives and detailed arrangements for operational cooperation between the customs administrations, through Joint Operations.
8. The framework of the CCWP includes a mechanism for coordinating its activities with those of other law enforcement agencies, the CUG and other bodies involved in customs matters. The aim is to align the activities, tools and analyses that are developed and to exchange experiences. This mechanism allows for an active exchange of information on the initiatives and the outcomes of Joint Operations.
9. It can involve, where appropriate, relevant bodies and agencies in the tasks of preparation and evaluation of Joint Operations. It also examines the need for cooperation and exchange with new bodies and agencies, such as the EU prosecutor.

Conclusions

As a result of the actions identified and carried out by the group, the following conclusions can be made:

- the existing legal acts mentioned in the list (see Annex I) cover different topics, so any proposal to merge them is not feasible;

- **DELETED**
- the Lisbon Treaty will have a large impact on EU initiatives relating to police and judicial cooperation in criminal matters and therefore on the work of the CCWP in general;
- the Lisbon Treaty leads to changes in the (legal) responsibilities of Member States and the Commission regarding customs cooperation, however, the need for a forum within the Council for discussions on customs cooperation remains.

Recommendations

- The CCWP is invited to ask the Commission to study the technical possibilities for streamlining existing computerised instruments and to add the current paper-based instruments for information exchange and customs cooperation, as a result of which the use of the instruments would become more user-friendly and at the same time preventing the violation of data protection rules would be enhanced; in such a central system different levels of data protection should be introduced to allow for the merging of the instruments without changing the existing legal acts;
- **DELETED**
- The CCWP should take into consideration the findings of this PG when a new Strategy for customs cooperation is developed in the light of the Lisbon Treaty.

Legal act	Customs	Other law enforcement	Administrative law	Criminal law	Topic	Customs enforcement cooperation	Information Exchange	Technical framework / Tools
Swedish Framework Decision (2006/960/JHA)	X	X		X	information exchange on criminal investigations and criminal intelligence operations on request and spontaneously		X	definitions and standard forms (paper)
Prüm Decisions (2008/615/JHA and 2008/616/JHA)		X		X	consultation of DNA, fingerprints and vehicle registration and introduction of instruments to fight terrorism (joint patrol, armed sky marshals and fight against illegal immigration	X	X	Data-exchange from nat. systems / The Trans European Services for Telematics between administrations (TESTA II) / For automated searching of vehicle registration data, a version of the software application (Eucaris) / existing standards (e.x. ESS, ISSOL, ISO 17025) / consultation between MS (the nat. contact points) / standard forms.

Framework Decision on data protection (2008/977/JHA)	X	X	X	X	introduction of restriction and proportionality in the exchange of personal data.		X	0
Common Risk Management Framework (Reg 450/2006)	X		X		cooperation and information exchange with the aim of combating violations of customs legislation and ensuring security and safety	X	X	Data exchange from national systems (Information system RIF, another system is being developed for the purpose of control priority area) / Surveillance
CIS Convention on the use of information technology for customs purposes	X	X	X	X	Storage of information related to cases of serious infringements of national (Customs) laws which are entered only for the purpose of sighting and reporting, discreet surveillance, specific checks		X	1) CIS 3rd pillar database technically managed by OLAF 2) FIDE database 3) A Joint Supervisory Authority
Protocol amending, as regards the creation of a FIDE third pillar database, the CIS Convention	X	X		X	Storage of information in ongoing or past investigations related to serious infringements of its (customs) national laws		X	FIDE database (for the purpose the third pillar)

Convention on Mutual Assistance between customs (Naples II)	X	X	X	X	Mutual assistance on all national and EU legislation for which customs is responsible		X	Paper based /forms. Forms for cooperation e.g. via 1) Central Coordinating Units 2) Liaison officers.
Regulation 515/97 on Mutual administrative assistance in customs and agriculture matters	X		X		Mutual assistance on EU customs and agriculture legislation		X	1) Spontaneous exchange or exchange on request of information (on paper based / forms or electronically) 2) Storage of cases in Customs Information System (CIS 1st pillar database) 3) Storage of file in FIDE 1st pillar database 4) The Community missions to third countries 5) Committee made up of representatives of the Member States and chaired by the representative of the Commission will assist to Commission.

Data Retention Directive (2006/24/EC)	X	X	X		Harmonisation of Member States' provisions concerning the obligations of the providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are regenerated or processed by them, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law.			data retained by communications providers. Access only to the competent national authorities in specific cases and in accordance with national law.
Europol Decision Council decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA) Pb. L 121/37, 15.05.2009		X		X	The objective of Europol will be to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.	X	X	Various

<u>International Agreements</u>								
<u>Liechtenstein</u> Proposal for a Council Decision on the signing, on behalf of the Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests doc. 17247/08 FL 44 JAI 717 FIN 556 GAF 27 FISC 188 UD 229	X	X	X	X	Combat fraud and any other illegal activity to the detriment of their financial interests by means of extension of administrative assistance and mutual legal assistance	X		Request for information, for surveillance or investigations made in writing (oral in urgent cases)

<u>Swiss confederation</u> Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests L 46 (17.2.2009) OJ	X	X	X	X	Extend administrative and mutual legal assistance in criminal matters	X	X	

<u>China</u> Agreement between the European Community and the Government of the Peoples Republic of China on Drug Precursors and Substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, L 56 (28/02/2009) OJ	X	X	X			X	Requests in writing
<u>USA</u> Agreement between the European Community and the United States of America on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, L 164 (21/06/1997) OJ	X	X	X	Strengthen administrative cooperation and improve working relations between the Contracting Parties to prevent the diversion of substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances		X	Requests

<p><u>Norway/Iceland</u> Proposal for a Council Decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions 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 its Annex doc. 5060/09 JAI 4 CRIMORG 2 ENFOPOL 1 RELEX 63</p>	X	X		X	Extend the application of EU legislation to Norway and Iceland in order to ensure cross-border cooperation between the EU MS and Iceland and Norway, particularly in combating terrorism and cross-border crime		X	
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Overview of the relevant provisions in the Lisbon Treaty that influence the decision-making powers and rules on customs cooperation

The substance of the Lisbon treaty

The "Lisbon Treaty" is the working title for the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. This official title accurately determines the substance of the Lisbon Treaty, which amends both abovementioned Treaties. Before the entry into force of the Lisbon Treaty only the European Community has a legal personality. The Lisbon Treaty gives a legal personality to the European Union as a whole, which substitutes the Communities. That is also the reason why the title of the Treaty establishing the European Community is changed on the basis of the Lisbon Treaty to the Treaty on functioning of the European Union. The Lisbon Treaty consists in fact of the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. The following text provides an overview of the changes brought about by the Lisbon Treaty influencing the activities of the CCWP and it also contains the relevant amended provisions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

Categories and areas of the European Union competences

The customs issues fall both under the first and the third pillar. The Customs Union Working Party deals with the first pillar issues relating to the community legislation. In the third pillar area the Customs Cooperation Working Party (CCWP) discusses customs cooperation issues falling under the area of freedom, security and justice according to Title VI TEU. The Lisbon Treaty abolishes the pillar structure and extends the powers of the bodies of the European Union also to issues falling into the area of freedom, security and justice.

With the entry into force of the Lisbon Treaty, the area of freedom, security and justice will be an area where the European Union and the Member States will share their competences. Article 4 of the TFEU provides that:

Article 4 TFEU

1. *The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.*
2. *Shared competence between the Union and the Member States applies in the following principal areas:*
 - (a) *internal market;*
 - (b) *social policy, for the aspects defined in this Treaty;*
 - (c) *economic, social and territorial cohesion;*
 - (d) *agriculture and fisheries, excluding the conservation of marine biological resources;*
 - (e) *environment;*
 - (f) *consumer protection;*
 - (g) *transport;*
 - (h) *trans-European networks;*
 - (i) *energy;*
 - (j) *area of freedom, security and justice;*
 - (k) *common safety concerns in public health matters, for the aspects defined in this Treaty.*
 - (...)

The essential change is the transferring of provisions relating to customs cooperation in criminal matters currently defined in Title VI TEU to TFEU. The whole Title VI TEU is interconnected with the current Title IV TEC. On the basis of the Lisbon Treaty these two Titles will form the Title V TFEU Area of Freedom, Security and Justice. The Title V TFEU contains Chapter V relating to police cooperation and customs cooperation.

Legislative initiative

As a result of the abolition of the pillars the position of the Commission in the area of customs cooperation will be strengthened, including its power of initiative. Actually Member States will continue to have the right of initiative but only by means of a proposal by at least a quarter of the Member States.

In Title V (Area of Freedom, Security and Justice) of the above Treaty, Article 76 lays down who has the right of initiative:

Article 76 TFEU

The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted:

- (a) on a proposal from the Commission, or*
- (b) on the initiative of a quarter of the Member States.*

Committee on internal security (COSI)

On the basis of the Lisbon Treaty a new Committee on internal security will be created pursuant to Article 71 (ex Article 36 TEU) - the Standing Committee on Internal Security¹.

Article 71 TEU

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

COSI shall facilitate support and strengthen coordination of operational activities of the Member States' competent authorities in the area of internal security. However, **COSI will not be involved in the preparation of legislative acts**. CCWP deals with operational issues and in this respect it may be concerned by the COSI activities, but at the same time the CCWP will discuss legislative and strategic documents relating to customs cooperation.

¹ In Council document 14785/09 POLGEN 153 of 22 October 2009, there is a Presidency Note on the state of play as regards the draft Council Decision on setting up the Standing Committee on operational cooperation on internal security (COSI).

Legislative procedure

The legislative procedure will change substantially. The typical procedure for customs cooperation in the third pillar was unanimous vote and consultation of the European Parliament. The Lisbon Treaty sets the qualified majority vote and the co-decision procedure for this area. Exceptions to this rule are the measures concerning operational cooperation in respect of which the legislative procedure remains unchanged, i.e. the Council acts unanimously after consulting the European Parliament.

In Chapter 5 (Police Cooperation) of Title V (Area of Freedom, Security and Justice) of the TFEU, Article 87 provides that for some measures the ordinary legislative procedure will be followed (co-decision) and for operational cooperation measures unanimity will be required:

Article 87 TFEU

1. *The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.*
2. *For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:*
 - (a) *the collection, storage, processing, analysis and exchange of relevant information;*
 - (b) *support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;*
 - (c) *common investigative techniques in relation to the detection of serious forms of organised crime.*
3. *The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.*

In case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis.

Voting majorities

The voting majorities within the Council are laid down in Article 16 of the TEU, and will be applicable from November 2014:

Article 16 TEU

- 1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.*
- 2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.*
- 3. The Council shall act by a qualified majority except where the Treaties provide otherwise.*
- 4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.*

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

5. *The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.*

(...)

The future Presidencies

The institution of the Presidency of the European Council and the Foreign Affairs Council will be established after the entry into force of the Treaty of Lisbon. The President of the European Council will chair and co-ordinate the European Council's work. The High Representative of the Union for Foreign Affairs and Security Policy will chair the Foreign Affairs Council.

All other tasks of the Presidency will remain and will be executed by the Member States and that is why the national ministries will chair the other Councils and the national representatives will chair the majority of working parties and committees. In short, the country holding the Presidency will be responsible for inner administration of EU whereas the newly appointed representatives will be responsible for external relations and security policy.

Legal background

The relevant provisions of the Treaty of Lisbon (consolidated version):

Article 16 paragraph 9

The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union.

Article 236

The European Council shall adopt by a qualified majority:

- (a) a decision establishing the list of Council configurations, other than those of the General Affairs Council and of the Foreign Affairs Council, in accordance with Article 16(6) of the Treaty on European Union;*
- (b) a decision on the Presidency of Council configurations, other than that of Foreign Affairs, in accordance with Article 16(9) of the Treaty on European Union.*

In addition the Treaty of Lisbon has Declarations annexed to the Final Act of the Intergovernmental conference which adopted the Treaty of Lisbon (signed on 13 December 2007) As for the Presidency Institut the relevant Declarations are no 8 and no 9 which are noticed below.

8. Declaration on practical measures to be taken upon the entry into force of the Treaty of Lisbon as regards the Presidency of the European Council and of the Foreign Affairs Council

In the event that the Treaty of Lisbon enters into force later than 1 January 2009, the Conference requests the competent authorities of the Member State holding the six-monthly Presidency of the Council at that time, on the one hand, and the person elected President of the European Council and the person appointed High Representative of the Union for Foreign Affairs and Security Policy, on the other hand, to take the necessary specific measures, in consultation with the following six-monthly Presidency, to allow an efficient handover of the material and organisational aspects of the Presidency of the European Council and of the Foreign Affairs Council.

Whereas the division of the Member States into groups of three Member States has already been practiced the Declaration no 9 attached to the Lisbon Treaty assumes a higher level of cooperation between the members of the groups. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may even decide alternative arrangements among themselves. The order of the Presidencies will be set out by means of a unanimously adopted Council Decision.

9. Declaration on Article 9 C(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty of Lisbon is signed, and should give its political approval within six months. A draft decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

Article 1

- 1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.*
- 2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.*

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

The European public prosecutor's office

Article 86 of the TFEU creates the possibility of establishing a European Public Prosecutor's Office from Eurojust, which was mentioned in the report of the project group.

Article 86 TFEU

1. *In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.*

In the absence of unanimity in the Council, a group of at least nine Member States may request that the draft regulation be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

2. *The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.*

3. *The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.*

4. *The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.*
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