

19. PROTOCOL ON THE POSITION OF THE UNITED KINGDOM AND IRELAND ON POLICIES IN RESPECT OF BORDER CONTROLS, ASYLUM AND IMMIGRATION, JUDICIAL COOPERATION IN CIVIL MATTERS AND ON POLICE COOPERATION

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland;

HAVING REGARD to the Protocol on the application of certain aspects of Article III-130 of the Constitution to the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing a Constitution for Europe:

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-260 thereof, insofar as that Article relates to the areas covered by those Sections, to Article III-263 or to Article III-275(2)(a) of the Constitution. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or of Article III-260 of the Constitution, insofar as that Article relates to the areas covered by those Sections, or of Article III-263 or Article III-275(2)(a) of the Constitution, no measure adopted pursuant to those Sections or Articles, no provision of any international agreement concluded by the Union pursuant to those

Sections or Articles, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the Council in writing, within three months after a proposal has been presented to the Council pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or after a proposal or initiative has been presented to the Council pursuant to Article III-263 or to Article III-275(2)(a) of the Constitution, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for acts of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption. The European regulations or decisions adopted pursuant to Article III-260 of the Constitution shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution.

For the purposes of this Article, a qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third subparagraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may, at any time after the adoption of a measure pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-263 or to Article III-275(2)(a) of the Constitution, notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article III-420(1) of the Constitution shall apply *mutatis mutandis*.

Article 5

A Member State which is not bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution, to Article III-263 or to Article III-275(2)(a) of the Constitution, shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution, to Article III-260 of the Constitution, insofar as that Article relates to the areas covered by those Sections, to Article III-263 or to Article III-275(2)(a) of the Constitution, the relevant provisions of the Constitution shall apply to that State in relation to that measure.

Article 7

Articles 3 and 4 shall be without prejudice to the Protocol on the Schengen acquis integrated into the framework of the European Union.

Article 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, this Protocol shall no longer apply to Ireland.
