

## 20. PROTOCOL ON THE POSITION OF DENMARK

THE HIGH CONTRACTING PARTIES,

RECALLING the decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union;

HAVING NOTED the position of Denmark with regard to citizenship, economic and monetary union, defence policy, and justice and home affairs as laid down in the Edinburgh decision;

CONSCIOUS of the fact that a continuation under the Constitution of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice;

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Chapter IV of Title III of Part III of the Constitution and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements;

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark;

BEARING IN MIND the Protocol on the Schengen *acquis* integrated into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

### PART I

#### *Article 1*

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Chapter IV of Title III of Part III of the Constitution. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the 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*

None of the provisions of Chapter IV of Title III of Part III of the Constitution, no measure adopted pursuant to that Chapter, no provision of any international agreement concluded by the Union pursuant to that Chapter, 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 Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; 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 Denmark.

#### *Article 3*

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

#### *Article 4*

1. Denmark shall decide within a period of six months after the adoption of a measure to build upon the Schengen *acquis* covered by Part I whether it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.

If Denmark decides not to implement such a measure, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. Denmark shall maintain the rights and obligations existing before the entry into force of the Treaty establishing a Constitution for Europe with regard to the Schengen *acquis*.

### PART II

#### *Article 5*

With regard to measures adopted by the Council pursuant to Article I-41, Article III-295(1) and Articles III-309 to III-313 of the Constitution, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the 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 third and fourth 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.

### PART III

#### *Article 6*

This Protocol shall also apply to measures remaining in force by virtue of Article IV-438 of the Constitution, which were covered, prior to the entry into force of the Treaty establishing a Constitution for Europe, by the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community.

#### *Article 7*

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

### PART IV

#### *Article 8*

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the Union.

#### *Article 9*

1. At any time and without prejudice to Article 8, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 9 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen acquis and measures adopted to build upon this acquis, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

## Annex

### *Article 1*

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Chapter IV of Title III of Part III of the Constitution. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the 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*

Pursuant to Article 1 and subject to Articles 3, 4 and 6, none of the provisions in Chapter IV of Title III of Part III of the Constitution, no measure adopted pursuant to that Chapter, no provision of any international agreements concluded by the Union pursuant to that Chapter, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; 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 Denmark.

### *Article 3*

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Chapter IV of Title III of Part III of the Constitution, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

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

#### Article 4

Denmark may at any time after the adoption of a measure pursuant to Chapter IV of Title III of Part III of the Constitution notify its intention to the Council and 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

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

#### Article 6

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Chapter IV of Title III of Part III of the Constitution, the relevant provisions of the Constitution shall apply to Denmark in relation to that measure.

#### Article 7

Where Denmark is not bound by a measure adopted pursuant to Chapter IV of Title III of Part III of the Constitution, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, acting unanimously after consulting the European Parliament, decides otherwise.

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