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OPINION OF THE LEGAL SERVICE¹

From:	Legal Service
To:	Coreper I
	Social Questions Working Party

Subject:	Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights
	- legal considerations

I. INTRODUCTION

1. On 26 April 2017 the Commission adopted a "proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights"² (hereafter "the Proclamation"). At the meeting of Coreper I on 11 July 2017, the representative of the Council Legal Service (CLS) set out in detail the main legal considerations relevant for the Council's examination of the Proclamation. This opinion responds to the request to put those considerations in writing. It confirms the oral intervention and addresses comments made by delegations at that meeting.

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² Doc. 8693/17.

II. THE PROPOSED PROCLAMATION

2. The Proclamation contains 20 "rights and principles" covering a wide range of issues primarily falling within employment, social and public health policies. According to the Preamble of the Proclamation, *"[t]he aim of the European Pillar of Social Rights is to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges which are directly aimed at fulfilling people's essential needs, and ensuring better enactment and implementation of social rights."*
3. According to the Preamble, *"[d]elivering on the European Pillar of Social Rights is a shared commitment and responsibility between the Union, its Member States and the social partners."* The Union, the Member States and the social partners must thus be seen as the intended addressees of the Proclamation. The Preamble furthermore gives an indication of the intended personal scope by specifying that *"[t]he principles enshrined in the European Pillar of Social Rights concern Union citizens and third country nationals with legal residence."*

4. The Commission suggests that the Proclamation be "*solemnly proclaimed*" by the European Parliament, the Council and the Commission. This choice of words, as well as the general structure and wording of the Proclamation, recall previous documents setting out similar rights and principles, in particular the Charter of Fundamental Rights of the European Union (hereinafter the Charter of Fundamental Rights)³ and the Community Charter of the Fundamental Social Rights of Workers⁴. In addition, and in light of Article 6(3) TEU, it is recalled that many Member States recognise what can be characterised as social "*rights and principles*" as part of their constitutional traditions, albeit with very different approaches and varying degrees of detail.⁵
5. The form and wording of the Proclamation is thus similar to documents having constitutional value. Even the choice of the term "Pillar" is manifestly intended to replicate the usual academic description of the structure of the Community legal order before the Treaty of Lisbon. The constitutional purpose is thus apparent. This fact, together with the Proclamation's broad and general nature requires that special attention is given to its nature and place within the Union legal framework created by the Treaties.

³ The Charter of Fundamental Rights was first "*solemnly declared*" by the three institutions on 7 December 2000 at the Nice European Council (OJ 2000 C 364, p.1). At the same time it was decided by the European Council to defer "*the question of the Charter's force*" (European Council, Nice, 7-10 December 2000, Conclusions of the Presidency, paragraph 2). A new version of the Charter of Fundamental Rights (see OJ C 303, 14.12.2007, p. 1) was signed by the three institutions on 12 December 2007, the day before the signature of the Lisbon Treaty. The 2007 version replaced the 2000 version on 1 December 2009, the date of entry into force of the Lisbon Treaty. That Treaty also gave the Charter of Fundamental Rights the same legal status as the Treaties (see Article 6(1) TEU).

⁴ The Community Charter of the Fundamental Social Rights of Workers was adopted on 9 December 1989 as a declaration by Heads of State or Government of eleven (out of twelve) Member States. While the text was not signed by any institution, references to it were subsequently included in the Treaties (see preamble to the TEU and Article 151 TFEU).

⁵ See, for example, the detailed provisions of Chapter II in Title III of Part I of Portugal's Constitution of 1976 as amended and the reference to a "*sozialer Bundesstaat*" in Article 20(1) of the German Basic Law.

III. LEGAL ANALYSIS

A. Competences of the Union in the areas of relevance for the Proclamation

6. The Union has legislative competences covering *inter alia*, discrimination (Article 19 TFEU); the definition of rights of third-country nationals residing legally in a Member State (Article 79(2) TFEU); incentive measures to encourage cooperation between the Member States to support their action in the field of employment (Article 149 TFEU); working conditions, social security and social protection of workers, representation and collective defence of the interests of workers and employers, social exclusion and the modernisation of social protection systems (Article 153(2)(a) and (b) read together with Article 153(1)(b), (c), (f), (j) and (k) TFEU); application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Article 157(3) TFEU); certain aspects of education and vocational training (Articles 165 and 166 TFEU); and certain aspects of public health (Article 168 TFEU). Many of the relevant legal bases contain important limitations; e.g. in certain cases only "incentive measures" are permitted (Articles 149, 165(4) and 168(5) TFEU) and/or measures to "encourage cooperation" (Articles 149 and 153(2)(a)).
7. In addition, the Treaties contain provisions relating to the coordination of economic⁶, employment⁷, social⁸ and public health⁹ policies going beyond the legislative competences of the Union referred to above.¹⁰

⁶ See, in particular, Articles 2(3), 5(1), 120, 121 and 134 TFEU.

⁷ See, in particular, Articles 2(3), 5(2), 145 and 150 TFEU.

⁸ See, in particular, Articles 5(3), 156 and 160 TFEU.

⁹ See, in particular Article 168(2).

¹⁰ See for example Article 156 TFEU on the Commission's role of encouraging coordination in the area of social policy which explicitly goes beyond the legislative competences under Article 153 TFEU by mentioning the right of association, excluded from legislative measures through Article 153(5) TFEU. See also Joined cases 281, 283, 284, 285 and 287/85 Germany and others v Commission, ECLI:EU:C:1987:351, notably paragraph 14.

8. The fact that many of the 20 rights and principles contained in the Proclamation are also, at least partly, reflected in the Charter of Fundamental Rights is not relevant for the determination of the Union's competences. As Article 51(2) of the Charter of Fundamental Rights makes clear, it does not "*establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties*".¹¹

B. Legal nature of the Proclamation

i) Legal nature of the "act" itself

9. Many delegations have questioned the nature of the Proclamation and, in particular, whether it can create legally binding rights and obligations with respect to the persons falling within its personal scope and its addressees, respectively.
10. The wording of the proposed Proclamation is currently ambiguous in this regard. The proposed Proclamation refers to rights (which could be understood as being directly enforceable)¹² and principles (which could be understood as requiring implementing measures before being enforceable)¹³. The language of the Proclamation appears to indicate that it is of a binding nature¹⁴ and the frequent references to rights¹⁵ create the impression that the Proclamation itself is constitutive of those rights and their corresponding obligations.

¹¹ For example, the relationship between the legal basis in Article 19 TFEU conferring powers on the Union in the area of non-discrimination, and Article 21(1) of the Charter of Fundamental Rights, also relating to non-discrimination, is clarified in the "Explanations relating to the Charter of fundamental rights" (OJ 2007/C 303/02).

¹² E.g. in the Preamble: "*The European Pillar of Social Rights expresses principles and rights essential for fair and well-functioning labour markets and welfare systems in 21st century Europe.*"

¹³ This draws on the distinction reflected in the Charter of Fundamental Rights according to which rights must be respected, whereas principles must be observed. Principles in the Charter of Fundamental Rights become significant for the Courts only when acts implementing them are interpreted or reviewed but they do not give rise to direct claims for positive action by the Union's institutions or Member States authorities. See Articles 51(1) and 52(5) of the Charter of Fundamental Rights and "Explanations relating to the Charter of Fundamental Rights" (OJ 2007/C 303/02) relating to Article 52(5).

¹⁴ E.g. Principle 6(b) "*Adequate minimum wages shall be ensured...*"

¹⁵ E.g. Principle 6(a) "*Workers have the right to fair wages that provide for a decent standard of living.*"

11. On the other hand, in the accompanying communication the Commission states that
*"[g]iven the legal nature of the Pillar, these principles and rights are not directly enforceable: they require a translation into dedicated action and/or separate legislation, at the appropriate level."*¹⁶
12. Considering the broad scope of the 20 rights and principles and the limitations on the powers conferred on the Union to adopt binding acts, whether legislative or non-legislative, in the relevant areas, it is clear that the Union does not have the powers necessary to give effect to all 20 rights and principles as directly enforceable. Nor does the Union have competence to adopt measures requiring the Member States to ensure that all the rights and principles are enforceable by the persons specified as falling within the personal scope of the Proclamation.
13. The Union only has competence to adopt directly enforceable rights or legally binding obligations on Member States to adopt measures granting such rights with regard to *certain aspects of* the content of the draft Proclamation.¹⁷ Moreover, the Union must do so through the type of measures foreseen in Article 288 TFEU and according to the procedures foreseen in the relevant legal bases.¹⁸ Indeed, the Union has already adopted numerous acts relating to different aspects of the rights and principles of the Proclamation.
14. However, the Proclamation does not take the form of a measure creating or extending legal rights and obligations at Union level and does not correspond to any act provided for by the Treaties. It is thus an atypical act of a political nature which does not create legally binding rights and obligations with respect to the persons falling within its personal scope and its addressees.

¹⁶ Doc. 8637/17, page 7.

¹⁷ See paragraph 6 above.

¹⁸ It is recalled that legally binding rights and obligations can, of course, also be created through primary Union law. Legally binding effect was given to the Charter of Fundamental Rights not through the solemn declaration of 12 December 2007, but through the entry into force of the Lisbon Treaty on 1 December 2009.

15. The CLS recommends that language should be included in the Proclamation, through amendments and/or additions, in order to clarify its nature, notably that it does not seek to create legal effects. Nor could it do so, without going beyond the powers of the three institutions as explained in paragraphs 12-14 above.

ii) Position of the addressees of the Proclamation

16. As stated above, the Preamble states that "[d]elivering on the European Pillar of Social Rights is a shared commitment and responsibility between the Union, its Member States and the social partners." With regard to the Member States it also states that "... the European Pillar of Social Rights is primarily conceived for the euro area but it is applicable to all Member States that wish to be part of it."
17. First, even if the Council signs the Proclamation, it does not alter the scope for the Member States to determine how, and even if, they wish to take measures to give effect to the rights and principles. In areas where the Union has already exercised legislative competences or adopted other legally binding measures, it is those measures which bind the Member States - not the corresponding rights and principles of the Proclamation.
18. Given the conclusion above on the legal nature of the Proclamation, its adoption by the three institutions would have to be considered as a political act encouraging the Union institutions, Member States and the social partners to move towards its realisation. The reference to the "euro area" must be considered as a political assessment that it is more crucial for Member States having the euro as their currency to take action in this regard than for the other Member States. However, the fact that the Proclamation cannot alter the scope of Member States' competence to determine how and if to adopt measures in order to give effect to it (see paragraph 17) applies equally to all Member States, whether part of the "euro area" or not.

19. From a legal perspective it would not be open to the Council to agree to language in the Proclamation indicating that all or certain aspects of it are particularly relevant for the "euro area" Member States, unless there were objective reasons for doing so. In so doing the Council would need to consider whether the policy areas covered by the Proclamation are relevant for all Member States or whether any of the exceptions concerning Member States with a derogation (Article 139(2) TFEU) apply. It should be recalled in this context that adoption by Member States of the euro as their currency is not the exercise of an option to join a more integrated union but (save in two cases) an obligation, as soon as the necessary conditions are fulfilled, to adopt the single currency of the Union.
20. Second, the fact that Member States are encouraged to act in order to give effect to the Proclamation, but are not legally bound to do so, also applies to them in their role as members of the Council. An atypical document, such as the Proclamation, cannot prejudice the positions that the Council takes in specific future dossiers, legislative or otherwise. The CLS recommends that this be recalled in the Proclamation.
21. Third, while nothing prevents the three institutions from addressing the Proclamation to the Union, the Member States and the social partners, the CLS recommends that the first sentence cited in paragraph 16 above be reformulated. It is not for the three institutions to commit other parties to political commitments they undertake nor to make them responsible for their implementation. In particular, committing the social partners to the fulfilment of the 20 rights and principles constitutes an interference with their autonomy, which the Union must respect in accordance with Article 152 TFEU.

C. **The principles of conferral, subsidiarity and proportionality**

22. Two aspects of the principle of conferral, set out in Article 5 TEU, are of relevance.
23. First, the Proclamation cannot establish new powers or tasks for the Union nor modify the powers and tasks as defined in the Treaties.
24. In this regard, the Preamble to the Proclamation states that "*[a]t Union level, the European Pillar of Social Rights does not entail an extension of the Union's powers as defined by the Treaties. It should be implemented within the limits of those powers.*" For the avoidance of doubt, this statement should be amended to cover also the tasks of the Union¹⁹. The use of "should" in the second sentence is also inappropriate as it gives the impression that this is a value judgment whereas the Proclamation can only be implemented, at Union level, within the scope of the powers conferred on the Union.
25. Second, the CLS has previously indicated that even for atypical acts, the principle of conferral must be respected²⁰. In other words, the Union may act only within the limits of the competences conferred on it to attain the objectives set out in the Treaties. As highlighted above, there are aspects of the Proclamation which cannot be the subject of legislation at Union level.²¹

¹⁹ See Article 51(2) of the Charter of Fundamental Rights.

²⁰ Opinion of 16 October 2012, doc.15018/12, paragraph 6.

²¹ For this reason, the Preamble does not - and could not without significantly reducing its intended scope - contain the same limitation as that found in the first sentence of Article 51(1) of the Charter of Fundamental Rights.

26. However, the Union's competences are not limited to the adoption of legally binding acts. Acts relating to areas of Union activity, including atypical acts²², may set out objectives in areas where the Union has coordinating competences. The rights and principles set out in the Proclamation relate to economic, employment, social and public health policies where the Union, as recalled above, also has powers of coordination. The adoption of an atypical act encouraging further action in such areas may be considered to fall within the powers conferred by the Treaties to coordinate Member States' activities in those areas, and thus to be consistent with the principle of conferral.
27. While all 20 rights and principles largely fall within the competences of the Union either to adopt legally binding acts or to coordinate Member States' action, there are aspects which can be interpreted as falling outside those competences.²³ Therefore, the CLS advises, in light of the considerations referred to in paragraph 5, clarifying that the rights and principles are to be read as relating only to the Union's competences. Were it not the case, the institutions would run the risk of being accused of acting *ultra vires*, since the principle of conferral also proscribes the adoption of purely declaratory documents without a legal basis.

²² C.f. Opinion of 16 October 2012, doc.15018/12, paragraph 6.

²³ For example, Principle 2 states that "*Equality of treatment and opportunities between women and men must be ensured and fostered in all areas [...]*" While the reach of that principle is broad, in particular in matters covered by Article 157 TFEU, and applies for example to access to posts in the armed forces (see for example Case C-285/98, Tanja Kreil, ECLI:EU:C:2000:2) it cannot be extended to apply to matters beyond the scope of Union law such as choices of military organisation for the defence of the territory of a Member State or of their essential interests. For those reasons the Court explained in paragraph 41 of its judgment in Dory (C-186/01, ECLI:EU:C:2003:146) that "*the delay in the careers of persons called up for military service is an inevitable consequence of the choice made by the Member State regarding military organisation and does not mean that that choice comes within the scope of Community law. The existence of adverse consequences for access to employment cannot, without encroaching on the competences of the Member States, have the effect of compelling the Member State in question either to extend the obligation of military service to women, thus imposing on them the same disadvantages with regard to access to employment, or to abolish compulsory military service.*" The wording "*in all areas*" cannot relate to such choices.

28. While the principle of conferral concerns the limits of the powers of the Union, the principles of subsidiarity and proportionality govern the use of those powers. As is the case for any use of the Union's powers, implementation of the rights and principles contained in the Proclamation at Union level must therefore respect those two principles. If Council so wishes, this could be recalled in the Proclamation.

D. Prohibition of certain atypical acts in Article 296 TFEU

29. Article 296 TFEU, third subparagraph, states that "[w]hen considering draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the relevant legislative procedure in the area in question."

30. Article 296 TFEU also gives the institutions freedom "*in compliance with the applicable procedures and the principle of proportionality*" to determine the type of act to be adopted (first subparagraph) and aims at ensuring transparency of Union acts through the duty to state reasons (second subparagraph). The aim and purpose of the third subparagraph of that Article must be determined in light of this context. It must therefore be understood as a prohibition on adopting acts which conflict with the procedures prescribed by the Treaties, thereby disturbing the institutional balance entailed therein or creating legal uncertainty in relation to the draft legislative act under consideration.

31. The CLS has already clarified that this prohibition applies "*if the content of [any form of document, even if its aim is purely political] addresses issues covered by the draft legislative act.*"²⁴ The third subparagraph of Article 296 TFEU therefore prohibits acts which prejudice policy choices covered by a draft legislative act.

²⁴ Opinion of 16 October 2012, doc. 15018/12, paragraph 1.

32. The CLS considers that the Proclamation does not infringe Article 296 TFEU as its rights and principles do not deal with specific detailed policy choices that are currently subject to legislative proposals.
33. This can be illustrated by reference to the current Commission proposal on work-life balance²⁵ and to Principle 9 of the Proclamation concerning work-life balance and caring responsibilities. That Principle speaks about "*suitable leave*" without specifying any particular type of leave, length thereof or any other relevant detailed modality of how that "right" is to be exercised. It does not provide any detail as to what constitutes "*flexible working arrangements*" nor who is considered to have caring responsibilities.
34. While adoption of the proposal in question would undoubtedly contribute to the implementation of Principle 9, that Principle does not prejudge the detailed choices that the co-legislators face in their consideration of the proposal. As is already clear from the fact that the Commission's proposal itself falls short of fully implementing Principle 9²⁶, the co-legislators, in signing the Proclamation, are not constrained as to the manner and extent to which that Principle is implemented through the adoption of the draft legislative act in question.

²⁵ Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, doc. 8633/17. That draft legislative act would introduce an individual entitlement of 5 days per year to "*carers' leave*" going beyond the current Union law limited to leave for parents. The proposal would moreover introduce a right for carers to request flexible working arrangements and extend this right also for parents already enjoying a more limited but similar right under Union law. The proposal would also extend rights to leave for parents compared to current Union law.

²⁶ The Principle goes beyond the legislative proposal as the latter does not introduce a right to flexible working arrangements but merely a right to request such arrangements. The Commission services discarded the option of a right to flexible working arrangements with the following justification: "*An extension of the level of the right to request flexible working as an absolute right for employees was not considered as a parameter, as it would create serious restrictions for employers to determine how work is organised in a firm. This is in line with employers' responses to the social partner consultation on work-life balance, as well as discussions held with SME representatives.*" See doc. 8633 ADD 2, page 68 (SWD(2017) 201 final). This serves as a good example of how the general principles setting high ambitions have to be balanced against other considerations when it comes to implementation.

E. Possible legal consequences of the Proclamation

35. Even as a political document, the Proclamation may have indirect legal consequences.
36. First, statements by the Commission in the documents accompanying the draft Proclamation indicate that it may, in the future, be linked to other acts, in particular acts relating to the European Semester and to Union Funds.²⁷ Those acts may entail legal consequences. The appropriateness of referring to the Proclamation in any such acts will have to be assessed in the event that such proposals are made.
37. It is not possible to assess all other measures at Union level that may potentially be presented to give effect to the rights and principles. The Commission services have published a Staff Working Document which describes "*recent and ongoing initiatives at EU level*" for the "*implementation*" of the different rights and principles. Signature of the Proclamation by the three institutions does not entail an acceptance of any of these initiatives nor any other statement in the Staff Working Document. The suggestion made in paragraph 20 above would clarify this.

²⁷ Doc. 8637/17, page 7-10.

38. Second, it cannot be excluded that the Court would rely on the Proclamation in future judgements concerning the interpretation of Union law.²⁸ The Court has previously relied on political documents in determining questions relating to the division of competences.²⁹
39. It may, in particular, be noted that the Court has relied upon the Community Charter of the Fundamental Social Rights of Workers in interpreting secondary law that makes reference to it.³⁰ The Court has also relied on that Charter and on other non-legally binding documents for determining which rights are to be "*recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures.*"³¹

²⁸ C.f. the Court's judgment in C-126/86, Giménez Zaera, ECLI:EU:C:1987:395 paragraph 14 where the Court held that "[t]he fact that the objectives of social policy laid down in Article 117 [of the EEC Treaty, today replaced in an amended version by Article 151 TFEU] are in the nature of a programme does not mean that they are deprived of any legal effect. They constitute an important aid, in particular for the interpretation of other provisions of the Treaty and of secondary community legislation in the social field".

²⁹ See the Court's judgment in ECOWAS (Case C-91/05, ECLI:EU:C:2008:288) where the Court relied partly on the Joint Statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, entitled 'The European Consensus [on Development]' (OJ 2006 C 46, p. 1) and a Council "*resolution on small arms*" for determining the demarcation between Community development policy and the CFSP.

³⁰ See for example C-84/94, UK v Council (working time), ECLI:EU:C:1996:431, paragraph 75-76.

³¹ See Case C-438/05, Viking, ECLI:EU:C:2007:772, paragraphs 43-44 where the Court recognised the right to strike as a fundamental right *inter alia* with reference to the Community Charter of the Fundamental Social Rights of Workers and the European Social Charter. It can be noted that both these documents were, at the time, referred to in Article 136 EC (current Article 151 TFEU).

40. Therefore, even with clear statements in the Proclamation that the rights and principles contained therein are not legally binding and do not constitute directly enforceable rights, it is still possible that the Court will make use of the Proclamation in order to interpret Union law. This was the case for the non-legally binding version of the Charter of Fundamental Rights proclaimed in 2000, which the Court referred to as "reaffirming" that a certain principle constituted a general principle of Union law stemming from the constitutional traditions common to the Member States³². Similarly, the Proclamation, if signed by the Council, could conceivably be considered to "reaffirm" that certain rights and principles therein are fundamental rights "*as they result from the constitutional traditions common to the Member States*" and thus "*constitute general principles of the Union's law.*" (Article 6(3) TEU).

F. Changes to the text of the proposed Proclamation

41. The suggested clarifications to the text of the Proclamation can be made in different ways. The Presidency has suggested that the 20 rights and principles themselves should not be redrafted³³ and that any relevant clarifications should be made in the Preamble to the Proclamation.
42. Given that the Proclamation as a whole is an atypical act which is not legally binding, there is, contrary to a legally binding act, no difference of status between the Preamble and the 20 rights and principles. The approach suggested by the Presidency of modifying only the Preamble to address the relevant concerns is therefore legally feasible. Whether this approach is followed or not is a policy choice for the Council to make.

³² See for example Joined cases C-402/05 P and C-415/05 P, Kadi, ECLI:EU:C:2008:461, paragraph 335. See also C-540/03, European Parliament v Council, ECLI:EU:C:2006:429, paragraphs 32, 34-38 and 58. It is recalled that at the time Article 6(2) TEU stated that that "*the Union shall respect fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, as general principles of Community law*". (c.f. current Article 6(3) TEU).

³³ See doc. 11002/17.

IV. PROCEDURE FOR THE COUNCIL DECISION TO SIGN THE PROCLAMATION

43. Given that the Proclamation does not correspond to any act to be adopted pursuant to the Treaties, a Council decision to commit to it and authorise its signature constitutes an atypical act for which consensus is needed. It can be recalled that consensus is not a voting rule and has no legal definition. Consensus has been considered to mean that a text is acceptable to all, with no delegation raising an objection, without precluding the possibility that some delegations may retain certain reservations of minor importance on certain aspects of the text which they do not regard as standing in the way of its adoption.³⁴
44. Signature on behalf of the Council of the Proclamation requires a Council act authorising such signature, which must be prepared within the instances of the Council. The Council will need to approve the final version of the text which it is prepared to sign, and the Presidency should be authorised to sign the Proclamation on behalf of the Council.
45. Given the current references in the Preamble to the euro area it is worth recalling that only in limited circumstances³⁵ may the Council take action limited to the euro area Member States. Members of the Council representing all Member States will therefore participate in any decision approving the Proclamation.

³⁴ See answer to parliamentary question P-3526/03 of 11 March 2004.

³⁵ See, in particular, Articles 136 to 138 TFEU.

V. CONCLUSIONS

46. The Proclamation is not a measure creating or extending legal rights and obligations and does not correspond to any act to be adopted pursuant to the Treaties. It constitutes an atypical act which is not legally binding and does not create directly enforceable rights.
47. Prior to the issuance of an authorisation to sign the Proclamation in the Council's name, consensus on the text is required.
48. The Proclamation may indirectly have legal consequences. In particular, the Court has in the past relied on similar documents when interpreting Union law and when defining fundamental rights constituting general principles of the Union's law within the meaning of Article 6(3) TEU.
49. Clarifications to the Proclamation are advisable as set out above in paragraphs 15 on the legal nature of the Proclamation; 20 (and 37) on the lack of binding effect of the Proclamation and on the relation to future Union measures; 21 on the social partners as addressees; and 24 and 27 on the principle of conferral. They may, if Council wishes, be made in the Preamble.
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