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ASIE 88  
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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 November 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	JOIN(2016) 51 final
Subject:	Joint Proposal for a COUNCIL DECISION on the conclusion of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part

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Delegations will find attached document JOIN(2016) 51 final.

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Encl.: JOIN(2016) 51 final



EUROPEAN  
COMMISSION

HIGH REPRESENTATIVE  
OF THE UNION FOR  
FOREIGN AFFAIRS AND  
SECURITY POLICY

Brussels, 28.11.2016  
JOIN(2016) 51 final

2016/0367 (NLE)

Joint Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Framework Agreement between the European Union and its  
Member States, of the one part, and Australia, of the other part**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

This joint proposal concerns the conclusion of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, on the other part ('the Agreement').

On 10 October 2011, the Council adopted a decision<sup>1</sup> authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part. Negotiations began in December 2011 and were successfully concluded with the initialling of the Agreement on 5 March 2015. The Agreement was signed on XXX. Pending its entry into force, certain parts of the Agreement, as mutually determined by the EU and Australia, are provisionally applied in accordance with Article 61 of the Agreement.

The European External Action Service and Commission services have been involved in the negotiating process. Member States have been consulted throughout the negotiating process at meetings of the relevant Council Working Parties. The European Parliament has been kept regularly informed throughout the negotiations.

The High Representative and the Commission consider that the objectives set by the Council in its directives on the negotiation of the Agreement have been met and that the draft Agreement can be submitted for conclusion. This joint proposal concerns the legal instrument concluding the Agreement on behalf of the EU.

The Agreement will contribute significantly to the improvement of the partnership between the EU and Australia, a partnership which is based on common values and principles, including respect for democratic principles, human rights and fundamental freedoms, the rule of law, international peace and security. The Agreement is premised on respect for human rights and democratic principles, and for international law and the principles set out in the Charter of the United Nations, which constitute the basis for cooperation between the Parties.

### **2. LEGAL ELEMENTS OF THE PROPOSAL**

#### **2.1 THE AIM AND CONTENT OF THE AGREEMENT**

The purpose of the Agreement is *'to establish a strengthened Partnership between the Parties; to provide a framework to facilitate and promote cooperation across a broad range of areas of mutual interest; and to enhance cooperation to develop solutions to regional and global challenges'* (Article 1 of the Agreement).

The content of the Agreement covers three pillars:

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<sup>1</sup> Council Decision 14657/11 and Decision of the Representatives of the Governments of the Member States, meeting with the Council 14658/11

- political cooperation on foreign policy and security issues of common interest, including weapons of mass destruction (WMD), small arms and light weapons (SALW), counter-terrorism, promoting international peace and security and cooperation in multilateral fora. The Agreement includes binding political clauses based on the shared values. These clauses are in line with the standard clauses found in similar agreements signed by the EU;
- cooperation on economic and trade matters, including economic policy dialogue, promoting trade and investment matters, and sectoral economic and trade issues, such as agriculture, technical barriers to trade, sanitary and phytosanitary issues, government procurement and intellectual property;
- sectoral cooperation, including in the areas of environment, climate change, migration and asylum, tourism, research and innovation, education and culture, consular protection, protection of personal data, the fight against organised crime and cybercrime and judicial cooperation.

## 2.2 The legal basis for the proposed decision

The choice of legal basis for the conclusion of an agreement must rest on objective factors amenable to judicial review, which include the aim and content of the measure.

With regard to a measure that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the Court of Justice has held that, where various provisions of the Treaty are therefore applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases, unless the procedure laid down for each legal basis are incompatible with each other<sup>2</sup>.

The Agreement pursues objectives and has components in the areas of Common Foreign and Security Policy, Common Commercial Policy and development cooperation. These aspects of the agreement are inseparably linked without one being incidental to the other.

Article 218(6)(a)(iii) of the Treaty on the Functioning of the European Union (TFEU) provides that, where an agreement establishes a specific institutional framework by organising cooperation procedures, the Council must adopt a decision concluding the agreement after obtaining consent of the European Parliament. Moreover, the second subparagraph of Article 218(8) of the TFEU provides that the Council must act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act.

The Common Foreign and Security Policy is a field for which unanimity is required for the adoption of a Union act. Equally, the Agreement establishes an institutional framework by organising cooperation procedures between the EU and its Member States, of the one part, and Australia, of the other part.

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<sup>2</sup> (Case C-490/10 Parliament v Council, ECLI: EU:C:2012:525, paragraph 46)

In light of the above, the legal basis of the proposed decision should therefore be Article 37 of the Treaty of the European Union (TEU), Article 207 TFEU and Article 212(1) TFEU read in conjunction with Article 218(6)(a) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as legal basis<sup>3</sup>.

### **2.3. The necessity of the proposed decision**

Article 216 of the TFEU provides that the Union may conclude an agreement with one or more third countries where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or where is provided for in a legally binding Union act or where is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as the Framework Agreement, namely in Articles 37 TEU, 207 TFEU and 212(1) TFEU.

### **2.4. Other legal aspects**

The Agreement establishes a Joint Committee, the objective of which is to monitor the development of the bilateral relationship between the Parties.

The Agreement includes as well a suspension mechanism. In cases of particularly serious and substantial violation of the essential elements of the Agreement, the Agreement may be suspended or terminated, and other appropriate measures affecting other agreements may be taken in accordance with the rights and obligations of the Parties under such agreements.

Once in force, the Agreement will create a coherent, legally binding overall framework for the EU's relations with Australia.

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<sup>3</sup> (Case C-377/12 Commission v Council, ECLI:EU:C:2014:1903)

Joint Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 and Article 212(1), read in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal of the European Commission and of the High Representative of the Union for Foreign Affairs and Security Policy,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with the Council Decision No 2016/XXX/EU, the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part ('the Agreement'), was signed on XXX, and applied on a provisional basis in accordance with Article 61 of the Agreement, pending its conclusion at a later date.
- (2) The objective of the Agreement is to strengthen the cooperation across a wide spectrum of policy fields including human rights, non-proliferation of weapons of mass destruction and the fight against terrorism; cooperation on economic and trade matters, health, the environment, climate change, energy, education, culture, labour, disaster management, fisheries and maritime affairs, transport, legal cooperation, combatting money laundering and terrorist financing, organised crime and corruption.
- (3) The Agreement should be approved on behalf of the Union.

HAS ADOPTED THIS DECISION:

*Article 1*

The Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

*Article 2*

The High Representative of the Union for Foreign Affairs and Security Policy shall chair the Joint Committee provided for in Article 56 of the Agreement.

The Union or, as the case may be, the Union and the Member States, shall be represented in the Joint Committee depending on the subject matter.

*Article 3*

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to the notification provided for in Article 61(1) of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

*Article 4*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*