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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Follow up to Judgment in Case C-660/13 - Arrangements between Secretaries General on non-binding instruments

On 28 July 2016, the Court of Justice issued its judgment in case C-660/13 confirming the policy-making prerogatives of the Council in relation to the negotiation and agreement of non-binding instruments of non-binding instruments on behalf of the Union with third countries and international organisations. Since the judgment, the Council Secretariat has worked on a constructive basis with the Commission and European External Action Service to ensure that the Council is seized, and provided with relevant information and texts, in a timely manner in order to enable to exercise its prerogatives. To underpin this work, they have agreed on the attached arrangements setting out the relevant administrative procedures which will be signed by their respective Secretaries General.

Encl.: Arrangements setting out the relevant administrative procedures



Arrangements for non-binding instruments

On 28 July 2016, the Court of Justice issued its judgment in case C-660/13. The judgment addresses the respective institutional powers concerning non-binding instruments (NBIs) adopted on behalf of the European Union.

In this context, the Secretary Generals of the Council, the Commission and the EEAS on behalf of the High Representative have decided on the arrangements as laid out below.

They apply to international bilateral and multilateral NBIs, irrespective of the policy field and of who represents the Union in the negotiations with the third side or sides and irrespective of their denomination or form.

They do not apply to administrative arrangements. Administrative arrangements can only engage the relevant institution or service, and be of a purely administrative, non-political nature and limited to the administrative powers conferred on the institution or service adopting them.

PREPARATORY PHASE

- The negotiator (Commission and/or EEAS on behalf of the High Representative) will seize, with sufficient time in advance, the Council by means of a written note of the intention to enter into discussions to draw up a NBI.
- The note should indicate the main elements of the NBI and the side or sides with which it would be negotiated. Such note may, following coordination with the Council Secretariat, be communicated to a preparatory body of the Council but sufficient time must be allowed for the Council to assess whether it is in the interest of the Union to enter into such an instrument.

SIGNATURE/AGREEMENT

- Before the intended signature or agreement of the proposed NBI, the negotiator must forward to the Council (or, following coordination with the Council Secretariat, to a Council preparatory body) the draft instrument as provisionally agreed with the third side or sides, together with a cover note. Sufficient time must be given for the Council to be able to give its authorisation; this should be at least five weeks before the date of the intended signature or adoption, except in duly justified cases of urgency.
- The cover note should indicate: 1) whether the text is definitive or will, by virtue of the nature of the negotiations, require finalisation on the spot and, if so, which elements of the instrument are still subject to further negotiation; and 2) the intended date and occasion of signature or adoption.
- Where the Council has authorised signature/adoption of the NBI, it will immediately notify this to the negotiator in writing, including where relevant the margin for pending negotiations.
- After signature or agreement, a copy of the final text as signed (in all language versions if there is more than one) must be sent to the Council.

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2/2