



Council of the
European Union

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From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

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Subject: COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes

- Adoption

COUNCIL DECISION on the conclusion of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes

- Agreement in principle
- Request for the consent of the European Parliament

= Statements by the Commission

Council Decision on the signing and provisional application of the Agreement between the European Union and New Zealand on the participation of New Zealand in Union programmes
– Adoption

The Commission does not support changes in the decision, which pertain to acts of external representation of the Union.

All acts of external representation in the treaty-making process, including the signature of an international agreement and the subsequent expression of the consent to be bound by it are in accordance with Article 17(1) TEU the institutional prerogatives of the Commission, with the exception of such acts pertaining to agreements falling exclusively or predominantly within the common foreign and security policy of the Union, where it is the High Representative who represents the Union externally according to Article 27(2) TEU.

Without prejudice to this exception, when the Commission and another actor designated by the Council, co-sign an international agreement on behalf of the Union, only the signature of the Commission commits the Union.

Similarly, the notification to be submitted to New Zealand under Article 15(2) of the Agreement with New Zealand concerning the provisional application of this Agreement by the Union is an act of external representation of the Union, thus falls under the Commission's prerogatives included in Article 17(1) TEU. As a consequence, it is not for the President of the Council or the Council to notify the provisional application of this agreement. Should it do so, it would violate the external representation power of the Commission as well as the principle of inter institutional balance enshrined in Article 13(2) TEU.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties 'cannot alter the rules of the Treaties that the institutions are obliged to respect' (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.

Council Decision on the conclusion of the Agreement between the European Union and New Zealand on the participation of New Zealand in Union programmes

– Agreement in principle; Request for the consent of the European Parliament

The Commission does not support changes in the decision, which pertain to acts of external representation of the Union.

All acts of external representation in the treaty-making process, including the signature of an international agreement and the subsequent expression of the consent to be bound by it are in accordance with Article 17(1) TEU the institutional prerogatives of the Commission, with the exception of such acts pertaining to agreements falling exclusively or predominantly within the common foreign and security policy of the Union, where it is the High Representative who represents the Union externally according to Article 27(2) TEU.

The notification to be submitted to New Zealand under Article 15(1) of the Agreement with New Zealand expressing the Union's consent to be bound by the Agreement is an act of external representation of the Union, thus falls under the Commission's prerogatives included in Article 17(1) TEU. As a consequence, it is not for the President of the Council or the Council to notify the Union's consent to be bound by this agreement. Should it do so, it would violate the external representation power of the Commission as well as the principle of institutional balance enshrined in Article 13(2) TEU.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties 'cannot alter the rules of the Treaties that the institutions are obliged to respect' (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendments by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.