



## **The Court of Justice annuls the decisions of the Council on the application of the Partnership Agreement with Armenia**

*It holds that, although the Partnership Agreement has some links with the CFSP, the components or declarations of intention that it includes which may be linked to the CFSP are insufficient to constitute an autonomous component of that agreement capable of splitting the Council measure into two decisions*

The Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part ('the Partnership Agreement with Armenia'), was signed on 24 November 2017.<sup>1</sup> That agreement provides for the establishment of a Partnership Committee and the possibility of establishing subcommittees and other bodies. It also provides that the Partnership Council is to adopt its own rules of procedure and to determine therein the duties and functioning of the Partnership Committee.

The European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy jointly adopted, on 29 November 2018, a proposal for a Council Decision on the position to be taken on behalf of the European Union within the Partnership Council established by the Partnership Agreement with Armenia, as regards the adoption of decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body. In its amended proposal of 19 July 2019, the Commission deleted the reference to Article 37 TEU, which covers the conclusion of agreements in the field of the common foreign and security policy (CFSP), as a substantive legal basis. The Council split that proposal for a decision into two separate decisions. It thus adopted, first, Decision 2020/245, intended to ensure the application of the Partnership Agreement with Armenia with the exception of Title II thereof, based on a substantive legal basis constituted by Articles 91, 207 and 209 TFEU, in the fields of transport, trade and development. Second, it adopted Decision 2020/246, intended to ensure the application of Title II of that agreement, covering cooperation in the field of the CFSP, based on a substantive legal basis constituted solely by Article 37 TEU. Whereas Decision 2020/245 was adopted by qualified majority, Decision 2020/246 was adopted by unanimity. The Commission contested, before the Court, the splitting of the Council act into two decisions, the choice of Article 37 TEU as the legal basis of Decision 2020/246, and the voting rules that resulted from that choice, and consequently sought the annulment of those two Council decisions.

The Court of Justice, sitting as the Grand Chamber, annuls the Council Decisions 2020/245 and 2020/246. It holds that, although the partnership agreement has some links with the CFSP, the components or declarations of intention it includes which may be linked to the CFSP are insufficient to constitute an autonomous component of that agreement capable of justifying the choice of Article 37 TEU as the substantive legal basis and the second subparagraph of Article 218(8) TFEU as the procedural legal basis of Decision 2020/246. It also holds that, in those

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<sup>1</sup> Council Decision (EU) 2018/104 on the signing, on behalf of the Union, and provisional application of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (OJ 2018, L 23, p. 1).

circumstances, there is nothing to justify splitting into two decisions the act on the position to be taken by the European Union within the Partnership Council established by the Partnership Agreement with Armenia.

### *Findings of the Court*

At the outset, the Court recalls that, pursuant to Article 218(8) TFEU the Council is to act, in principle, by way of qualified majority and that it is only in the situations set out in the second subparagraph of that provision that it is to act by unanimity. In those circumstances, the voting rules applicable must, in each individual case, be determined according to whether or not it falls within one of the situations set out in the second subparagraph of Article 218(8) TFEU, as the choice of substantive legal basis of the decision concerned must be based on objective factors amenable to judicial review, which include the aim and the content of that measure.

The Court recalls in that regard that, if examination of a European Union measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely, that required by the main or predominant purpose or component. In the present case, although the contested decisions formally concern different titles of the partnership agreement, the Court observes that the field that they cover and, thus, the legal basis of the external action of the European Union at issue, must be assessed with regard to the agreement as a whole, as those decisions concern, overall, the functioning of the international bodies created on the basis of the Partnership Agreement with Armenia. Moreover, the adoption of two separate decisions of the Council, based on different legal bases, but which seek to establish the single position to be adopted on behalf of the European Union on the functioning of the bodies established by that agreement, can be justified only if the agreement, considered as a whole, contains distinct components corresponding to the different legal bases used for the adoption of those decisions.

In that regard, the Court emphasises that the characterisation of an agreement as a development cooperation agreement must be determined having regard to its essential object and not in terms of its individual clauses. While it is true that the provisions of Title II of the Partnership Agreement with Armenia cover subjects capable of falling within the CFSP and reaffirm the will of the parties to collaborate in that area, those provisions are nevertheless few in number in the agreement and are, for the main part, limited to declarations of a programmatic nature which merely describe the relationship between the contracting parties and their common future intentions.

The Court next observes, as regards the aims of the agreement, that it seeks principally to establish the framework for cooperation in matters of transport, trade and development with Armenia. In that context, the Court finds that to require a development cooperation agreement also to be based on a provision other than the provision relating to that policy whenever the agreement touches on a specific area would in practice be liable to render devoid of substance the competence and the procedure laid down in Article 208 TFEU. In the present case, while some of the specific aims seeking to strengthen political dialogue may be linked to the CFSP, the Court observes that the enumeration of those specific aims is not accompanied by any programme of action or concrete terms governing cooperation in that field that may be capable of establishing that the CFSP constitutes one of the distinct components of that same agreement, outside the scope of those aspects connected with trade and development cooperation.

Finally, while a contextual element of a measure, such as, in the present case, the Nagorno-Karabakh conflict, may also be taken into account in order to determine the legal basis of that measure, the Court finds that the Partnership Agreement with Armenia does not envisage any concrete or specific measure with a view to addressing that situation which puts international security in issue.

In the light of the foregoing, the Court annuls Decision 2020/246 since it was based, wrongly, on the substantive legal basis of Article 37 TEU. The Court also annuls Decision 2020/245. As is apparent from recital 10 and from Article 1 thereof, that decision does not relate to the position to

be adopted on behalf of the European Union within the Partnership Council established by the Partnership Agreement with Armenia in so far as that position is covered by the application of Title II of that agreement. However, the provisions comprising that title do not constitute a distinct component of that agreement that obliged the Council to use, inter alia, Article 37 TEU and the second subparagraph of Article 218(8) TFEU as a basis for establishing that same position. Therefore, there was nothing to justify the Council excluding the position in question from the object of Decision 2020/245, in so far as it covers the application of Title II of that same agreement and adopting a separate decision pursuant to Article 218(9) TFEU, which has as its object the establishment of that position in so far as it covers that same application.

The Court decides nonetheless, on grounds of legal certainty, to maintain the effects of the annulled decisions pending a new decision to be taken by the Council which complies with the judgment.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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