

ENHANCED COOPERATION

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ENHANCED COOPERATION

1. SUMMARY
2. KEY PROVISIONS OF THE TREATIES

ENHANCED COOPERATION -SUMMARY-

- **shall** aim to further the objectives of the Union, protect its interests and **reinforce its integration process**;
- shall **not** undermine the internal market or economic, social and territorial cohesion; shall **not** constitute a barrier to or discrimination in trade between Member States, **nor** shall it distort competition between them;
- shall be **open** at any time to all Member States;
- **last resort**;
- **at least nine** Member States (*not one-third*);
- **only members of** the Council representing **the Member States participating** in a given enhanced cooperation (e. coop.) (= the “ins”) **shall take part in votes** taken within the framework of the e. coop. concerned;
- acts adopted in the framework of e. coop. shall **bind only participating** Member States (-> “mini acquis”);

ENHANCED COOPERATION -SUMMARY-

- **Authorisation** to proceed with e. coop. (specific procedures in fields of the CSFP, judicial cooperation in criminal matters and police cooperation) shall be **granted by the Council (by qm)**, on a proposal from the Commission and after obtaining the **consent** of the European Parliament.
- **Accession** to e. coop. in progress (specific procedure in fields of the CSFP): the Commission confirms (however, if request for accession is rejected twice by the Commission -> Council deciding by qm - of the “ins“!);
- Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall **be borne by the participating Member States**.

ENHANCED COOPERATION
-RELEVANT PROVISIONS OF THE TREATIES-
emphasis added

TITLE IV TEU
Article 20

1. Member States which wish to establish enhanced cooperation between themselves **within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties**, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to **further the objectives of the Union**, protect its interests and reinforce its integration process. Such cooperation shall **be open at any time to all Member States**, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council **as a last resort**, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that **at least nine Member States** participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.

3. All members of the Council may participate in its deliberations, but **only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote**. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.

4. **Acts** adopted in the framework of enhanced cooperation **shall bind only participating Member States**. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

TITLE III TFEU ENHANCED COOPERATION

Article 326 TFEU

Any enhanced cooperation shall comply with the Treaties and Union law. Such cooperation **shall not undermine the internal market or economic, social and territorial cohesion**. It shall **not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them**.

Article 327 TFEU

Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

Article 328 TFEU

1. When enhanced cooperation is being established, it **shall be open to all Member States**, subject to compliance with any conditions of participation laid down by the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible.

2. The Commission and, where appropriate, the High Representative of the Union for Foreign Affairs and Security Policy shall keep the European Parliament and the Council regularly informed regarding developments in enhanced cooperation.

Article 329 TFEU

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Treaties, **with the exception of fields of exclusive competence and the common foreign and security policy**, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with the enhanced cooperation referred to in the first subparagraph shall be **granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.**

2. The request of the Member States which wish to establish enhanced cooperation between themselves **within the framework of the common foreign and security policy** shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be **granted by a decision of the Council acting unanimously.**

Article 330 TFEU

All members of the Council may participate in its deliberations, but only members of the Council representing the **Member States participating** in enhanced cooperation **shall take part in the vote.**

Unanimity shall be constituted by the votes of the representatives of the participating Member States only.

A qualified majority shall be defined in accordance with Article 238(3).

Article 331 TFEU

1. Any Member State which wishes to participate in enhanced cooperation in progress in one of the areas referred to in Article 329(1) shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, **confirm the participation of the Member State concerned**. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, **the Member State concerned may refer the matter to the Council, which shall decide on the request**. The Council shall act in accordance with Article 330. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

Article 331 TFEU continued

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the **common foreign and security policy** shall notify its intention to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the High Representative, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the **Council shall act unanimously** and in accordance with Article 330.

Article 332 TFEU

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, **shall be borne by the participating Member States**, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 333 TFEU

1. Where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article 330, **may adopt a decision stipulating that it will act by a qualified majority.**

2. Where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt acts under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article 330, **may adopt a decision stipulating that it will act under the ordinary legislative procedure.** The Council shall act after consulting the European Parliament.

3. Paragraphs 1 and 2 shall **not apply** to decisions having military or defence implications.

Article 334 TFEU

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.