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NOTE

From:	General Secretariat of the Council
To:	CATS
No. prev. doc.:	5632/16; 12275/16
Subject:	International agreements that concern EU competences in the area of criminal law - Inventory

1. At its meeting of 26-27 September 2016 CATS agreed that the practice of keeping an inventory of present and future international agreements that raise an issue of EU competence in the area of criminal law should be maintained with a view to further improving coordination in the area of external action[1]. An updated inventory is found in the Annex.

2. Furthermore, CATS agreed that the inventory should in particular facilitate advance warning on possible issues of EU competence raised by international agreements. In this respect, the Presidency would like to draw the attention of delegations to two specific Council of Europe (COE) instruments, on which work is currently underway.

[1] doc. 12275/16

Future Second Additional Protocol to the CoE Convention on Cybercrime (ETS 185) and UNODC developments

3. At its 16th Plenary meeting in November 2016, the Cybercrime Convention Committee (T-CY) agreed in principle on the need for an Additional Protocol to the Convention. In order to facilitate a formal T-CY decision by June 2017 on initiating the drafting of a Protocol, the T-CY extended the mandate of the Cloud Evidence Group. The Group has been tasked to submit draft Terms of Reference (ToR) for the drafting process and additional information on possible elements to the T-CY in the first semester of 2017 [2]. The Cloud Evidence Group discussed draft ToR at its meeting on 31 January and 1 February 2017.
4. As proposed in the final report of the Cloud Evidence Group of September 2016 [3], possible elements that may be considered in view of the new Additional Protocol may include:

- Provisions for more effective mutual legal assistance;
- Provisions allowing for direct cooperation with service providers in other jurisdictions with regard to requests for subscriber information, preservation requests and emergency requests;
- A clearer framework and stronger safeguards for existing practices of transborder access to data;
- General safeguards, including data protection requirements.

5. It could, therefore, be expected that the negotiations on the new Protocol would touch upon areas of EU competences, as well as issues that are currently under discussion in the framework of the expert process on e-evidence launched by the Commission following the Council conclusions of 9 June 2016 on improving criminal justice in cyberspace [4].

[2] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cd270
[3] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a495e
[4] 10007/16

6. It is recalled that the 2016 Council conclusions envisage that "the development of a common EU approach on improving criminal justice in cyberspace should be treated as a matter of priority. This should be done in a way which is consistent with the work underway on the Council of Europe Budapest Convention framework."

7. Furthermore, relevant developments are also taking place in the context of UNODC. The Intergovernmental Experts Group (IEG) on Cybercrime will meet from 10 to 13 April. The agenda is still under negotiation and specific outcomes – such as possible calls for a new international instrument – are as of yet difficult to predict. A possible further IEG meeting may take place in autumn 2017.

8. This is particularly relevant in view of possible proposals for resolutions at the 26th meeting of the UNODC's Commission on Crime Prevention and Criminal Justice (CCPCJ) on 22 to 26 May ahead of next year's meeting, which will have cybercrime as a main topic. The subject of a new international instrument on cybercrime is likely to be raised.

9. In view of the above, it would be necessary that timely arrangements should be made to ensure both the best representation of the interests of the Union and its Member States in the incoming negotiations in the Council of Europe and UNODC and synergies with the ongoing work on implementation of the 2016 Council conclusions.

Delegations and the Commission are invited to exchange views on this issue.

Draft Protocol amending the Additional Protocol to the CoE Convention on the Transfer of Sentenced Persons (CETS N° 167)

10. In 2013, the Committee of Experts on the Operation of European Conventions on Cooperation in criminal matters (PC-OC) conducted an inquiry on the implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol (Docs PC-OC (2013) 10 rev 2 and PC-OC (2013) 10 ADD rev 2). The replies received by the Parties mentioned difficulties encountered in the implementation of the Convention and its Additional Protocol and contained proposals for amendments which were discussed during a special session organised during the 65th plenary meeting of the PC-OC (26-28 November 2013).

11. The PC-OC has considered these proposals and agreed on the main obstacles to a speedy and successful implementation of the Convention and the Additional Protocol thereto. As a result, the PC-OC made a proposal to the European Committee on Crime Problems (CDPC) to address certain difficulties identified by introducing the following changes to the Additional Protocol:

- extension of the scope of Article 2 to situations where the person, subject to a final sentence, did not flee but was free to move to the country of his or her nationality and made use of this freedom.
- deletion of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol;
- extension of the scope of Article 3 paragraph 3a to cases where the person concerned refuses to give an opinion on the transfer. It was felt that transfer should also be possible in those cases.
- introduction of a time-limit (90 days) as regards the decision making related to the application of the rule of speciality in the Additional Protocol (Article 3, paragraph 4a).

12. Work on the draft Protocol is underway in the CoE PC-OC Committee[5].

[5] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806be128
http://www.coe.int/en/web/transnational-criminal-justice-pcoc/pc-oc-mod-23rd-meeting

13. The Convention and its Additional Protocol are not open for signature by the European Union. However, the EU has adopted common rules on transfer of prisoners by Framework Decision 2008/909/JHA [6] on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences.

14. This instrument demonstrates certain similarities with the ***Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation,*** where Member States were authorised to sign and conclude the Protocol in the interest of the Union, insofar as EU competences are concerned (see section 5 in the Annex).

15. In this respect, assessing the implications of this instrument on the existing common EU rules and the appropriate next steps seems appropriate.

Delegations are invited to exchange views on this issue

[6] OJ L 327, 5.12.2008, p. 27–46

Inventory of recent international agreements that concern EU competences in the area of criminal law

<table>
<tr><th colspan="2">1. Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217)</th></tr>
<tr><td colspan="2">Status:
Open for signature in Riga (Latvia) on 22 October 2015. Not entered into force yet. Only signatories of the Convention can become parties to the Protocol. Open for signature by the EU.</td></tr>
<tr><td colspan="2">Main objectives:
The Additional Protocol aims to facilitate the effective implementation of certain aspects of UNSCR 2178 (mainly those related to preventing and pursuing the departure of foreign terrorist fighters). It provides for the criminalisation of participation in an association or group for the purpose of terrorism, receiving training for terrorism, travelling or attempting to travel for terrorist purposes, providing or collecting funds for such travels and organising and facilitating such travels.</td></tr>
<tr><td colspan="2">State of play:
The EU signed the CoE Convention on the Prevention of Terrorism and its Additional Protocol on 22 October 2015 in Riga upon the opening for signature of the Protocol. Finalising the accession process is subject to a COM proposal for Council decisions on the conclusion of the Convention and its Protocol by the EU and obtaining the consent of the EP.</td></tr>
<tr><td colspan="2">Responsible Council WP:
JHA Counsellors - Substantive Criminal Law</td></tr>
<tr><th>COM Recommendation for opening negotiations on behalf of the Union of 13 March 2015[7]</th><th>Council Decision authorising the opening of negotiations on behalf of the Union of 1 April 2015[8]</th></tr>
<tr><td>Nature and scope of the Union's competence:
According to the Explanatory memorandum to the Commission Recommendation, "the negotiation of the Additional Protocol […] is within the exclusive competence of the Union" in its entirety by virtue of Article 3(2) TFEU since the Union has already adopted measures in the area covered by the subject matter of the Protocol notably by means of Council Framework Decision 2002/475/JHA, as amended by</td><td>Nature and scope of the Union's competence:
Commission was authorised to negotiate the Protocol on behalf of the Union insofar as it falls within Union's competence, alongside its Member States.
The examination of the nature and extent of the Union's competence left for the stage where the decisions on the signing and/or concluding of the Protocol on behalf of the Union were to be discussed.</td></tr>
</table>

[7] doc. 7219/15 EU RESTRICTED

[8] doc.7300/3/15 REV 3

Framework Decision 2008/919/JHA and because of the foreseeable adoption of further amendments to the *acquis*."	
COM proposal of 15 June 2015 for Council decisions on signing on behalf of the Union of the CoE Convention and its Additional Protocol[9] .	**Council decision[10] of 18 September 2015 on the signing on behalf of the EU of the additional Protocol to the CoE Convention on the Prevention of Terrorism[11] and Council Decision of 18 September 2015 on the signing on behalf of the Union of the CoE Convention on the prevention of Terrorism[12]**
Nature and scope of the Union's competence Exclusive competence of the EU on the entirety of the Protocol. No references to the existing acquis have been included in the Commission's proposals. The potentially mixed nature of the Convention is acknowledged. The Explanatory memorandum to the proposal states that "the Union can become party to the Convention alongside the Member States to the extent that the Convention falls within Union's competence"	*Nature and scope of the Union's competence* The two Council Decisions on the signing assert the mixed nature of the two agreements. Signature on behalf of the Union is authorised as regards matters falling within its competence, insofar as the two international agreements may affect common rules on combatting terrorism or alter their scope. A reference to Framework Decision 2002/475/JHA was made in this respect. The Decisions state explicitly that the Member States retain their competence for the rest of the provisions of the two instruments.
2. Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215)	
Status: Open for signature in Magglingen/Macolin (Switzerland) on 18 September 2014. Not entered into force yet. Open for signature by the EU.	
Main objectives: The Convention envisages a number of measures that aim at preventing, detecting and sanctioning the manipulation of sports competitions, including by means of criminal law.	

[9] 9975/15 and 9969/15. According to Article 10(1) of the Additional Protocol, it is open for signature only by signatories to the main Convention.
[10] Common accord was established at the COREPER 2 meeting of 16 September 2015.
[11] OJ L 280, 24.10.2015, p. 24–25
[12] OJ L 280, 24.10.2015, p. 22–23

<table>
<tr><td colspan="2">State of play:
The adoption of the Council decisions authorising signature of the Convention on behalf of the Union is withheld after a common accord of the Member States to be bound by the Convention with respect to their national competences could not be established at COREPER 1 of 20 November 2015.</td></tr>
<tr><td colspan="2">Responsible Council WP:
Working Party of Sport</td></tr>
<tr><td>COM Recommendation of 13 November 2012 for opening negotiations on behalf of the EU[13]</td><td>Council decision of 23 September 2013authorising negotiations on behalf of the EU as regards matters related to cooperation in criminal matters and police cooperation[14]
Council decision of 10 June 2013 authorising negotiations on behalf of the EU as regards matters not related to cooperation in criminal matters and police cooperation[15]</td></tr>
<tr><td>Nature and scope of the Union's competence:
According to the Explanatory memorandum to the Commission Recommendation "the envisaged Convention does not aim at harmonising criminal law provisions in the signatory countries, nor at achieving harmonisation in other fields such as gambling and betting laws, and since, based on Article 6 TFEU, the EU only has a competence to carry out action to support, coordinate or supplement actions of the Member States in the field of sport, it is proposed that the EU participates in the forthcoming negotiations alongside its Member States."</td><td>Nature and scope of the Union's competence:
Further to the Council Legal Service opinion of 21 March 2013[16], the COM Recommendation was split into two Decisions, one on matters related to cooperation in criminal matters and police cooperation pursuant to Title V TFEU and another on matters not related to Title V. The Council Decision related to criminal matters asserts the mixed nature of the agreement.
It provides that: "As the negotiations will cover matters which fall partly within the Union's competence and partly within the Member States competence, the Union should participate in these negotiations together with its Member States. Member States may therefore attend negotiations and negotiate on matters falling within their competence."
"The legal nature of the Convention and distribution of the powers between the Member States and the Union will be determined separately at the end of the negotiations on the basis of an analysis of</td></tr>
</table>

[13] 6214/12
[14] 10180/13
[15] 10178/13
[16] 7726/13

	the precise scope of the coverage of the individual provisions" in the where accession of the Union to the future Convention would be considered.
COM proposal of 2 March 2015 for **Council Decision on the signing of the Convention on behalf of the EU on matters related to cooperation in criminal matters and police cooperation**[17] **and** **Council Decision on the signing of the Convention on behalf of the EU on matters not related to cooperation in criminal matters and police cooperation**[18]	**Draft**[19] **Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to the definition of criminal offences**[20] **Draft Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to the definition of criminal offences**[21]
Nature and scope of the Union's competence: According to the Explanatory memorandum to the proposal related to criminal matters: "Certain offences are currently not covered by Article 83(1) TFEU. The Union has competence over the rest, but it is exclusive only over two provisions - Article 11 (to the extent that it applies to services from and to third countries) and Article 14 on data protection (in part). The remainder is shared or "supportive" competence." The Commission proposal contains certain references to existing EU acquis in the area.	*Nature and scope of the Union's competence:* The draft Council Decision related to the definition of criminal offences authorises the signature on behalf of the Union as regards matters falling within its competence, insofar as the Convention may affect common rules or alter their scope. In this respect, signature on behalf of the EU would be authorised regarding Article 16 (1) of the Convention, which requires Parties to criminalise a conduct involving money laundering when the offence giving rise to profit is a criminal offence relating to the manipulation of sports competitions, as well as the aiding and abetting of the commission of such an offence. A reference to Framework Decision

17 6721/15

18 6720/15

19 On 20 November 2015, broad support for the two decisions, as resulting from the negotiations in the WP of Sport was noted at COREPER 1. At the same meeting, the Presidency proceeded with the verification of the consent of all Member States to be bound by the Convention with respect to their national competences, in line with the opinion of the Council Legal Service on mixed agreements (10285/15). One delegation was not in a position to give its consent at that time for reasons relating to issues not linked to criminal matters. Currently, the adoption of the Council decisions is withheld until all delegations would be in a position to express their consent to be bound by the Convention.

20 14002/15

21 14001/15

	2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime is made. The Decision states explicitly that the Member States retain their competence insofar as the Convention does not affect common rules or alter the scope of such rules.
3. Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No.: 210)	
Status: Open for signature in Istanbul (Turkey) on 11 May 2011. Entered into force on 1 August 2014. Open for signature by the EU.	
Main objectives: The main objective of the Convention is to prevent and prosecute all forms of violence against women, as well as domestic violence, and to design a comprehensive framework for the protection of and assistance to all victims of violence against women and domestic violence. In order to ensure effective implementation of its provisions, the Convention establishes a specific monitoring mechanism - The Group of experts on action against violence against women and domestic violence ("GREVIO")	
State of Play: Work on the draft decision on signing of the Convention on behalf of the EU is proceeding in the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) since 26 April 2016. On 27 October 2016 the Council Legal Service issued an opinion regarding the competence of the Union to become party to the Convention[22]. Work on the draft decision on the conclusion of the Convention will be taken at a later stage.	
Responsible Council WP: Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP).	

[22] 13795/16

COM proposal of 4 March 2016 for Council decision on the signing on behalf of the European Union of the Convention[23] and Council decision on the conclusion by the European Union of the Convention[24]	Council decision on the signing on behalf of the Union of the Convention and Council decision on the conclusion by the European Union of the Convention
Nature and scope of the Union's competence: The mixed nature of the Convention is recognised. It is explicitly stated that the Union has exclusive competence to the extent that the Convention may affect common rules or alter their scope (recital 6). Specific references to the existing EU rules, in particular Directive 2012/29/EC ("Victim's rights") are included in recital 5. Furthermore, recognising that the respective competences of the Union and the Member States are inter-linked, the Commission considers that "it is appropriate to also establish arrangements between the Commission and the Member States for the implementation and monitoring mechanisms provided by the Convention (Coordinating body under Article 10, reporting and data collection obligations towards the group of experts (Article 11(3), and Articles 66 to 70 of the Convention)". In this respect, the proposed decision on the conclusion of the Convention envisages in Articles 3 and 4 that the Commission shall represent the Union at the meetings of the bodies created by the Convention and perform the role of the coordinating body with respect to matters falling within the Union's competence.	

[23] 6695/16
[24] 6696/16

4.Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No: 198)
Status: Open for signature in Warsaw, 16 May 2005. Entered into force on 1 May 2008. Open for signature by the EU.
Main objectives: The Council of Europe decided to update and widen its 1990 Convention to take into account the fact that not only could terrorism be financed through money laundering from criminal activity, but also through legitimate activities. The Convention covers both the prevention and the control of money laundering and the financing of terrorism. It aims to facilitate a quick access of competent authorities to financial information or information on assets held by criminal organisations, including terrorist groups.
State of play: The EU signed the Convention on 2 April 2009. Finalising the accession process is subject to COM proposals for Council decisions on the conclusion of the Convention by the EU and obtaining the consent of the EP. The first Activity Report of the Conference of the States Parties to the Convention covering the period 2009-2014 (COM(2015)126 of 19 August 2015) stipulates that: *"The Convention currently has 26 State Parties. It is time now for all Council of Europe States and the European Union to ratify this Convention, not only for its strategic role in countering money laundering, but also because of its importance today, especially in the fight against terrorism and the Council of Europe's Action plan on Extremism and Radicalisation."*

COM proposal of 13 September 2005 for a Council decision concerning the signing, on behalf of the European Community, of the Convention[25]	**Council decision of 26 February 2009concerning the signing, on behalf of the European Community, of the Convention**[26]
Nature and scope of the Union's competence: The operative provision envisages signing of the Convention in its entirety, while certain references to the existing acquis are included in the Explanatory memorandum of the COM proposal.	*Nature and scope of the Union's competence:* Signing on behalf of the European community is authorised to the extent that the Convention falls within the sphere of Community competence. No specific references to existing acquis are included.
5. Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation (ILO)	
Status: At its 103rd session on 11 June 2014 in Geneva (Switzerland), the International Labour Conference (ILC) adopted the Protocol supplementing the Forced Labour Convention from 1930 (Protocol 29) of the ILO. Entered into force on 9 November 2016. Only States are members of ILO. States, which ratified the Convention can be parties to the Protocol. Given that the Union is not a member of ILO, it cannot therefore become party to the Protocol.	
Main objectives: The 2014 ILO Protocol seeks to address gaps in implementation and to make progress on preventing trafficking for labour exploitation and protecting and compensating victims of forced labour.	
State of play: The Protocol includes aspects falling under EU competence. Member States cannot therefore ratify autonomously those parts of the Protocol, whilst the EU itself cannot ratify any ILO Protocol or Convention. It was therefore necessary for the EU to provide an authorisation for the Member States to ratify the Protocol in its interest. Further to the agreement in principle on the text of the Council decisions of 2 March 2015[27] and after the European Parliament has given its consent, on 10 November 2015 the Council adopted two decisions authorising Member States to ratify, in the interests of the EU, the 2014 Protocol with regard to matters related to judicial cooperation in criminal matters and to matters related to social policy.	
Responsible Council WP:	

[25] 12476/05
[26] 5733/09 and 16695/08
[27] 6731/15 and 6732/15

Working Party on Social Questions	
COM Recommendation of 14 April 2014 authorising the opening of negotiations at the 103rd session of the International Labour Conference (ICL) on a Protocol supplementing the ILO Convention No29[28]	**Council Decision**
Nature and scope of the Union's competence: The mixed nature of the agreement is acknowledged. References to relevant EU acquis is included. Opening of negotiations as regards matters falling within the Union's competence is requested, subject to the specific modalities of negotiations within ILO and the prerogatives of the MSs as members of the ILO: MSs acting both on national competences and jointly in the interest of the Union in proposing amendments and in voting at the ICL should act together with the Commission in the spirit of sincere cooperation.	*Nature and scope of the Union's competence:* At the Working Party on Social Questions, a majority of Member States opposed the adoption of the Decision with the argument that the Union representation in international fora is a very important and politically sensitive horizontal matter. In addition, splitting the Council decision regarding criminal law matters and social policy matters was considered necessary. On 23 May 2014, COREPER confirmed that there was a large blocking minority against the adoption of the Council Decisions on the basis of the Commission Recommendation, and decided not to pursue the matters further.[29]

[28] 8994/14 EU RESTRICTED

[29] See summary record of the COREPER 1 meeting - doc. 10091/14

Commission proposal of 11 September 2014 for Council decision authorising Member States to ratify, in the interests of the EU, the 2014 Protocol with regard to matters related to judicial cooperation in criminal matters[30] and Council decision authorising Member States to ratify, in the interests of the EU, the 2014 Protocol with regard to matters related to social policy[31]	**Council decision of 10 November 2015 authorising Member States to ratify, in the interests of the EU, the 2014 Protocol with regard to matters related to judicial cooperation in criminal matters[32] and Council decision authorising Member States to ratify, in the interests of the EU, the 2014 Protocol with regard to matters related to social policy[33]**
Nature and scope of the Union's competence: The mixed nature of the agreement is acknowledged. Recital 2 of the draft decision on criminal matters envisages that: "Parts of the rules under the Protocol of 2014 […], fall within the competences of the Union, as laid down in Article 82(2) TFEU. Furthermore, some of the rules of the Protocol are already covered by EU *acquis* in the areas of judicial cooperation in criminal matters." Specific references to the existing acquis were included.	*Nature and scope of the Union's competence:* The Council Decision on criminal law matters, is consistent with the approach suggested by the Commission. It confirms the mixed nature of the agreement, where a specific reference to the existing EU legislation concerning the protection of victims of crime has been included, namely the Directive 2011/36/EU on trafficking in human beings and Directive 2012/29/EU on the protection of victims of crime. Furthermore, the Council Decision indicates the provisions of the Protocol for which ratification in the interest of the Union is authorised, namely Articles 1 to 4.

[30] 13157/14
[31] 13158/14
[32] OJ L 301, 18.11.2015, p. 47
[33] OJ L 298/3, 14.11.2015, p. 23

6. Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health organisation's (WHO) Framework Convention on Tobacco Control (FCTC)
Status: Adopted by the Parties to the WHO FCTC in November 2012 in Seoul, Republic of Korea. Opened for signature by the Parties to the FCTC[34] at WHO Headquarters, Geneva on 10 January 2013 until 9 January 2014. Since 10 January 2014, the Protocol can no longer be signed[35].
Main objectives: The main objective of the Protocol is to contribute to the overall tobacco control efforts by combatting all forms of illicit trade in tobacco products and manufacturing equipment. It provides tools for preventing illicit trade by securing the supply chain, including by establishing an international tracking and tracing system, by countering illicit trade through dissuasive law enforcement measures and a suite of measures to enable international cooperation.
State of play: Further to the agreement in principle on the text of the Council decisions of 24 February 2016[36] and after the European Parliament has given its consent, on 17 June 2016 the Council adopted two decisions on the conclusion on behalf of the Union of the Tobacco Protocol respectively for the provisions falling within or outside the scope of Title V TFEU.
Responsible Council WP: Working Party on Customs Union

[34] FCTC is open for signature by regional economic integration organizations (Article 34). The EU concluded the FCTC by Council Decision 2004/513/EC of 2 June 2004 (OJ L 312, 15.6.2004, p. 8)

[35] The EU signed the Protocol on 20 December 2013.

[36] 14384/15 and 14387/15

COM proposal of 18 July 2013 for **Council decision on the signing, on behalf of the European Union, of the Protocol, in so far as the provisions of the Protocol fall under Title V TFEU**[37] **Council decision on the signing, on behalf of the European Union, of the Protocol, in so far as the provisions of the Protocol do not fall under Title V TFEU**[38]	**Council decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol, insofar as the provisions of the Protocol fall under Title V TFEU**[39] **Council decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol, insofar as the provisions of the Protocol do not fall under Title V TFEU**[40]
Nature and scope of the Union's competence: No specific references to the existing EU acquis, neither definition of the nature and scope of the Union's competence.	*Nature and scope of the Union's competence:* The Council Decision concerning Title V related provisions has been adopted on the legal base proposed by the Commission, namely Article 82(1), Article 83 and Article 87(2) TFEU. This hints towards the areas of possible existing EU common rules that might be potentially affected by the Protocol. Referring to the mixed nature of the Protocol, recital 6 of the Council Decision on signing states that: "By signing the Protocol, the Union will not be exercising shared competence, hence Member States retain their competence in the areas covered by the Protocol which do not affect common rules or alter the scope of such rules."

[37] 12606/13
[38] 12605/13
[39] OJ L 333, 12.12.2013, p. 73–74
[40] OJ L 333, 12.12.2013, p. 75–76

Commission proposal of 4 May 2015 for **Council Decision on the conclusion, on behalf of the European Union, of the Tobacco Protocol in so far as the provisions of the Protocol fall under Title V TFEU**[41] **Council Decision on the conclusion, on behalf of the European Union, of the Tobacco Protocol in so far as the provisions of the Protocol do not fall under Title V TFEU**[42]	**Council Decision of 17 June 2016 on the conclusion, on behalf of the European Union, of the Tobacco Protocol as regards its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences**[43] **Council Decision on the conclusion, on behalf of the European Union, of the Tobacco Protocol with the exception of its provisions falling under Title V TFEU**[44]
Nature and scope of the Union's competence: No specific references to the existing EU acquis, neither definition of the nature and scope of the Union's competence.	*Nature and scope of the Union's competence:* The title V related Decision reiterates the mixed nature of the agreement, thereby authorising the approval of the Protocol only insofar as it may affect common rules or alter their scope. In this respect, references to the existing EU legislation are included, namely Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime and Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests. The Council Decision contains furthermore a specific delimitation, including in the operative part, of the provisions of the Protocol for which the conclusion on behalf of the EU is authorised. It is stated explicitly that by signing the Protocol, the Union will not be exercising shared competence, hence Member States retain their competence in the areas covered by the Protocol which do not affect common rules or alter the scope of such rules. In addition, pursuant to Article 44 of the Protocol, a Declaration of competences by the EU, specifying the categories and policy areas in respect of which the Member States of the EU have conferred competences upon the EU in the areas covered by the FCTC Protocol, is to be submitted upon the conclusion of the Protocol.

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41 8563/15
42 8565/15
43 OJ L 268, 1.10.2016, p. 6–9
44 OJ L 268, 1.10.2016, p. 1–5