European Council

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COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	European Council meeting (18 and 19 February 2016) – Conclusions

Delegations will find attached the conclusions adopted by the European Council at the above meeting.

I. THE UNITED KINGDOM AND THE EUROPEAN UNION

1. At their December meeting, the members of the European Council agreed to work together closely to find mutually satisfactory solutions in all the four areas mentioned in the British Prime Minister's letter of 10 November 2015.

2. Today, the European Council agreed that the following set of arrangements, which are fully compatible with the Treaties and will become effective on the date the Government of the United Kingdom informs the Secretary-General of the Council that the United Kingdom has decided to remain a member of the European Union, constitute an appropriate response to the concerns of the United Kingdom:

   a) a Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union (Annex 1);

   b) a Statement containing a draft Council Decision on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area which will be adopted on the day the Decision referred to in point (a) takes effect (Annex 2);

c) a Declaration of the European Council on competitiveness (Annex 3);

d) a Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism (Annex 4);

e) a Declaration of the European Commission on the indexation of child benefits exported to a Member State other than that where the worker resides (Annex 5);

f) a Declaration of the Commission on the safeguard mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government (Annex 6);

g) a Declaration of the Commission on issues related to the abuse of the right of free movement of persons (Annex 7).

3. Regarding the Decision in Annex 1, the Heads of State or Government have declared that:

(i) this Decision gives legal guarantee that the matters of concern to the United Kingdom as expressed in the letter of 10 November 2015 have been addressed;

(ii) the content of the Decision is fully compatible with the Treaties;

(iii) this Decision is legally binding, and may be amended or repealed only by common accord of the Heads of State or Government of the Member States of the European Union;

(iv) this Decision will take effect on the date the Government of the United Kingdom informs the Secretary-General of the Council that the United Kingdom has decided to remain a member of the European Union.

4. It is understood that, should the result of the referendum in the United Kingdom be for it to leave the European Union, the set of arrangements referred to in paragraph 2 above will cease to exist.

II. MIGRATION

5. In response to the migration crisis facing the EU, the objective must be to rapidly stem the flows, protect our external borders, reduce illegal migration and safeguard the integrity of the Schengen area. As part of this comprehensive approach, the European Council assessed, on the basis of detailed reports from the Presidency and the Commission, the state of implementation of the orientations agreed in December.

6. The European Council welcomes NATO's decision to assist in the conduct of reconnaissance, monitoring and surveillance of illegal crossings in the Aegean sea and calls on all members of NATO to support this measure actively. The EU, in particular FRONTEX, should closely cooperate with NATO.

7. The full and speedy implementation of the EU-Turkey Action Plan remains a priority, in order to stem migration flows and to tackle traffickers and smugglers networks. Steps have been taken by Turkey to implement the Action Plan, notably as regards access by Syrian refugees to Turkey's labour market and data sharing with the EU. However, the flows of migrants arriving in Greece from Turkey remain much too high. We need to see a substantial and sustainable reduction of the number of illegal entries from Turkey into the EU. This calls for further, decisive efforts also on the Turkish side to ensure effective implementation of the Action Plan. The European Council welcomes the agreement reached on the Facility for Refugees in Turkey and calls on the Commission and the Member States to implement swiftly the priority projects. It also welcomes the progress on preparing a credible voluntary humanitarian admission programme with Turkey.

8. In addition,

   a) regarding relations with relevant third countries, the comprehensive and tailor-made packages of incentives that are currently being developed for specific countries to ensure effective returns and readmission require the full support of the EU and the Member States. The European Council also calls on the Commission, the High Representative and the Member States to monitor and address any factors that may prompt migration flows;

b) implementation and operational follow-up to the Valletta Summit, in particular the agreed list of 16 priority actions, should continue and be stepped up;

c) humanitarian assistance should continue to be provided to Syrian refugees and to the countries neighbouring Syria. This is an urgent global responsibility. In this context, the European Council welcomes the outcome of the Conference on supporting Syria and the Region in London on 4 February and calls on the Commission, Member States and all other contributing countries to rapidly implement their commitments;

d) the continued and sustained irregular migrant flows along the Western Balkans route remain a grave concern that requires further concerted action and an end to the wave-through approach and to uncoordinated measures along the route, taking into account humanitarian consequences for Member States affected. It is also important to remain vigilant about potential developments regarding other routes so as to be able to take rapid and concerted action;

e) the Council adopted a Recommendation on 12 February 2016. It is important to restore, in a concerted manner, the normal functioning of the Schengen area, with full support for Member States which face difficult circumstances. We need to get back to a situation where all Members of the Schengen area apply fully the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions or who have not made an asylum application despite having had the opportunity to do so, while taking into account the specificities of maritime borders, including by implementing the EU-Turkey agenda;

f) with the help of the EU, the setting up and functioning of hotspots is gradually improving as regards identification, registration, fingerprinting and security checks on persons and travel documents; however, much remains to be done, in particular to make hotspots fully functional, to ensure the full 100% identification and registration of all entries (including systematic security checks against European databases, in particular the Schengen Information System, as required under EU law), to fully implement the relocation process, to stem secondary flows of irregular migrants and asylum-seekers and to provide the significant reception facilities needed to accommodate migrants under humane conditions while their situation is being clarified. Asylum seekers do not have the right to choose the Member State in which they seek asylum;

g) the humanitarian situation of migrants along the Western Balkans route calls for urgent action using all available EU and national means to alleviate it. To this end, the European Council considers it necessary to now put in place the capacity for the EU to provide humanitarian assistance internally, in cooperation with organisations such as the UNHCR, to support countries facing large numbers of refugees and migrants, building on the experience of the EU Humanitarian Aid and Civil Protection department. The European Council welcomes the Commission's intention to make concrete proposals as soon as possible;

h) all the elements agreed last December should be implemented rapidly, including the decisions on relocation and measures to ensure returns and readmissions. As far as the 'European Border and Coast Guard' proposal is concerned, work should be accelerated with a view to reaching a political agreement under the Netherlands Presidency and to make the new system operational as soon as possible;

i) the European Council invites the European Investment Bank to rapidly develop ideas, in cooperation with the Commission, on how it can contribute to the EU response.

9. The comprehensive strategy agreed in December will only bring results if all its elements are pursued jointly and if the institutions and the Member States act together and in full coordination. At the same time, progress must be made towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. To this end, following today's in-depth discussion, preparations will be stepped up so as to allow for a comprehensive debate at the next European Council, where, on the basis of a more definitive assessment, further orientations have to be fixed and choices made.

III. EXTERNAL RELATIONS

Syria

10. Recalling UNSC Resolution 2254, the European Council welcomes the commitments made by the International Syria Support Group meeting in Munich on 11/12 February and calls on all parties to swiftly implement these commitments in full. A nationwide cessation of hostilities must urgently be implemented, applying to any party currently engaged in military or paramilitary hostilities, other than groups designated as terrorist organisations by the United Nations Security Council.

    The European Council calls on the Syrian regime and its allies to stop at once attacking non-terrorist opposition groups, which threatens the prospects for peace, benefits Da'esh and drives the refugee crisis. The European Council is concerned by the risk of further military escalation and condemns the repeated bombing of civilian infrastructure and calls for an immediate cessation of bombardments in civilian areas, in particular in the corridor between Aleppo and the Turkish-Syrian border. The implementation should jointly be verified by the relevant parties. The European Council welcomes the start of delivery of humanitarian aid within one week to civilians in besieged areas and urges all sides to ensure that this continues and use this as a first step to full sustained and unimpeded humanitarian access throughout Syria, as agreed in Munich, including Aleppo, and in full compliance with international humanitarian law.

Libya

11. Stabilising Libya remains a high priority for regional and European security and for managing migration flows in the central Mediterranean. The European Council urges all parties to implement the Libyan Political Agreement, install a Government of National Accord, and focus efforts on restoring the economy and fighting terrorism. The EU, in cooperation with the UN, will support these efforts.

IV. EUROPEAN SEMESTER

12. The European Council endorsed the recommendation on the economic policy of the euro area.

ANNEX I

DECISION OF THE HEADS OF STATE OR GOVERNMENT, MEETING WITHIN THE EUROPEAN COUNCIL, CONCERNING A NEW SETTLEMENT FOR THE UNITED KINGDOM WITHIN THE EUROPEAN UNION

The Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, whose Governments are signatories of the Treaties on which the Union is founded,

Desiring to settle, in conformity with the Treaties, certain issues raised by the United Kingdom in its letter of 10 November 2015,

Intending to clarify in this Decision certain questions of particular importance to the Member States so that such clarification will have to be taken into consideration as being an instrument for the interpretation of the Treaties; intending as well to agree arrangements for matters including the role of national Parliaments in the Union, as well as the effective management of the banking union and of the consequences of further integration of the euro area,

Recalling the Union's objective of establishing, in accordance with the Treaties, an economic and monetary union whose currency is the euro and the importance which a properly functioning euro area has for the European Union as a whole. While nineteen Member States have already adopted the single currency, other Member States are under a derogation which applies until the Council decides that the conditions are met for its abrogation and two Member States have, pursuant to Protocols No 15 and No 16 annexed to the Treaties, respectively no obligation to adopt the euro or an exemption from doing so. Accordingly, for as long as the said derogations are not abrogated or the said protocols have not ceased to apply following notification or request from the relevant Member State, not all Member States have the euro as their currency. Recalling that the process towards the establishment of the banking union and a more integrated governance of the euro area is open to Member States that do not have the euro as their currency,

Recalling that the Treaties, together with references to the process of European integration and to the process of creating an ever closer union among the peoples of Europe, contain also specific provisions whereby some Member States are entitled not to take part in or are exempted from the application of certain provisions or chapters of the Treaties and Union law as concerns matters such as the adoption of the euro, decisions having defence implications, the exercise of border controls on persons, as well as measures in the area of freedom, security and justice. Treaty provisions also allow for the non-participation of one or more Member States in actions intended to further the objectives of the Union, notably through the establishment of enhanced cooperations. Therefore, such processes make possible different paths of integration for different Member States, allowing those that want to deepen integration to move ahead, whilst respecting the rights of those which do not want to take such a course,

Recalling in particular that the United Kingdom is entitled under the Treaties:

- not to adopt the euro and therefore to keep the British pound sterling as its currency (Protocol No 15),
- not to participate in the Schengen acquis (Protocol No 19),
- to exercise border controls on persons, and therefore not to participate in the Schengen area as regards internal and external borders (Protocol No 20),
- to choose whether or not to participate in measures in the area of freedom, security and justice (Protocol No 21),
- to cease to apply as from 1 December 2014 a large majority of Union acts and provisions in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty while choosing to continue to participate in 35 of them (Article 10(4) and (5) of Protocol No 36),

Recalling also that the Charter of Fundamental Rights of the European Union has not extended the ability of the Court of Justice of the European Union or any court or tribunal of the United Kingdom to rule on the consistency of the laws and practices of the United Kingdom with the fundamental rights that it reaffirms (Protocol No 30),

Determined to exploit fully the potential of the internal market in all its dimensions, to reinforce the global attractiveness of the Union as a place of production and investment, and to promote international trade and market access through, inter alia, the negotiation and conclusion of trade agreements, in a spirit of mutual and reciprocal benefit and transparency,

Determined also to facilitate and support the proper functioning of the euro area and its long-term future, for the benefit of all Member States,

Respecting the powers of the institutions of the Union, including throughout the legislative and budgetary procedures, and not affecting the relations of the Union institutions and bodies with the national competent authorities,

Respecting the powers of the central banks in the performance of their tasks, including the provision of central bank liquidity within their respective jurisdictions,

Having regard to the Statement containing the draft Decision of the Council on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area,

Having regard to the Conclusions of the European Council of 26 and 27 June 2014 and of 18 and 19 February 2016,

Noting the Declaration of the European Council on competitiveness,

Noting the Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism,

Noting the Declaration of the Commission on the safeguard mechanism referred to in paragraph 2(b) of Section D of the Decision,

Noting the Declaration of the Commission on issues related to the abuse of the right of free movement of persons,

Having taken into account the views expressed by the President and members of the European Parliament,

Have agreed on the following Decision:

SECTION A

ECONOMIC GOVERNANCE

In order to fulfil the Treaties' objective to establish an economic and monetary union whose currency is the euro, further deepening is needed. Measures, the purpose of which is to further deepen economic and monetary union, will be voluntary for Member States whose currency is not the euro and will be open to their participation wherever feasible. This is without prejudice to the fact that Member States whose currency is not the euro, other than those without an obligation to adopt the euro or exempted from it, are committed under the Treaties to make progress towards fulfilling the conditions necessary for the adoption of the single currency.

It is acknowledged that Member States not participating in the further deepening of the economic and monetary union will not create obstacles to but facilitate such further deepening while this process will, conversely, respect the rights and competences of the non-participating Member States. The Union institutions, together with the Member States, will facilitate the coexistence between different perspectives within the single institutional framework ensuring consistency, the effective operability of Union mechanisms and the equality of Member States before the Treaties, as well as the level-playing field and the integrity of the internal market.

Mutual respect and sincere cooperation between Member States participating or not in the operation of the euro area will be ensured by the principles recalled in this Section, which are safeguarded notably through the Council Decision[1] referring to it.

[1] Council Decision on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area.

1. Discrimination between natural or legal persons based on the official currency of the Member State, or, as the case may be, the currency that has legal tender in the Member State, where they are established is prohibited. Any difference of treatment must be based on objective reasons.

Legal acts, including intergovernmental agreements between Member States, directly linked to the functioning of the euro area shall respect the internal market, as well as economic and social and territorial cohesion, and shall not constitute a barrier to or discrimination in trade between Member States. These acts shall respect the competences, rights and obligations of Member States whose currency is not the euro.

Member States whose currency is not the euro shall not impede the implementation of legal acts directly linked to the functioning of the euro area and shall refrain from measures which could jeopardise the attainment of the objectives of economic and monetary union.

2. Union law on the banking union conferring upon the European Central Bank, the Single Resolution Board or Union bodies exercising similar functions, authority over credit institutions is applicable only to credit institutions located in Member States whose currency is the euro or in Member States that have concluded with the European Central Bank a close cooperation agreement on prudential supervision, in accordance with relevant EU rules and subject to the requirements of group and consolidated supervision and resolution.

The single rulebook is to be applied by all credit institutions and other financial institutions in order to ensure the level-playing field within the internal market. Substantive Union law to be applied by the European Central Bank in the exercise of its functions of single supervisor, or by the Single Resolution Board or Union bodies exercising similar functions, including the single rulebook as regards prudential requirements for credit institutions or other legislative measures to be adopted for the purpose of safeguarding financial stability, may need to be conceived in a more uniform manner than corresponding rules to be applied by national authorities of Member States that do not take part in the banking union. To this end, specific provisions within the single rulebook and other relevant instruments may be necessary, while preserving the level-playing field and contributing to financial stability.

3. Emergency and crisis measures designed to safeguard the financial stability of the euro area will not entail budgetary responsibility for Member States whose currency is not the euro, or, as the case may be, for those not participating in the banking union.

Appropriate mechanisms to ensure full reimbursement will be established where the general budget of the Union supports costs, other than administrative costs, that derive from the emergency and crisis measures referred to in the first subparagraph.

4. The implementation of measures, including the supervision or resolution of financial institutions and markets, and macro-prudential responsibilities, to be taken in view of preserving the financial stability of Member States whose currency is not the euro is, subject to the requirements of group and consolidated supervision and resolution, a matter for their own authorities and own budgetary responsibility, unless such Member States wish to join common mechanisms open to their participation.

This is without prejudice to the development of the single rulebook and to Union mechanisms of macro-prudential oversight for the prevention and mitigation of systemic financial risks in the Union and to the existing powers of the Union to take action that is necessary to respond to threats to financial stability.

5. The informal meetings of the ministers of the Member States whose currency is the euro, as referred to in Protocol (No 14) on the Euro Group, shall respect the powers of the Council as an institution upon which the Treaties confer legislative functions and within which Member States coordinate their economic policies.

In accordance with the Treaties, all members of the Council participate in its deliberations, even where not all members have the right to vote. Informal discussions by a group of Member States shall respect the powers of the Council, as well as the prerogatives of the other EU institutions.

6. Where an issue relating to the application of this Section is to be discussed in the European Council as provided in paragraph 1 of Section E, due account will be taken of the possible urgency of the matter.

7. The substance of this Section will be incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States.

SECTION B
COMPETITIVENESS

The establishment of an internal market in which the free movement of goods, persons, services and capital is ensured is an essential objective of the Union. To secure this objective and to generate growth and jobs, the EU must enhance competitiveness, along the lines set out in the Declaration of the European Council on competitiveness.

To this end, the relevant EU institutions and the Member States will make all efforts to fully implement and strengthen the internal market, as well as to adapt it to keep pace with the changing environment. At the same time, the relevant EU institutions and the Member States will take concrete steps towards better regulation, which is a key driver to deliver the above-mentioned objectives. This means lowering administrative burdens and compliance costs on economic operators, especially small and medium enterprises, and repealing unnecessary legislation as foreseen in the Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism, while continuing to ensure high standards of consumer, employee, health and environmental protection. The European Union will also pursue an active and ambitious trade policy.

Progress on all these elements of a coherent policy for competitiveness will be closely monitored and reviewed as appropriate.

SECTION C

SOVEREIGNTY

1. It is recognised that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union. The substance of this will be incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States, so as to make it clear that the references to ever closer union do not apply to the United Kingdom.

The references in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe do not offer a legal basis for extending the scope of any provision of the Treaties or of EU secondary legislation. They should not be used either to support an extensive interpretation of the competences of the Union or of the powers of its institutions as set out in the Treaties.

These references do not alter the limits of Union competence governed by the principle of conferral, or the use of Union competence governed by the principles of subsidiarity and proportionality. They do not require that further competences be conferred upon the European Union or that the European Union must exercise its existing competences, or that competences conferred on the Union could not be reduced and thereby returned to the Member States.

The competences conferred by the Member States on the Union can be modified, whether to increase or reduce them, only through a revision of the Treaties with the agreement of all Member States. The Treaties already contain specific provisions whereby some Member States are entitled not to take part in or are exempted from the application of certain provisions of Union law. The references to an ever closer union among the peoples are therefore compatible with different paths of integration being available for different Member States and do not compel all Member States to aim for a common destination.

The Treaties allow an evolution towards a deeper degree of integration among the Member States that share such a vision of their common future, without this applying to other Member States.

2. The purpose of the principle of subsidiarity is to ensure that decisions are taken as closely as possible to the citizen. The choice of the right level of action therefore depends, inter alia, on whether the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States and on whether action at Union level would produce clear benefits by reason of its scale or effects compared with actions at the level of Member States.

Reasoned opinions issued by national Parliaments in accordance with Article 7(1) of Protocol No 2 on the application of the principles of subsidiarity and proportionality are to be duly taken into account by all institutions involved in the decision-making process of the Union. Appropriate arrangements will be made to ensure this.

3. Where reasoned opinions on the non-compliance of a draft Union legislative act with the principle of subsidiarity, sent within 12 weeks from the transmission of that draft, represent more than 55 % of the votes allocated to the national Parliaments, the Council Presidency will include the item on the agenda of the Council for a comprehensive discussion on these opinions and on the consequences to be drawn therefrom.

Following such discussion, and while respecting the procedural requirements of the Treaties, the representatives of the Member States acting in their capacity as members of the Council will discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions.

For the purposes of this paragraph, the votes allocated to the national Parliaments are calculated in accordance with Article 7(1) of Protocol No 2. Votes from national Parliaments of Member States not participating in the adoption of the legislative act in question are not counted.

4. The rights and obligations of Member States provided for under the Protocols annexed to the Treaties must be fully recognised and given no lesser status than the other provisions of the Treaties of which such Protocols form an integral part.

In particular, a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) on the area of freedom, security and justice does not bind the Member States covered by Protocols No 21 and No 22, unless the Member State concerned, where the relevant Protocol so allows, has notified its wish to be bound by the measure.

The representatives of the Member States acting in their capacity as members of the Council will ensure that, where a Union measure, in the light of its aim and content, falls within the scope of Title V of Part Three of the TFEU, Protocols No 21 and No 22 will apply to it, including when this entails the splitting of the measure into two acts.

5. Article 4(2) of the Treaty on European Union confirms that national security remains the sole responsibility of each Member State. This does not constitute a derogation from Union law and should therefore not be interpreted restrictively. In exercising their powers, the Union institutions will fully respect the national security responsibility of the Member States.

The benefits of collective action on issues that affect the security of Member States are recognised.

SECTION D

SOCIAL BENEFITS AND FREE MOVEMENT

Free movement of workers within the Union is an integral part of the internal market which entails, among others, the right for workers of the Member States to accept offers of employment anywhere within the Union. Different levels of remuneration among the Member States make some offers of employment more attractive than others, with consequential movements that are a direct result of the freedom of the market. However, the social security systems of the Member States, which Union law coordinates but does not harmonise, are diversely structured and this may in itself attract workers to certain Member States. It is legitimate to take this situation into account and to provide, both at Union and at national level, and without creating unjustified direct or indirect discrimination, for measures limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination.

The concerns expressed by the United Kingdom in this regard are duly noted, in view of further developments of Union legislation and of relevant national law.

Interpretation of current EU rules

1. The measures referred to in the introductory paragraph should take into account that Member States have the right to define the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits.

(a) Whereas the free movement of workers under Article 45 TFEU entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment, this right may be subject to limitations on grounds of public policy, public security or public health. In addition, if overriding reasons of public interest make it necessary, free movement of workers may be restricted by measures proportionate to the legitimate aim pursued. Encouraging recruitment, reducing unemployment, protecting vulnerable workers and averting the risk of seriously undermining the sustainability of social security systems are reasons of public interest recognised in the jurisprudence of the Court of Justice of the European Union for this purpose, based on a case by case analysis.

Based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim pursued, conditions may be imposed in relation to certain benefits to ensure that there is a real and effective degree of connection between the person concerned and the labour market of the host Member State.

(b) Free movement of EU citizens under Article 21 TFEU is to be exercised subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect.

The right of economically non active persons to reside in the host Member State depends under EU law on such persons having sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State, and on those persons having comprehensive sickness insurance.

Member States have the possibility of refusing to grant social benefits to persons who exercise their right to freedom of movement solely in order to obtain Member States' social assistance although they do not have sufficient resources to claim a right of residence.

Member States may reject claims for social assistance by EU citizens from other Member States who do not enjoy a right of residence or are entitled to reside on their territory solely because of their job-search. This includes claims by EU citizens from other Member States for benefits whose predominant function is to cover the minimum subsistence costs, even if such benefits are also intended to facilitate access to the labour market of the host Member States.

(c) Those enjoying the right to free movement shall abide by the laws of the host Member State.

In accordance with Union law, Member States are able to take action to prevent abuse of rights or fraud, such as the presentation of forged documents, and address cases of contracting or maintaining marriages of convenience with third country nationals for the purpose of making use of free movement as a route for regularising unlawful stay in a Member State or address cases of making use of free movement as a route for bypassing national immigration rules applying to third country nationals.

Host Member States may also take the necessary restrictive measures to protect themselves against individuals whose personal conduct is likely to represent a genuine and serious threat to public policy or security. In determining whether the conduct of an individual poses a present threat to public policy or security, Member States may take into account past conduct of the individual concerned and the threat may not always need to be imminent. Even in the absence of a previous criminal conviction, Member States may act on preventative grounds, so long as they are specific to the individual concerned.

Further exchange of information and administrative cooperation between Member States will be developed together with the Commission in order to more effectively fight against such abuse of rights and fraud.

Changes to EU secondary legislation

2. It is noted that, following the taking effect of this Decision, the Commission will submit proposals for amending existing EU secondary legislation as follows:

(a) a proposal to amend Regulation (EC) No 883/2004 of the European Parliament and of the Council[2] on the coordination of social security systems in order to give Member States, with regard to the exportation of child benefits to a Member State other than that where the worker resides, an option to index such benefits to the conditions of the Member State where the child resides. This should apply only to new claims made by EU workers in the host Member State. However, as from 1 January 2020, all Member States may extend indexation to existing claims to child benefits already exported by EU workers. The Commission does not intend to propose that the future system of optional indexation of child benefits be extended to other types of exportable benefits, such as old-age pensions;

[2] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

(b) in order to take account of a pull factor arising from a Member State's in-work benefits regime, a proposal to amend Regulation (EU) No 492/2011 of the European Parliament and of the Council[3] on freedom of movement for workers within the Union which will provide for an alert and safeguard mechanism that responds to situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time, including as a result of past policies following previous EU enlargements. A Member State wishing to avail itself of the mechanism would notify the Commission and the Council that such an exceptional situation exists on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system, or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services. On a proposal from the Commission after having examined the notification and the reasons stated therein, the Council could authorise the Member State concerned to restrict access to non-contributory in-work benefits to the extent necessary. The Council would authorise that Member State to limit the access of newly arriving EU workers to non-contributory in-work benefits for a total period of up to four years from the commencement of employment. The limitation should be graduated, from an initial complete exclusion but gradually increasing access to such benefits to take account of the growing connection of the worker with the labour market of the host Member State. The authorisation would have a limited duration and apply to EU workers newly arriving during a period of 7 years.

The representatives of the Member States, acting in their capacity as members of the Council, will proceed with work on these legislative proposals as a matter of priority and do all within their power to ensure their rapid adoption.

The future measures referred to in this paragraph should not result in EU workers enjoying less favourable treatment than third country nationals in a comparable situation.

[3] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

Changes to EU primary law

3. With regard to future enlargements of the European Union, it is noted that appropriate transitional measures concerning free movement of persons will be provided for in the relevant Acts of Accession to be agreed by all Member States, in accordance with the Treaties. In this context, the position expressed by the United Kingdom in favour of such transitional measures is noted.

SECTION E
APPLICATION AND FINAL PROVISIONS

1. Any Member State may ask the President of the European Council that an issue relating to the application of this Decision be discussed in the European Council.

2. This Decision shall take effect on the same date as the Government of the United Kingdom informs the Secretary-General of the Council that the United Kingdom has decided to remain a member of the European Union.

ANNEX II

STATEMENT
ON SECTION A
OF THE DECISION OF THE HEADS OF STATE OR GOVERNMENT,
MEETING WITHIN THE EUROPEAN COUNCIL,
CONCERNING A NEW SETTLEMENT FOR THE UNITED KINGDOM
WITHIN THE EUROPEAN UNION

The Heads of State or Government declare that the Council Decision on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area will be adopted by the Council on the date of the taking effect of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union, and will enter into force on that same day.

The draft Decision is set out below:

Draft Council Decision
on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) Supplementing Decision 2009/857/EC of 13 December 2007[4], provisions should be adopted in order to allow for the effective management of the banking union and of the consequences of further integration of the euro area.

(2) The mechanism in this Decision contributes to the respect of the principles laid down in Section A of the Decision of the Heads of State or Government as regards legislative acts relating to the effective management of the banking union and of the consequences of further integration of the euro area, the adoption of which is subject to the vote of all members of the Council.

(3) In accordance with paragraph 1 of Section E of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union[5], any Member State may ask the President of the European Council that an issue relating to the application of that Decision be discussed in the European Council.

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4 Council Decision 2009/857/EC of 13 December 2007 relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other (OJ L 314, 1.12.2009, p. 73).

5 Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union (OJ C .., …2016, p. ..).

(4) This Decision is without prejudice to the specific voting arrangements agreed by the representatives of the 28 Member States meeting within the Council on 18 December 2013[6], concerning the adoption of Decisions by the Council on the basis of Article 18 of Regulation (EU) No 806/2014 of the European Parliament and of the Council[7].

(5) In the application of this Decision, and in particular with reference to the reasonable time for the Council to discuss the issue concerned, due account should be taken of the possible urgency of the situation,

HAS ADOPTED THIS DECISION:

Article 1

1. If, in relation to the legislative acts to which Section A of the Decision of the Heads of State or Government applies, the adoption of which is subject to the vote of all members of the Council, at least one member of the Council that does not participate in the banking union indicates its reasoned opposition to the Council adopting such an act by qualified majority, the Council shall discuss the issue. The Member State concerned shall justify its opposition by indicating how the draft act does not respect the principles laid down in Section A of that Decision.

2. The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the member or members of the Council referred to in paragraph 1.

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6 Declaration of 18 December 2013 of the Representatives of the 28 Member States meeting within the Council, doc. No. 18137/13.

7 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

3. To that end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council[8], shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

While taking due account of the possible urgency of the matter and based on the reasons for opposing as indicated under paragraph 1, a request for a discussion in the European Council on the issue, before it returns to the Council for decision, may constitute such an initiative. Any such referral is without prejudice to the normal operation of the legislative procedure of the Union and cannot result in a situation which would amount to allowing a Member State a veto.

Article 2

This Decision, which supplements Decision 2009/857/EC, shall enter into force on the date of the taking effect of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union. It shall cease to apply if the latter ceases to apply.

Done at …, [date]

For the Council
The President
[name]

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[8] Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

ANNEX III

EUROPEAN COUNCIL DECLARATION
ON COMPETITIVENESS

Europe must become more competitive if we are to generate growth and jobs. Although this goal has been at the heart of EU activities in recent years, the European Council is convinced more can be done in order to exploit fully the potential of all strands of the internal market, promote a climate of entrepreneurship and job creation, invest and equip our economies for the future, facilitate international trade, and make the Union a more attractive partner.

The European Council highlights the enormous value of the internal market as an area without frontiers within which goods, persons, services and capital move unhindered. This constitutes one of the Union's greatest achievements. In these times of economic and social challenges, we need to breathe new life into the internal market and adapt it to keep pace with our changing environment. Europe must boost its international competiveness across the board in services and products and in key areas such as energy and the digital single market.

The European Council urges all EU institutions and Member States to strive for better regulation and to repeal unnecessary legislation in order to enhance EU competitiveness while having due regard to the need to maintain high standards of consumer, employee, health and environmental protection. This is a key driver to deliver economic growth, foster competitiveness and job creation.

To contribute to this objective, the European Parliament, the Council and the Commission have agreed the Interinstitutional Agreement on Better Law Making. Effective cooperation in this framework is necessary in order to simplify Union legislation and to avoid overregulation and administrative burdens for citizens, administrations and businesses, including small and medium sized enterprises, while ensuring that the objectives of the legislation are met.

The focus must be on:

- a strong commitment to regulatory simplification and burden reduction, including through withdrawal or repeal of legislation where appropriate, and a better use of impact assessment and ex-post evaluation throughout the legislative cycle, at the EU and national levels. This work should build on the progress already made with the Regulatory Fitness Programme (REFIT);
- doing more to reduce the overall burden of EU regulation, especially on SMEs and micro-enterprises;
- establishing where feasible burden reduction targets in key sectors, with commitments by EU institutions and Member States.

The European Council welcomes the Commission's commitment to review every year the success of the Union's efforts to simplify legislation, avoid over-regulation and reduce burdens on business. This annual overview done in support of the Commission's REFIT program will include an Annual Burden Survey and also look at the stock of existing EU law.

The European Council also asks the Council to examine the annual reviews conducted by the Commission under its Declaration on Subsidiarity with a view to ensuring that these are given appropriate follow up in the different areas of the Union's activities. It invites the Commission to propose repealing measures that are inconsistent with the principle of subsidiarity or that impose a disproportionate regulatory burden.

The European Council stresses the importance of a strong, rules-based multilateral trading system and the need to conclude ambitious bilateral trade and investment agreements with third countries, in a spirit of reciprocity and mutual benefit. In this context it welcomes the recent agreement reached by the WTO in Nairobi. Work must be advanced in negotiations with the US, Japan and key partners in Latin America, notably Mercosur, and in the Asia-Pacific region. Trade must benefit all, consumers, workers and economic operators alike. The new trade strategy ("Trade for All: Towards a more responsible trade and investment policy") is a crucial component.

The European Council will keep developments under review and asks the General Affairs Council and the Competitiveness Council to regularly evaluate progress on the various elements set out in this Declaration.

ANNEX IV

DECLARATION OF THE EUROPEAN COMMISSION

on a subsidiarity implementation mechanism
and a burden reduction implementation mechanism

The Commission will establish a mechanism to review the body of existing EU legislation for its compliance with the principle of subsidiarity and proportionality, building on existing processes and with a view to ensuring the full implementation of this principle.

The Commission will draw up priorities for this review taking into account the views of the European Parliament, the Council and the national parliaments.

The Commission will propose a programme of work by the end of 2016 and subsequently report on an annual basis to the European Parliament and the Council.

The Commission is fully committed to and will continue its efforts to make EU law simpler and to reduce regulatory burden for EU business operators without compromising policy objectives by applying the 2015 Better Regulation Agenda, including in particular the Commission's Regulatory Fitness and Performance Programme (REFIT). Cutting red tape for entrepreneurship, in particular small and medium size enterprises, remains an overarching goal for all of us in delivering growth and jobs.

The Commission, within the REFIT platform, will work with Member States and stakeholders, towards establishing specific targets at EU and national levels for reducing burden on business, particularly in the most onerous areas for companies, in particular small and medium size enterprises. Once established, the Commission will monitor progress against these targets and report to the European Council annually.

ANNEX V

DECLARATION OF THE EUROPEAN COMMISSION

On the indexation of child benefits exported to a Member State other than that where the worker resides

The Commission will make a proposal to amend Regulation (EC) No 883/2004 of the European Parliament and of the Council[9] on the coordination of social security systems in order to give Member States, with regard to the exportation of child benefits to a Member State other than that where the worker resides, an option to index such benefits to the conditions of the Member State where the child resides.

The Commission considers that these conditions include the standard of living and the level of child benefits applicable in that Member State.

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[9] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

ANNEX VI

DECLARATION OF THE EUROPEAN COMMISSION

on the Safeguard Mechanism
referred to in paragraph 2(b) of Section D
of the Decision of the Heads of State or Government, meeting within the European Council,
concerning a new settlement for the United Kingdom within the European Union

With reference to paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union, the European Commission will table a proposal to amend Regulation 492/2011 on freedom of movement for workers within the Union to provide for a safeguard mechanism with the understanding that it can and will be used and therefore will act as a solution to the United Kingdom's concerns about the exceptional inflow of workers from elsewhere in the European Union that it has seen over the last years.

The European Commission considers that the kind of information provided to it by the United Kingdom, in particular as it has not made full use of the transitional periods on free movement of workers which were provided for in recent Accession Acts, shows the type of exceptional situation that the proposed safeguard mechanism is intended to cover exists in the United Kingdom today. Accordingly, the United Kingdom would be justified in triggering the mechanism in the full expectation of obtaining approval.

ANNEX VII

DECLARATION OF THE EUROPEAN COMMISSION

on issues related to the abuse of the right of free movement of persons

The Commission notes the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union and notably its section D.

The Commission intends to adopt a proposal to complement Directive 2004/38 on free movement of Union citizens in order to exclude, from the scope of free movement rights, third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen or who marry a Union citizen only after the Union citizen has established residence in the host Member State. Accordingly, in such cases, the host Member State's immigration law will apply to the third country national. This proposal will be submitted after the above Decision has taken effect.

As regards situations of abuse in the context of entry and residence of non-EU family members of mobile Union citizens the Commission will clarify that:

- Member States can address specific cases of abuse of free movement rights by Union citizens returning to their Member State of nationality with a non-EU family member where residence in the host Member State has not been sufficiently genuine to create or strengthen family life and had the purpose of evading the application of national immigration rules.

- The concept of marriage of convenience - which is not protected under Union law – also covers a marriage which is maintained for the purpose of enjoying a right of residence by a family member who is not a national of a Member State.

The Commission will also clarify that Member States may take into account past conduct of an individual in the determination of whether a Union citizen's conduct poses a "present" threat to public policy or security. They may act on grounds of public policy or public security even in the absence of a previous criminal conviction on preventative grounds but specific to the individual concerned. The Commission will also clarify the notions of "serious grounds of public policy or public security" and "imperative grounds of public security". Moreover, on the occasion of a future revision of Directive 2004/38 on free movement of Union citizens, the Commission will examine the thresholds to which these notions are connected.

These clarifications will be developed in a Communication providing guidelines on the application of Union law on the free movement of Union citizens.