



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DECISION

**on the conclusion, on behalf of the European Community, of the United Nations
Convention Against Transnational Organised Crime**

Proposal for a
COUNCIL DECISION

**on the conclusion, on behalf of the European Community, of the Protocol Against the
Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations
Convention Against Transnational Organised Crime**

Proposal for a
COUNCIL DECISION

**on the conclusion, on behalf of the European Community, of the Protocol to Prevent,
Suppress and Punish Trafficking in Persons, Especially Women And Children,
supplementing the United Nations Convention Against Transnational Organised Crime**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

In its Resolution 53/111 of 9 December 1998, the United Nations' General Assembly (UNGA) decided to establish an open-ended intergovernmental ad-hoc committee charged with elaborating a Convention against transnational organised crime (UNTOC), supplemented by three Protocols:

- to prevent, suppress and punish trafficking in persons, especially women and children (Trafficking Protocol);
- against the smuggling of migrants by land, air and sea (Smuggling Protocol); and
- against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (Firearms Protocol).

The first formal session of the ad-hoc committee took place in Vienna in January 1999.

The Commission presented to the Council a recommendation for a Council decision authorising it to negotiate all the elements of the draft Convention that are subject to Community competence. Similar recommendations were also submitted in respect of the three draft Protocols.

In response to these recommendations, the Council authorised the Commission to negotiate the draft UNTOC¹, the draft Trafficking and Smuggling Protocols² and the draft Firearms Protocol³.

The Commission actively participated in the UN negotiations in Vienna, in close co-operation with EU Member States and non-EU G8 countries. Negotiations on the UNTOC were completed in July 2000 while the finalisation of the Smuggling and Trafficking Protocols took until October 2000. The UNGA adopted these three instruments at its 55th session on 15 November 2000⁴ and opened them for signature. Negotiations on the Firearms Protocol lasted half a year longer (until May 2001) and this instrument was adopted by the UNGA at its 55th session on 31 May 2001⁵ and thereafter opened for signature.

The Italian Government hosted, from 12 to 15 December 2000, a high-level political conference in Palermo for the purpose of signing the UNTOC and the Smuggling and Trafficking Protocols. Since the Commission, in conformity with the negotiating directives issued to it, had successfully negotiated for these instruments not only to be open for signature by States but also by regional economic integration organisations, such as the EC, the Council authorised the signing, on behalf of the

¹ Decision of 2 May 2000.

² Decision of 14 February 2000.

³ Decision of 31 January 2000.

⁴ UN General Assembly Resolution A/RES/55/25

⁵ UN General Assembly Resolution A/RES/55/255

European Community, of the UNTOC and the Smuggling and Trafficking Protocols during this conference.⁶ On 12 December 2000, the European Community formally signed these three instruments in Palermo, along with all EU Member States. Authorisation to sign the Firearms Protocol was given by the Council in October 2001⁷ and this instrument was formally signed by the European Community at United Nations Headquarters in New York on 16 January 2002.

The fortieth instrument of ratification of the United Nations Convention against Transnational Organised Crime was deposited with the United Nations Secretary-General on 1 July. In accordance with Article 38 of the Convention, it [will enter] [entered] into force on 29 September 2003. The three Protocols supplementing the UNTOC have not yet entered into force, which requires ratification of each of them by at least 40 States.

A regional economic integration organisation cannot ratify the UNTOC (or a Protocol) before at least one of its Member States has already done so. Of the 15 EU Member States, Spain (on 1 March 2002) and France (on 29 October 2002) have already deposited a document of ratification for the UNTOC and the Smuggling and Trafficking Protocols with the UN Secretariat General; the other Member States are still in the process of ratification.

Draft Council Decisions on the conclusion, on behalf of the European Community, of the Smuggling Protocol and the Trafficking Protocol are submitted in parallel with the present document.

Eleven EU Member States have signed but not yet ratified the Firearms Protocol. Pursuant to Article 17 (1) of the Firearms Protocol, the possibility for signing it has expired on 12 December 2002. However, the Protocol is open for accession by any State according to Article 17 (4). The Firearms Protocol comprises provisions that require the amendment of existing and introduction of new Community legislation. The Commission is in the process of preparing these legislative acts. Against this background the Commission currently considers it not appropriate to propose to the Council to conclude the Firearms Protocol, which should be left to a later stage.

2. OUTCOME OF NEGOTIATIONS ON THE UNTOC

The Commission considers that the objectives set by the Council in its negotiating directives have been well attained.

The UNTOC provides for a high standard of measures to combat money laundering that conform to the Community *acquis* on measures to prevent the financial system, as well as other institutions and professions considered to be vulnerable, from being used to launder money. The Commission has also submitted a proposal for a Regulation in order to supplement existing legislation against money laundering by having recourse to customs co-operation arrangements under Article 135 TEC.⁸

⁶ Council Decision 2001/87/EC, OJ L 30 of 1.2.2001, p. 44.

⁷ Council Decision 2001/748/EC, OJ L 280 of 24.10.2001, p. 5

⁸ Proposal for a Regulation of the European Parliament and the Council on the prevention of money laundering by means of customs co-operation, COM(2002)328 final; OJ C 227 E of 24.9.2002, p. 574

Finally, the preparatory work accompanying the text of the Convention refers to the standards established by the Financial Action Task Force on Money Laundering.

The UNTOC contains provisions on measures against corruption which fall under Community competence. These provisions are consistent with the relevant Community *acquis*. The latter provides for measures to ensure the free movement of goods and services which includes public procurement legislation intended to ensure transparency and the equal access of all candidates for the public contracts and services markets while preventing fraud, corruption and collusion between the tenderers. Measures against corruption are also an integral part of the EC's development policy, notably the Cotonou Agreement of 23 June 2000 which provides for a consultation procedure in "serious cases of corruption" with the possibility of, albeit as an *ultima ratio*, suspending assistance.

Last, the Community has competence to adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community pursuant to Article 280 (4) TEC. On this basis a legislative proposal aligning substantive criminal law in the Member States as regards the definition of fraud, corruption and money laundering affecting Community financial interests has been submitted to the Council.⁹

3. CONCLUSIONS

The UNTOC is the first global instrument on the fight against transnational organised crime. It sets a very useful multilateral framework and a variety of important minimum standards for all participating States. Consequently, the European Community has a high interest in seeing it enter into force as soon as possible. Completing the process of ratification by the European Community sends a clear signal that the Community is committed to the aims of this instrument.

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the UNTOC by the European Community, the legal basis for which can be found in Articles 47, 55, 95, 135, 179 and 280 in conjunction with Article 300 TEC. The proposal contains a first Article that approves the UNTOC on behalf of the European Community. The second Article authorises the President of the Council to designate the person empowered to deposit, on behalf of the European Community, the instrument of approval. The text of the UNTOC appears in Annex I. Annex II comprises the declaration on the extent of the European Community's competence with respect to matters governed by the UNTOC which have to be deposited together with the instrument of approval (Art. 36 (3) UNTOC).

The Council will decide by qualified majority after consulting the European Parliament has been obtained (Article 300(2) first sentence and 300(3) first subparagraph TEC).

The Commission accordingly proposes that the Council adopt the attached Decision.

⁹ Proposal for a Directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests, COM(2001)272 final; OJ C 240 E of 28.8.2001, p. 125

Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the European Community, of the United Nations
Convention Against Transnational Organised Crime**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47, 55, 95, 135, 179 and 280, in conjunction with Articles 300(2) first sentence and 300(3) first subparagraph thereof;

Having regard to the proposal from the Commission,¹⁰

Having regard to the opinion of the European Parliament¹¹,

Whereas:

- (1) The elements of the Convention which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community,
- (2) The Council instructed the Commission to negotiate the accession of the Community to the international agreement in question,
- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Council Decision (2001/87/EC) of 8 December 2000¹²,
- (4) Some Member States are parties to the Convention while the ratification process is under way in other Member States,
- (5) The conditions permitting the Community to deposit the instrument of approval provided for in Article 36 (3) of the Convention have been fulfilled,
- (6) The Convention should be approved to enable the Community to become a party to it within the limits of its competence,
- (7) The Community must, when depositing the instrument of approval, also deposit a declaration on the extent of the European Community's competence with respect to matters governed by the Convention under Article 36 (3) of the Convention,

¹⁰ OJ [...], of [...], p.

¹¹ OJ , p.

¹² OJ L 30 of 1.2.2001, p. 44

HAS DECIDED AS FOLLOWS:

Article 1

The United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community.

The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 36 (3) of the Convention as set out in Annex II.

Article 2

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community.

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council,
The President*

ANNEXES

ANNEX I will include the text of the Convention.

ANNEX II

DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME

Article 36 (3) of the United Nations Convention against transnational organised crime provides that the instrument of ratification, acceptance or approval of a regional economic integration organisation shall contain a declaration specifying the matters governed by the Convention in respect of which competence has been transferred to the organisation by its Member States which are Parties to the Convention.

The United Nations Convention against transnational organised crime shall apply, with regard to the competences transferred to the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof.

Pursuant to Article 299, this declaration is not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Convention. The scope and the exercise of such Community competence are, by their nature, subject to continuous development, and the Community will complete or amend this declaration, if necessary, in accordance with Article 36 (3) of the Convention.

The Community points out that it has competence with regard to progressively establishing the internal market, comprising an area without internal frontiers in which the free movement of goods and services is ensured in accordance with the provisions of the Treaty establishing the European Community. This includes measures to combat money laundering and to ensure transparency and the equal access of all candidates for the public contracts and services markets which contributes to preventing corruption. The Community also has competence regarding customs co-operation between EU Member States and between the latter and the Commission which supplement other measures to prevent money laundering. The Community also has competence to adopt the necessary measures in the fields of the prevention of and fight against fraud and any other illegal activities, including corruption and money laundering, affecting the financial interests of the Community. Hence in these fields it is for the Community to adopt the relevant rules and regulations and, within its competence, to enter into external undertakings with third States or competent international organisation. Community policy in the sphere of development co-operation supplements policies pursued by Member States and includes provisions to combat corruption.