



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 July 2013

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**Interinstitutional File:
2013/0083 (NLE)**

**UD 186
GENVAL 51
CRIMORG 100
ENFOPOL 240
MI 641
COARM 115**

NOTE

from:	General Secretariat
to:	Delegations
No previous doc.:	7933/13 GENVAL 19 CRIMORG 49 ENFOPOL 90 MI 242 + COR 1 + COR 2
Subject:	Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime - Presidency compromise text

Delegations will find in the Annex an amended version of the above proposal, prepared by the Presidency. The only change compared with the original proposal a set out in doc. 7933/13 concerns the legal basis.

2013/0083 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207(4) 1st subparagraph, in conjunction with and 218(6) (a) thereof;

Having regard to the proposal from the Commission¹,

Having regard to the consent of the European Parliament²,

Whereas:

- (1) The elements of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition ("the Protocol") which are covered by the competences of the Union were negotiated by the Commission, with the approval of the Council, on behalf of the Union.

¹ OJ, p.

² OJ, p.

- (2) In accordance with Council Decision 2001/748/EC³ the Protocol was signed on 16 January 2002, subject to its conclusion at a later date.
- (3) The conclusion of the United Nations Convention against Transnational Organized Crime was approved on behalf of the European Union by Council Decision 2004/579/EC of 29 April 2004⁴ which is a condition for the European Union to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention.
- (4) The Protocol provides for measures falling within the scope of the Union's Common Commercial Policy. Several European Union legal acts have been adopted aiming at facilitating and eliminating barriers for the transfers of conventional arms within the internal market or aiming at regulating the exports of arms to third countries.
- (5) A legally binding instrument on the highest possible common international standards for the transfer and control of arms concerns matters that fall under Union competence because they are within the scope of the Common commercial policy or the conclusion of the Protocol is likely to affect the abovementioned European Union legal acts or alter their scope.
- (6) Insofar as the provisions of the Protocol fall within the scope of competences conferred on the Union the agreement should be approved on behalf of the European Union,

³ OJ L 280 of 24.10.2001, p.5

⁴ OJ L 261 of 06.08.2004

- (7) The Union must, when depositing the instrument of approval, also deposit a declaration on the extent of the European Union's competence with respect to matters governed by the Protocol as required under Article 17 (3) of the Protocol,
- (8) The control of the acquisition and possession of firearms in the Union as well as the formalities for the movements of firearms within the Member States are regulated by Council Directive 91/477/EEC amended by Directive 2008/51/EC of the European Parliament and the Council,
- (9) The rules and procedures applicable to the intra-community transfers of defence-related products are regulated by Directive 2009/43/EC of the European Parliament and the Council.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, is hereby approved on behalf of the European Union.

The Union's instrument of formal approval shall comprise a declaration of competence according to Article 17 (3) of the Protocol as set out in Annex I.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the deposit of the instrument of approval provided for in Article 17(3) of the Protocol, in order to express the consent of the European Union to be bound by the Protocol.

Article 3

This Decision shall enter into force on ⁵.

Done at Brussels,

For the Council

The President

⁵ The date of entry into force of the Decision will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Declaration concerning the competence of the European Union with regard to matters governed by the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Article 17 (3) of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition 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 Protocol in respect of which competence has been transferred to the organisation by its Member States which are Parties to the Protocol.

The European Union has exclusive competence over commercial policy. It also has shared competence over rules for the achievement of the internal market, and exclusive competence as regards provisions of the agreement which may affect or alter the scope of common rules adopted by the European Union. The Union has adopted rules as regards notably the fight against illicit manufacturing of and trafficking in firearms, regulating standards and procedures on commercial policy of the Member States concerning in particular record keeping, marking of firearms, deactivation of firearms, requirements for exports, import and transit licensing authorisation systems strengthening of controls at export points and brokering activities.

The Protocol to fight against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition shall apply, with regard to the competences transferred to the European Union, to the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in that Treaty.

The scope and the exercise of such Union competence are, by their nature, subject to continuous development, and the Union will complete or amend this declaration, if necessary, in accordance with Article 17 (3) of the Protocol.
