



**COUNCIL OF
THE EUROPEAN UNION**

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Subject: COUNCIL DECISION on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation

COUNCIL DECISION

of

**on the signing, on behalf of the European Union,
of the Protocol to Eliminate Illicit Trade in Tobacco Products
to the World Health Organisation's Framework Convention on Tobacco Control,
with the exception of its provisions on obligations
related to judicial cooperation in criminal matters,
the definition of criminal offences, and police cooperation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 113, 114 and 207(4), first subparagraph, in conjunction with Article 218(5) and 218(8), second subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 22 October 1999, the Council authorised the Commission to negotiate, in the context of the World Health Organisation (WHO), a Framework Convention on Tobacco Control (FCTC) and related protocols. This authorisation was amended by the Council on 21 April 2001 and, on 20 December 2007, in relation to the Protocol to Eliminate Illicit Trade in Tobacco Products ('the Protocol'). Negotiations were conducted by the Commission within the terms of the negotiating directives adopted by the Council and were successfully finalised by the adoption of the Protocol at the fifth Conference of the Parties to the WHO FCTC on 12 November 2012, in Seoul, Republic of Korea.
- (2) The conclusion of the FCTC was approved on behalf of the Community by Council Decision 2004/513/EC¹, which is a condition for the Union's becoming a Party to the Protocol.
- (3) The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products, which constitute an essential component of tobacco control.
- (4) The Union has exclusive competence for a number of provisions of the Protocol which fall within the scope of the Union's common commercial policy or where corresponding Union legislation has been adopted. Therefore, the Protocol should be signed on behalf of the Union, subject to its conclusion at a later date.

¹ Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO Framework Convention on Tobacco Control (OJ L 213, 15.6.2004, p. 8).

- (5) 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.
- (6) The Protocol sets out obligations for the contracting parties related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation. As a consequence, those provisions fall within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, and the Protocols (No°21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice and (No°22) on the position of Denmark, both annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, apply.
- (7) A separate decision^{1*} relating to the signing of the Protocol, as regards its provisions on obligations related to judicial cooperation in criminal matters,

HAS ADOPTED THIS DECISION:

¹ Council Decision .../.../... of ... on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ ...).

* OJ insert reference to st 14711/13.

Article 1

The signing of the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control^{*}, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation, is hereby authorised subject to the conclusion of the said Protocol¹.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Protocol on behalf of the Union, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President

* Note to delegates: see st 15044/13.

¹ The text of the Protocol will be published together with the decision on its conclusion.