



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 December 2013  
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#### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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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, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation

- Statements to the Council minutes

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#### **STATEMENTS BY DELEGATIONS**

1. **Statement by the BE, BG, CZ, DK, DE, EE, EL, ES, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI and UK delegations**

*"The aforementioned delegations would like to draw the attention to the implementation of the WHO FCTC Protocol to eliminate illicit trade in tobacco products and request the Commission that every possible effort is made to limit any disproportional administrative burdens on either administrations or industry."*

2. **Statement by the BE, BG, CZ, DK, DE, EE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI and UK delegations**

*"Pursuant to Article 44 third paragraph of the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products, the Union shall declare the extent of their competence with respect to the matters governed by the Protocol. The aforementioned delegations hereby confirm that a thorough discussion on the competence shall be conducted in the appropriate Council bodies and that a full and detailed list of competences shall be agreed as part of the decision on the Conclusion of the Protocol, in accordance with the rules of procedure."*

3. **Statement by the BE, BG, CZ, DK, DE, EE, IE, EL, HR, IT, CY, LV, LT, LU, HU, NL, AT, PT, RO, SI and FI delegations**

*"Given the importance of reaching an agreement within a reasonable deadline on the Decision on the signing of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organization's Framework Convention on Tobacco Control, the Council decided not to identify in detail, at the stage of the signature, the provisions of the said Protocol which contain obligations for the contracting parties related to judicial cooperation in criminal matters, the definition of criminal offences and police cooperation. At first sight, those are Articles 14, 16, 19, 23, 26, 27, 29 and 30 of the Protocol, but the Council intends to examine further this issue with a view to having a list ready for the moment when it will take the decision on the conclusion of the Protocol."*

4. **Statement by the AT and RO delegations**

*"The aforementioned delegations hold the view that Council decisions in accordance with Article 218 TFEU always concern an agreement in its entirety. A splitting into several decisions which refer to individual articles of an agreement is legally not viable."*

5. **Statement by the IT, PL, PT, SK and RO delegations**

*"The aforementioned delegations particularly welcome the provisions on tracking and tracing provided for in the Article 8 of the "Protocol to eliminate illicit trade in tobacco products". These delegations therefore request the Commission to ensure that, should the Proposal for the revision of "Directive 2001/37/CE on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products" provide measures on tracking and tracing, the latter should be consistent with those of the Protocol."*

6. **Statement by the BG, CZ, DK, DE, EL, ES, FR, HR, IT, CY, LV, LU, HU, MT, NL, AT, PL, PT, RO, SK, SE, FI and UK delegations**

*"The global information sharing focal point, in Article 8, paragraphs 1 and 8-9 of the Protocol, must not be a global database system. The aforementioned delegations understand that the provision on access to a manufacturer's database, by the competent authority in the jurisdiction of the tobacco manufacturer, shall be considered to fulfil the requirements of the global information sharing focal point."*

**7. Statement by the UK delegation**

*"Under Article 4 TFEU, the area of freedom, security and justice is an area of shared competence. As the Protocol does not affect or alter the scope of any existing internal EU rules in this area, the EU has not acquired exclusive external competence by virtue of Article 3(2) TFEU and this area therefore remains an area of shared competence. The UK therefore holds the view that, in this particular set of circumstances, a separate Council Decision authorising the EU to sign the Protocol in relation to the area of freedom, security and justice is not necessary."*

**STATEMENT BY THE COUNCIL**

*"Within the EU, Article 6 of the Protocol will be implemented through the system laid down in Directive 2008/118/EC, insofar as it concerns manufactured tobacco within the meaning of Directive 2011/64/EU (cigarettes, cigars, cigarillos and smoking tobacco)."*

**STATEMENTS BY THE COMMISSION**

- 1. The Commission considers that limiting the Council's decision on signature to matters over which the Union has exclusive competences is not justified in the present case. Areas of exclusive competence in the Protocol are essential, and cannot be severed from parts of shared competence. In the Commission's view, the signature of the Union ought to be understood as indicating its intention to consider the conclusion of the totality of the Protocol, severally with the Member States acting reciprocally in respect of Article 4(3) TEU.*

2. *The Commission considers that, in principle, it is premature and not necessary to include any statement dealing with the implementation of the Protocol at the stage of signature. In particular, one statement of Member States appears to refer to matters which are not yet established, and the functioning and implementation of which is not yet known. In consequence, a final EU position on such matters, as for instance the implementation of the Protocol as regards the data management with the global information sharing focal point under Article 8 (8) of the Protocol, can only be reached when all the available technical and administrative options will be known to the EU and the Member States.*
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