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CONUN 63
JAIEX 50

DECLASSIFICATION

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Subject: DRAFT COUNCIL COMMON POSITION on the United Nations
Convention against Corruption,
- Preparation of the 3rd Conference of the States Parties to the UNCAC
(Doha, Qatar, 9-13 November 2009)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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THE EUROPEAN UNION**

Brussels, 18 September 2009

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NOTE

from : the Swedish Presidency
to : Delegations

Subject : DRAFT COUNCIL COMMON POSITION on the United Nations Convention
against Corruption,
- Preparation of the 3rd Conference of the States Parties to the UNCAC
(Doha, Qatar, 9-13 November 2009)

Delegations will find attached the draft Common Position on the UN Convention against Corruption in view of the 3rd Conference of the States Parties to the Convention.

The text was discussed in the Multidisciplinary Group on Organised Crime (MDG) on 8 July 2009 and has been amended according to the proposals of the delegations.

It takes into account the conclusions of the EU coordination meetings held in Vienna on the occasion of the experts' meetings on review mechanism (UNODC, Vienna, 11-13 May 2009 and 25 August - 2 September 2009) and the written comments submitted by the delegations beforehand.

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ANNEX

DRAFT COUNCIL COMMON POSITION 2009/ /JHA of.....2009

On the United Nations Convention against Corruption, Preparation for the 3rd Conference of the States Parties (Doha, Qatar, 9 – 13 November 2009)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(a) thereof, and

Having regard to the initiative of Sweden,

Recalling that:

- (1) the European Union recognises that preventing and combating all forms of corruption is a key objective to be achieved worldwide;
- (2) a number of legal instruments have been adopted by the European Union with a view to developing a comprehensive EU anti-corruption policy both in the public and in the private sector;
- (3) it is desirable that the existing international anti-corruption instruments are ratified and effectively implemented by all States without further delay;
- (4) most Member States are parties to the United Nations Convention against Corruption (UNCAC) while the ratification process is underway in other member States;
- (5) the Council of the European Union has adopted the Decision on the conclusion, on behalf of the European Community, of the UNCAC;

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(6) in preparation for the first session of the Conference of States Parties (COSP) and the second session, the Council had adopted Common Positions¹;

(7) the CoSP agreed at its first session to develop best practices to prevent corruption and held a seminar on best practices during its second session and agreed to place particular emphasis on the prevention of corruption at the third session of the CoSP;

(8) the CoSP, at its first session in December 2006, agreed the need to establish an appropriate and effective review mechanism to assist in the implementation of the UNCAC and established an open-ended inter-departmental working group on review. At its second session in January 2008 the COSP decided to develop guiding principles for a review mechanism;

(8a) the review mechanism shall take into account the experiences gained through the Pilot Review Programme carried out by a number of States Parties with the support of the UNODC;

(9) the CoSP decided at its first session to establish an open-ended inter-governmental working group on asset recovery inter alia to assist the CoSP in developing knowledge in the area. At the second CoSP the working group was requested to continue its work;

(10) the CoSP agreed at its first session to establish an open-ended inter-governmental working group on technical assistance. At its second session inter alia requested national, regional and international donors to continue their coordination efforts as agreed in the Paris Declaration of Aid Effectiveness and requested the working group to continue its work.

¹ Doc. 15012/1/06 REV 1 CRIMORG 165 RESTREINT UE.
Doc. 14412/1/07 REV 1 CRINORG 164 RESTREINT UE.
Doc. 15233/1/07 REV 1 CRIMORG 172 RESTREINT UE.

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HAS DEFINED THIS COMMON POSITION:

Prevention

Article 1

The Member States shall support the development of efficient policies devised to prevent corruption and endeavour to identify good practices/share experiences with prevention measures as foreseen in Chapter II of the UNCAC on Preventive measures, bearing in mind the principles of the 2003 Communication on a comprehensive EU anti-corruption policy.

Review Mechanism

Article 2

The Member States shall support the establishment of a strong and effective review mechanism to assist the State Parties and, where applicable, the signatories to the Convention on a voluntary basis, in their effective implementation of the Convention. The Member States shall encourage the CoSP to take into account experiences from other relevant evaluation mechanisms existing in other international and regional fora with the view to benefiting from best practice and avoiding duplication of efforts. The mechanism shall be governed by transparent and objective assessment criteria.

Article 3

1. The review mechanism shall enable the Conference of State Parties to acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them and to allow individual States to obtain reliable and consistent information concerning their implementation of the Convention with the view to identifying gaps, highlight successful experiences and good practices and their needs for technical assistance.
2. The reviews shall be carried out by experts nominated by reviewing State parties and shall preferably also involve at least one expert from the region concerned.

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3. The information gathering should be accurate, timely and should aim to limit the administrative burden on States. A variety of relevant sources should be taken into account.
4. The self-assessment checklist is a comprehensive information gathering tool which shall form one of the main sources for reviews of implementation.
5. Member States shall seek and promote the active participation in the review process of individuals and groups outside the public sector, such as civil society.
6. Member States shall seek to promote country visits to be part of the review process in order to enable an in depth analysis of the implementation and proper dialogue with the reviewed State inter alia on technical assistance requirements.

Article 4

The report of the review shall include priorities and actions identified during the review process to improve implementation of the Convention and technical assistance needs for that purpose. Reports should be made public.

Asset Recovery

Article 5

1. The Member States shall promote and support the identification of effective methods and the adoption of expeditious procedures for asset recovery.
2. The Member States shall, in particular, promote and support the adoption of initiatives aimed at:
 - a) developing among competent authorities a common knowledge on the legal framework for and best practices in the area of asset recovery;

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b) enhancing the cooperation and mutual trust among national and international counterparts involved in asset recovery procedures;

c) promoting the financial investigation skills of law enforcement agencies to improve the rapid identification and tracing of illicit financial transfers and other transactions;

d) facilitating the coordination of existing bilateral and multilateral initiatives in the area of asset recovery with the view to avoiding duplication of work and overlap with existing initiatives.

3. The member States welcome and support the joint initiative of the UNODC and the World Bank called Stolen Assets Recovery Initiative, StAR, and commit to cooperate with StAR in an effective manner, as appropriate.

The Implementation Review Group

Article 6

The Member States shall support the establishment of an appropriate body to assist in the effective implementation of the Convention, the Implementation Review Group, IRG. The Group shall operate under the authority of and report to the CoSP. Member States shall endeavour to give the IRG the following key tasks:

- to assist the CoSP in analysing the results of country reviews with the view to identifying priorities and initiatives for enhancing implementation of the Convention;
- to have overview of activities in the field of prevention;
- to manage the review process; and
- to have overview of activities in the field of asset recovery and technical assistance.

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The Group should be composed of a representative number of country experts in the areas covered by the Convention, from State parties of all regions, and allow all states to participate equally in the process.

Article 7

The Council will adopt further positions on this matter, as appropriate.

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