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

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



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RESTREINT

**CRIMORG 187
MI 121**

NOTE

from :	Presidency
to :	Multidisciplinary Group on Organised Crime (MDG)
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Subject :	Draft protocol to the United Nations Convention against organised crime to combat illegal trafficking in and the manufacture of firearms, their parts, components and ammunition - Discussion paper on the Commission's recommendation for a Council decision authorising it to participate in the negotiating of the draft protocol

I. Introduction

1. On 10 November 1999 the Commission adopted a recommendation for a Council decision authorising it to take part, on behalf of the European Community, in the negotiations on the above protocol. The purpose of this discussion paper is to clarify the basis on which an appropriate negotiating mandate should be determined for the Commission. In that regard it is understood that the United Nations negotiations on the draft protocol will resume in January 2000.

II. Mandate sought by the Commission

2. The Commission recommendation takes account of the fact that certain provisions of the draft protocol are concerned with the import, export and transit of firearms. In that context it states that Community rules on commercial policy will apply and that, under Article 133 of the EC Treaty, the Community has power to conclude an international agreement on measures connected with the import and export of firearms. Furthermore, the proposed negotiating mandate is based on Community legislation, in particular Directive 91/477/EC on control of the acquisition and possession of firearms, and on the case law of the Court of Justice concerning the negotiation and conclusion of international agreements affecting internal Community rules. A comparison between Community provisions and the relevant portions of the draft protocol has also been provided.
3. On the basis of its analysis, the Commission recommendation seeks a mandate authorising it to negotiate, in accordance with the procedure laid down in Article 300 of the EC Treaty, in respect of the following provisions of the draft protocol:
 - Article VIII (record keeping)
 - Article IX (marking of firearms)
 - Article X (deactivation of firearms)
 - Article XI (requirements for export, import and transit licensing or authorization systems)
 - Article XIII (strengthening of controls at export points)
 - XVIII bis (brokering activities).In addition the recommendation envisages that the Commission mandate would be exercised on the basis of a specific negotiating brief and in consultation with a special committee to be appointed by the Council.

III. Presidency proposals

4. The Presidency has examined the Commission recommendation and it accepts that it would be appropriate for the Council to confer a negotiating mandate on the Commission in respect of a number of the provisions of the draft protocol. This view is based on the concept that the UN instrument will be a mixed text with some of its elements within the competence of the Member States and others falling within the remit of the Community, in accordance with its internal rules and legislation. In addition, Opinions from the Council Legal Service which have outlined the relevant jurisprudence of the Court of Justice have been taken into account.¹
5. More specifically, the Presidency considers that the relevant negotiating mandate should apply to the following provisions of the draft protocol:
 - **Article VIII (record-keeping):** This Article contains provisions which could affect the operation of Article 4 of Directive 91/477/EEC under which registers must be kept by firearms dealers.
 - **Article IX (marking of firearms):** One of the consequences of this Article is that it would impose conditions in respect of the manufacture and importation of firearms which are not currently provided for under the 1991 Directive or existing Community legislation in the commercial field.
 - **Article XI (general requirements for export, import and transit licensing or authorization systems):** This Article imposes much stricter requirements for the import/export of firearms and ammunition than those which apply on the basis of the 1991 Directive and other Community measures.

¹ See, in particular, document 13014/99 JUR 427 CRIMORG 176 MIGR which contains an Opinion from the Council Legal Service in connection with the request made by the Commission for a negotiating mandate in relation to certain provisions of the UN protocols on smuggling of migrants and on trafficking in persons.

- **Article XIII (strengthening of controls at export points):** This Article obliges State Parties to adopt measures, inter alia, to prevent and detect illicit traffic in firearms by strengthening controls at export points. It is clear that it raises issues which, in so far as transfers between EU Member States are concerned, are very closely linked to the operation of the Single Market.
- **Article XVIII bis (registration and licensing of brokers):** The effect of this Article is to create obligations in respect of brokers which go beyond those laid down in the 1991 Directive.

6. The overall approach the Presidency proposes is that the Council should generally agree to the conferral of a negotiating mandate with reference to the articles of the draft protocol suggested by the Commission. However, the Presidency has also concluded that Article X (preventing the reactivation of deactivated firearms) should not be covered by the mandate. This is because the relevant subject matter does not appear to have significant implications in terms of existing Community rules or legislation.
7. The Presidency also supports the Commission proposals for the adoption by the Council of a negotiating brief for the Commission in conducting the appropriate negotiations and the establishment of a special Council committee to assist with that task. These are measures which are expressly mentioned in Article 300 of the TEC.

IV Conclusions

8. The Presidency invites delegations to consider its proposals that a negotiating mandate should be conferred on the Commission, on behalf of the Community, in respect of Articles VIII, IX, XI, XIII and XVIII bis of the draft UN firearms protocol and that a negotiating brief on the lines proposed by the Commission should be adopted by the Council for that purpose. In addition a special committee should be set up to facilitate the negotiations undertaken by the Commission.
