



Council of the  
European Union

002524/EU XXVII. GP  
Eingelangt am 12/11/19

Brussels, 12 November 2019  
(OR. en)

13798/1/99  
REV 1 DCL 1

CRIMORG 187  
MI 125

## DECLASSIFICATION

---

of document:	ST 13798/1/99 REV 1 RESTREINT
dated:	13 January 2000
new status:	Public
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

---

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

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

---



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 January 2000**

**13798/1/99  
REV 1**

**RESTREINT**

**CRIMORG 187  
MI 125**

**NOTE**

from :	Presidency
to :	Article 36 Committee
No. prev. doc.:	13789/99 CRIMORG 187 MI 121
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 document is to clarify the basis on which an appropriate negotiating mandate should be determined for the Commission. It takes account of the discussion in the Multidisciplinary Group on 13 December and on 10 and 11 January. Attached delegations can find a draft negotiating directive on the Draft Firearms Protocol. 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.<sup>1</sup>
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.

---

<sup>1</sup> See, in particular, document 13014/99 JUR 427 CRIMORG 176 MIGR (RESTREINT) 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. As regards the Protocol provision on preventing the reactivation of deactivated firearms, the Presidency considers that the question whether this provision falls under an exclusive community competence or not should be further examined in order to enable the Council to take a decision soon.
7. Regarding those parts of the Draft Protocol on Firearms which are not covered by Community competence, in application of Article 296, paragraph 1.b and 2 TEC, Member States remain competent.
8. The Presidency also supports the Commission proposals for the adoption by the Council of a negotiating directive 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

9. 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 the attached negotiating directive should be adopted by the Council for that purpose. Should a further examination establish that the issue of the reactivation of deactivated firearms (Article X of the Protocol) falls under Community competence, the Council may decide that the mandate will also be extended to this provision.

In addition a special committee should be set up to facilitate the negotiations undertaken by the Commission in accordance with Article 300 TEC.

DECLASSIFIED

DRAFT NEGOTIATING DIRECTIVE<sup>2</sup>**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**

1. The Commission is authorised to negotiate the provisions set out below to the extent that they fall under [...] <sup>3</sup> Community competence and to ensure their compatibility with ] all applicable Community rules, namely the rules contained in the Treaty and in any secondary legislation, namely the Directives 91/477/EEC and 93/15/EEC.
2. The authorisation to negotiate conferred to the Commission is not extended to the arms, ammunitions and war material covered by the Article 296, paragraph 1.b and 2 TEC.
3. The draft listed Articles are the following :
  - Provision on record keeping (Article VIII<sup>4</sup>) ;
  - Provision on marking (Article IX);
  - Provision on reactivation of deactivated firearms (Article X).

Should a further examination establish that this matter falls under the exclusive Community competence, the Council may decide that the mandate will also be extended to this provision.
  - Provision on import, export, transit (Article XI);
  - Provision on the strengthening of controls at export points (Article XIII) ;
  - Provision on brokering activity (Article XVIII bis). When negotiating this provision, the Commission shall ensure that the work achieved on the same issue in second pillar fora shall be taken into consideration. The Commission should also reach for a definition regarding brokering activities.

<sup>2</sup> Scrutiny reservations by DK, S, F and NL

<sup>3</sup> Scrutiny reservation by UK. UK is considering if will accept this new version.

<sup>4</sup> The reference to Article numbers in this document is based on the Draft Protocol, version from 19 July 1999

4. When considering provisions aiming at identifying and tracing firearms, the Commission shall look for proportionate and practical solutions which take account of the need to protect public security and preserve law and order but which do not represent an unjustified burden for either traders or the supervisory authorities.
5. The draft protocol should include a clause allowing the Community to accede to the Protocol.
6. In the event that the Community could not or would not accede to the protocol, a disconnection clause allowing the application of current and future Community rules adopted in particular on the basis of Title IV of Part Three III of the EC Treaty would have to be included in the draft Protocol.

DECLASSIFIED