



Council of the
European Union

007896/EU XXVII.GP
Eingelangt am 07/01/20

Brussels, 7 January 2020
(OR. en)

17796/09
DCL 1

DROIPEN 167
UD 290
SAN 374
COPEN 253

DECLASSIFICATION

of document:	17796/09 RESTREINT UE/EU RESTRICTED
dated:	22 December 2009
new status:	Public
Subject:	World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol on illicit trade in tobacco products -Intersessional drafting Groups

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

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

RESTREINT UE



COUNCIL OF
THE EUROPEAN UNION

Brussels, 22 December 2009

17796/09

RESTREINT UE

DROIPEN 167
UD 290
SAN 374
COPEN 253

NOTE

from :	Presidency
to :	Delegations
Subject :	World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol on illicit trade in tobacco products -Intersessional drafting Groups

OUTCOME OF DISCUSSIONS OF INTERSESSIONAL DRAFTING GROUP 2

The third round of negotiations on a new protocol on illicit trade in tobacco products (INB3) was held in Geneva 28 June–5 July 2009. A fourth round of negotiations (INB4) will be held 14–21 March 2010. Due to difficulties experienced during INB3, it was decided to hold informal intersessional drafting meetings during autumn 2009. In this respect, and in view of preparation of INB4, two working groups were created. These groups, named INB Drafting Groups 1 and 2, have met twice in Geneva (Drafting Group 2; 7–9 October and 26–28 November 2009).

This document contains a short report of the outcome of the two meetings of Drafting Group 2 in which the Swedish Presidency represented the Member States of the European Union. The drafting proposals of the Drafting Group are enclosed in the Annex, to which the text below refers unless it is otherwise stated.

RESTREINT UE

The Drafting Group was able to agree on a text, except for Articles 30.1, 30.8 (g), 30.14 (d), 31.1 and 31.2. The basis for the discussions was the revised INB chairperson's text FCTC/COP/INB-IT/3/5, 5 July 2009 (the first meeting) and the Drafting Group chairperson's text FCTC/COP/INB-IT/3/DG2/2/4, 17 November 2009 (the second meeting). The comments in this outcome focus on how the final text as proposed in the Annex relates to the INB chairperson's text.

For the outcome of discussions of the first drafting meeting, please see previously issued doc. 15205/1/09/REV 1.

Official documentation for INB4, including the proposals drafted at the meetings of INB Drafting Group 2 now annexed to this document, will be available in January 2010 at <http://apps.who.int/gb/fctc/E/index.html>.

Article 12 Unlawful conduct including criminal offences

The basic structure of the Article on unlawful conduct is kept; Article 12.1 contains a list of conduct which the Parties shall make unlawful under its domestic law, while Article 12.2 leaves it up to the Parties to determine which of the unlawful conduct they wish to criminalise. A safeguard in the chapeau makes it clear that only measures that are in accordance with the basic principles of domestic law are required. Although the list of conduct has been rearranged few substantial changes were made in the end. For the agreed text, please see the Annex. The following could be noted however.

1. Because of the inherent nature of the terms, conduct including "money laundering" and "participation", "attempt" etc. (former Article 12.1 f-1) was reworded and moved to separate paragraphs (Article 12.3 and 12.4) and was made mandatory to criminalise. Two safeguards were added: "subject to the basic principles of its domestic law" and "having regard to the nature and gravity of the offence" in order to avoid, inter alia, an obligation to establish criminalisation for attempt of a petty crime or a crime that in itself already consists in a preparatory conduct. The Presidency also succeeded in reducing the list of different forms of

RESTREINT UE

participation etc. However it was not possible to reach consensus on an even stricter wording as proposed by the Presidency according to its instructions. Compared to earlier versions, the wording of the provision about predicate offences (Article 12.5) has been softened allowing Parties to use the system in national law when deciding which offences can constitute predicate offences. Thus it is no longer required to make any offence a predicate offence.

2. In Article 12.1 (b)(ii) the concept of “smuggling” has been added, even though many delegations felt that Article 12.1 (a) and 12.1 (b)(i) already cover most acts of “smuggling”.
3. In Article 12.1 (c)(iii) an “advantage criterion” has been added to limit the scope to behaviour that has not been undertaken “without right” or in “course of business activities”.
4. In Article 12.1 (h)(i) the qualifier “material” has been added to sort out misleading information that does not imply a risk that an incorrect decision is taken in the end from the scope of this provision. A specific mention of the right against self incrimination has been added.
5. In Article 12.1 (h)(ii) a) and b) the purpose of evading payment or prejudicing control measures has been added to limit the scope somewhat.

Regarding the need for definitions of terms appearing in the Article, the Presidency has expressed that no definitions are needed, i.e. it should be up to the Parties to define the terms in accordance with their domestic law. However, the Presidency has not opposed that INB is recommended to consider if definitions are needed.

Article 13 Liability of legal persons

The Article on liability of legal persons has only been slightly changed. There was consensus to let Article 10.1–3 in UNTOC serve as a model. For the agreed text, please see the Annex.

RESTREINT UE

Article 14 Prosecutions and sanctions

There was consensus to let Articles 10.4, 11.2 and 11.6 in UNTOC serve as a model. No reference is made to “serious crime” or a certain level of penalties. For the agreed text, please see the Annex.

Article 30 Mutual Legal Assistance

On request from many delegations the Article on mutual legal assistance has been brought into line with UNTOC. Consequently, the Article is rather extensive with many detailed provisions.

Two issues are still unsolved:

One delegation proposed the following additional provision in Article 30.8. ”A request for mutual legal assistance shall contain: ... (g) The provisions of the domestic law relevant to the criminal offence and the punishment therefore.” Considering the content of the coordinated position, the Presidency could not give its view about this on the spot. After a silent procedure among the Member States of the European Union the Secretariat of the Drafting Group was informed that the proposal could not be supported.

The same delegation proposed the following additional provision in Article 30.14, with Article 46.9 (b) in UNCAC as a model: “Mutual legal assistance may be refused: ... (e) Where the request involves matters of a *de minimis* nature”. The proposal was put in square brackets, since no consensus was reached.

Article 31 Extradition

As there seemed to be no reason to have one Article on prosecution of alleged offenders (former Article 32) and another one on extradition of alleged offenders (former Article 33) these two Articles were merged.

The new Article on extradition has, on request from many delegations, been brought into line with UNTOC. As a consequence, also this Article is rather extensive with many detailed provisions.

RESTREINT UE

During the second meeting, it was discussed at length if the approach should be to use the structure in Article 16.1 in UNTOC read together with 16.6 in UNTOC, i.e. with a reference to domestic law, or to introduce a threshold, and if so which threshold it should be – one year or four years.

The view shared by most delegations was to introduce a threshold and that this should be one year. However, some delegations supported four years. No consensus was reached in terms of the threshold.

If a Party does not determine any unlawful conduct in Article 12.1 to be criminalised, the provisions on mutual legal assistance and extradition do not apply.

Article 33 Measures to ensure extradition

Some changes have been made in the Article on measures to ensure extradition, which has been brought in line with Article 16.9 in UNTOC and Article 9.3 in International Convention for the Suppression of the Financing of Terrorism. For the agreed text, please see the Annex.

DECLASSIFIED

Drafting proposals by Drafting Group 2¹

PART IV: OFFENCES

Article 12

Unlawful conduct including criminal offences

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures, as may be necessary, to establish all of the following conduct as unlawful under its domestic law:
 - (a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products contrary to the provisions of this Protocol;
 - (b)
 - (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;
 - (ii) any other acts of smuggling of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products not covered by paragraph (b) (i);
 - (c)
 - (i) counterfeiting tobacco products or manufacturing equipment used in the manufacture of tobacco products or counterfeiting packaging, applicable fiscal stamps, unique identification markings, or any other markings or labels;

¹ Established by the Intergovernmental Negotiating Body (INB) on a Protocol on Illicit Trade in Tobacco Products at its third session, decision FCTC/INB-IT/3(1).

RESTREINT UE

- (ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting counterfeit tobacco products or counterfeit manufacturing equipment used in the manufacture of tobacco products or counterfeit fiscal stamps or unique identification markings, or any other markings or labels;
- (iii) defacing, falsifying, removing, altering or otherwise interfering with applicable fiscal stamps, unique identification markings, or any other required markings or labels affixed to tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products in order to, directly or indirectly, obtain any advantage, financial or other material benefit;
- (d) intermingling tobacco products with non-tobacco products during the progression through the supply chain of tobacco products, including during storage, warehousing, transit, transportation, import or export, for the purpose of concealing or disguising tobacco products;
- [(e) using Internet, telecommunication or any other evolving technology-based modes of sale of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products, in contravention of the provisions of this Protocol;] *(Final formulation depends on outcome of the discussions on Article 10)*
- (f) obtaining, by a person licensed in accordance with Article 5, tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products from a person who should be, but is not, licensed in accordance with Article 5;
- (g) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;

RESTREINT UE

- (h) (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products and when not contrary to the right against self incrimination;
- (ii) mis-declaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products or any other information specified in the protocol to:
- a) evade the payment of applicable duties, taxes and other levies, or
 - b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
- (iii) failing to create or maintain records covered by this Protocol or maintaining false records.
2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 of this Article shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.
3. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish the following conduct as criminal offences, when committed intentionally:

RESTREINT UE

- (a) Converting or transferring property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (*UNTOC¹, Article 6.1 (a) (i), non-substantive modification²*)
 - (b) Concealing or disguising the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; (*UNTOC, Article 6.1 (a) (ii), non-substantive modification*)
 - (c) Acquiring, possessing or using property, knowing, at the time of receipt, that such property is the proceeds of crime. (*UNTOC, Article 6.1 (b) (i), nonsubstantive modification*)
4. With respect to criminal offences established in accordance with paragraphs 2 and 3 of this Article, each Party shall, subject to the basic principles of its domestic law, and having regard to the nature and gravity of the offence, adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:
- (a) Participating in, associating with or conspiring to commit an offence;
 - (b) Attempting to commit an offence;
 - (c) Aiding, abetting, or inciting the commission of an offence.
- (*UNTOC, Article 6.2 (b)(ii) modified³*)
5. For the purposes of implementing or applying paragraph 3 of this Article, each Party shall in accordance with its domestic law include as predicate offences the criminal offences established in accordance with paragraphs 2 and 4 of this Article as a result of which proceeds have been generated.

¹ United Nations Convention Against Transnational Organized Crime (UNTOC).

² References to "*non-substantive modifications*" in this and the following Articles indicate that minor changes have been made to the original text, which are not considered to be substantive, such as replacing "State Party" with "Party", "Convention" with "Protocol" or using the gerund instead of the infinitive of a verb.

³ References to which "*modified*" has been added indicate that the language in the original provision has been changed in a manner which may be regarded as substantive.

RESTREINT UE

6. Knowledge, intent, or purpose required as an element of an offence established in accordance with paragraph 3 of this article may be inferred from objective factual circumstances.
(UNTOC, Article 6.2 (f) modified)

Article 13

Liability of legal persons

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the unlawful conduct including criminal offences established in accordance with Article 12 of this Protocol. (UNTOC, Article 10.1 modified)
2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative. (UNTOC, Article 10.2 modified)
3. Such liability shall be without prejudice to the liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with Article 12 of this Protocol. (UNTOC, Article 10.3 modified)

Article 14

Prosecutions and Sanctions

1. Each Party shall adopt such measures as may be necessary to ensure that legal and natural persons held liable for the unlawful conduct including criminal offences established in accordance with Article 12 are subjected to effective, proportionate and dissuasive sanctions.
(UNTOC, Article 10.4 modified)

RESTREINT UE

2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct including criminal offences established in accordance with Article 12 are exercised to maximize the effectiveness of law enforcement measures in respect of those unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences. *(UNTOC, Article 11.2 modified)*
3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal offences established in accordance with this Protocol and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a Party and that such unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law. *(UNTOC, Article 11.6 modified)*

Article 30

Mutual Legal Assistance

1. The Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with [paragraphs 2, 3 and 4 of] Article 12 of this Protocol. *(UNTOC, Article 18.1 modified)*
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 13 of this Protocol in the requesting Party. *(UNTOC, Article 18.2 modified)*

RESTREINT UE

3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:
- (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested Party.

(UNTOC, Article 18.3, non-substantive modification)

4. The provisions of this Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

(UNTOC, Article 18.6 modified)

5. Paragraphs 6 to 24 of this Article shall apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty of mutual legal assistance. If the Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 24 of this Article in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate co-operation. *(UNTOC, Article 18.7, non-substantive modification)*

RESTREINT UE

6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible. *(UNTOC, Article 18.13 modified)*
7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith. *(UNTOC, Article 18.14 modified)*
8. A request for mutual legal assistance shall contain:
- (a) The identity of the authority making the request;

RESTREINT UE

- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned;
- (f) The purpose for which the evidence, information or action is sought;
- [(g) The provisions of the domestic law relevant to the criminal offence and the punishment therefore.]

(UNTOC, Article 18.15 modified)

- 9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution. *(UNTOC, Article 18.16, non-substantive modification)*
- 10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request. *(UNTOC, Article 18.17, non-substantive modification)*
- 11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting Party shall notify the

RESTREINT UE

requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay. (*UNTOC, Article 18.19, non-substantive modification*)

12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party. (*UNTOC, Article 18.20, non-substantive modification*)
13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party. (*UNTOC, Article 18.18, non-substantive modification*)
14. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this Article;
 - (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
 - (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - [(d) Where the request involves matters of a *de minimis* nature] (*Article 46.9b UNCAC*)
 - (e) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted. (*UNTOC, Article 18.21, non-substantive modification*)

RESTREINT UE

15. Reasons shall be given for any refusal of mutual legal assistance. (*UNTOC, Article 18.23, non-substantive modification*)
16. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy. (*UNTOC, Article 18.8*)
17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. (*UNTOC, Article 18.22, nonsubstantive modification*)
18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party. (*UNTOC, Article 18.9, non-substantive modification*)
19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party on progress of its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required. (*UNTOC Article 18.24, non-substantive modification*)
20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. (*UNTOC Article 18.25, non-substantive modification*)

RESTREINT UE

21. Before refusing a request pursuant to paragraph 14 of this Article or postponing its execution pursuant to paragraph 20 of this article, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions. *(UNTOC, Article 18.26, nonsubstantive modification)*
22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.
(UNTOC, Article 18.28, non-substantive modification)
23. In the event of a request, the requested Party:
- (a) Shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - (b) May, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.
(UNTOC, Article 18.29 modified)
24. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article. *(UNTOC, Article 18.30, nonsubstantive modification)*

RESTREINT UE

Article 31

Extradition

1. [This Article shall apply to the criminal offences established in accordance with paragraphs 2, 3 and 4 of Article 12 of this Protocol when:
 - (a) the person who is the subject of the request for extradition is located in the territory of the requested Party;
 - (b) the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and
 - (c) the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least [one]/[four] years or by a more severe penalty.
(*UNTOC, Article 16.1 modified*)

or

[This Article shall apply to the following criminal offences established in accordance with Article 12 of this Protocol, when the person who is a subject of the request for extradition is located in the territory of the requested Party and provided that the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting and the requested Parties:

- (a) criminal offences in paragraphs 2 and 4 of Article 12 where the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least [one]/[four] years or by a more severe penalty;
 - (b) criminal offences in paragraphs 3 and 4 as it pertains to the offences in paragraph 3 of Article 12.]
2. Each of the criminal offences to which this Article applies shall be treated, for the purposes of extradition between the Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the Parties that have established their jurisdiction in accordance with paragraphs 1 and 2 of Article 26.]
(*Article 33.4 of the Negotiating Text, document FCTC/COP/INB-IT/3/5 Rev.1*)

RESTREINT UE

3. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. *(UNTOC, Article 16.3 modified)*
4. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies. *(UNTOC, Article 16.4 modified)*
5. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves. *(UNTOC, Article 16.6 modified)*
6. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition. *(UNTOC, Article 16.7, non-substantive modification)*
7. Parties shall, subject to their domestic law, endeavor to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies. *(UNTOC, Article 16.8 modified)*
8. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall co-operate with each other, in particular on procedural

RESTREINT UE

and evidentiary aspects, to ensure the efficiency of such prosecution. (*UNTOC, Article 16.10 modified*)

9. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 8 of this Article. (*UNTOC, Article 16.11, non-substantive modification*)
10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof. (*UNTOC, Article 16.12, non-substantive modification*)
11. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present. (*UNTOC, Article 16.13 modified*)
12. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons. (*UNTOC, Article 16.14, non-substantive modification*)
13. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. (*UNTOC, Article 16.15, non-substantive modification*)

RESTREINT UE

14. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation. *(UNTOC, Article 16.16, non-substantive modification)*
15. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. *(UNTOC, Article 16.17, nonsubstantive modification)*

Article 32

Measures to ensure extradition

1. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings. *(UNTOC, Article 16.9, non-substantive modification)*
2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.
3. Any person regarding whom the measures in accordance with paragraph 1 of this Article are being taken, shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) Be visited by a representative of that State.

(International Convention for the Suppression of the Financing of Terrorism, Article 9.3 modified)