



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.3.2006
COM(2006) 82 final

2006/23 (CNS)

Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the European Community,
of the United Nations Convention against Corruption**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The UN Convention against Corruption (UNCAC) was signed, on behalf of the European Community, in New York on 15 September, 2005. This proposal seeks the Council's approval for the conclusion of the Convention.

- **General context**

1. BACKGROUND

In its Resolution 55/61 of 4 December 2000, the United Nations' General Assembly recognised that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organised Crime, was desirable; and decided to establish an ad hoc committee for the negotiation of such an instrument. The first formal session of the ad-hoc committee took place in Vienna from 21 January to 1 February 2002.

The Commission presented to the Council a recommendation for a Council Decision authorising it to negotiate all the elements of the draft Convention against Corruption (UNCAC) that are subject to Community competence. In response, the Council authorised the Commission to negotiate the draft UNCAC.

The Commission actively participated in the UN negotiations in Vienna, in close cooperation with EU Member States and non-EU G8 countries. Negotiations on UNCAC were completed in October 2003. The text of the UNCAC was adopted by the United Nations General Assembly at its 58th session in October 2003, and opened for signature at a high-level political conference in Mérida, Mexico from 9-11 December 2003 .

Since the UNCAC is not only open for signature by States but also by regional economic integration organisations, such as the EC, the Council authorised its signing, on behalf of the European Community. UNCAC was signed, on behalf of the European Community, in New York on 15 September, 2005.

A regional economic integration organisation cannot ratify the UNCAC before at least one of its Member States has already done so. Of the 25 EU Member States, Hungary (on 19 April 2005), France (on 11 July 2005), Latvia (on 4 January 2006) and Austria (on 11 January 2006), have already deposited an instrument of ratification for the UNCAC with the UN Secretariat General; the other Member States are still in the process of ratification.

2. OUTCOME OF NEGOTIATIONS ON THE UNCAC

The UNCAC contains provisions on corruption which fall within Community

competence. These provisions are consistent with the Community's legislation applicable to the public administration of the Community, and with the relevant Community acquis. The Commission considers that the objectives set by the Council in its negotiating directives have been well attained.

(a) The UNCAC contains provisions which set out obligations with respect to the organisation of the public sector of the State Parties (Chapter II), which in principle are susceptible to being applied to the European Community, once it has become a party to the Convention (Article 67 para. 2). Moreover, since Article 2 (a) of the Convention defines "public official" as "any person holding a legislative, executive, administrative or judicial office of a State Party..." this definition would include officials of the European Community once it has acceded to the Convention.

As regards the Community's civil service, most of the matters dealt with in Chapter II, UNCAC, are governed by provisions of Community law. Moreover, the European Community has an exclusive competence to accept such obligations with respect to its own public administration.

(b) The Community acquis provides for measures to ensure the free movement of goods, capital and services which includes public procurement legislation intended to ensure transparency and the equal access of all candidates for the public contracts and services markets while preventing fraud, corruption and collusion between those submitting tenders. The Community acquis also contains measures on accounting and auditing. To the extent that provisions of the Convention affect such instruments, the Community has, in accordance with the case law of the Court of Justice, an exclusive competence to accept the corresponding international obligations.

(c) The UNCAC provides for a high standard of measures to combat money laundering which conform to the Community acquis on measures to prevent the financial system, as well as other institutions and professions considered to be vulnerable, from being used to launder money. The Community is competent in respect of measures concerning cooperation between Financial Intelligence Units by virtue of the third anti-money laundering Directive, which repealed and replaced the first and second anti-money laundering Directives. On the same date, a Regulation was adopted to supplement existing legislation against money laundering by having recourse to customs co-operation arrangements under Article 135 TEC, on controls of cash entering or leaving the Community. The Commission has also submitted a proposal for a Regulation on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities, including money laundering related to EC fraud and corruption in the EU, based on Article 280 TEC.

(d) Community policy in the sphere of external action, including development cooperation and cooperation with other third countries, complements policies pursued by Member States and includes provisions to combat corruption, for example Art. 97 of the Cotonou Partnership Agreement of 23 June 2000, amended on 23 February 2005, which provides for a consultation procedure "in serious cases of corruption" with the ultimate possibility of suspending assistance.

(e) Finally, the Community acquis also comprises the development of policies and practices aimed at preventing and fighting corruption affecting the financial interests of

the European Communities. In addition, it ensures the existence of appropriate bodies which prevent corruption, such as the European Commission, the European Anti-fraud Office (OLAF), the European Court of Auditors, the Ombudsman, the Court of Justice of the European Communities and the European Parliament (Budgetary Control Committee) as well as the existence of appropriate procedures, such as those set out in Articles 22 (a) and 22 (b) of the Staff Regulations which concern disclosure of information.

3. CONCLUSION OF THE UNCAC

The United Nations Convention against Corruption is the first global instrument on the prevention of, and fight against, corruption. It provides a comprehensive framework and a variety of important minimum standards for all participating States. Consequently, the European Community is pleased to note that it has entered into force on 14 December 2005.

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the UNCAC by the European Community, the legal basis for which can be found in the following Articles of the Treaty establishing the European Community: Articles 47 (2), 57 (2), 95, 107 (5), 179, 181a, 190 (5), 195 (4), 199, 207 (3), 218 (2), 223 final paragraph, 224 penultimate paragraph, 225a penultimate paragraph, 245 (2), 248 (4) final paragraph, 255 (2), 255 (3), 260 (2), 264 second paragraph, 266 final paragraph, 279, 280, 283, read in conjunction with the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof.

The proposal contains two Articles. The first Article approves the UNCAC on behalf of the European Community. The second Article authorises the President of the Council to designate the person empowered to deposit, on behalf of the European Community, the instrument of approval. The text of the UNCAC is provided at Annex I. Annex II comprises the declaration on the extent of the European Community's competence with respect to matters governed by the UNCAC, as required by Article 67 (3) UNCAC. Annex III contains a statement reminding all parties that, in disputes involving the Community only dispute settlement by way of arbitration will be available (Article 66, paragraph 2, UNCAC refers).

The Convention concerns public officials in all institutions of the EC. Accordingly, and without prejudice to the procedures of Article 300 EC, the Commission suggests to the Council informing those institutions concerned, namely the Court of Justice of the European Communities, the Committee of the Regions, the European Economic and Social Committee, the European Central Bank, the European Court of Auditors and the European Investment Bank.

For these reasons, the Commission proposes to the Council to adopt the attached decision.

- **Existing provisions in the area of the proposal**

The UN Convention on Transnational Organised Crime (UNTOC) contains a number of Articles relating to corruption, but these have a narrower focus than that of the UNCAC, being confined to organised crime. UNTOC was concluded on behalf of the EC on 21 May 2004, following adoption of the relevant Council Decision at the JHA

Council on 29 April, 2004 (8763/04 dated 27 April, 2004).

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation with interested parties is not appropriate for a proposal for a Council Decision on the conclusion of an international instrument on behalf of the European Community.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

No impact assessment was carried out.

The proposal for the conclusion of UNCAC follows from the earlier Council Decision to approve its signature, and its subsequent signature on 15 September, 2005.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal invites the Council to proceed with the conclusion, of behalf of the EC, of the UN Convention against Corruption, following its signature on 15 September 2005.

- **Legal basis**

The legal basis for the proposal can be found in the following Articles of the Treaty establishing the European Community: Articles 47 (2), 57 (2), 95, 107 (5), 179, 181a, 190 (5), 195 (4), 199, 207 (3), 218 (2), 223 final paragraph, 224 penultimate paragraph, 225a penultimate paragraph, 245 (2), 248 (4) final paragraph, 255 (2), 255 (3), 260 (2), 264 second paragraph, 266 final paragraph, 279, 280, 283, read in conjunction with the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Conclusion of the UN Convention against Corruption will enable the EC to become a party to this international agreement.

Any financial and administrative burden falling upon the Community as a result of the obligations arising from the UNCAC will build on the comprehensive preventive and enforcement measures already in place, with a view to reinforcing their effectiveness.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

No other option is available in this instance, as a Council Decision is the only appropriate form of instrument for conclusion of a UN Convention.

4) BUDGETARY IMPLICATION

The institutions already have in place a comprehensive framework of anti-corruption measures. Nevertheless, it is possible that meeting the requirements of the Convention in respect of the institutions of the EC may require minimal additional expenditure for administrative purposes etc.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47 (2), 57 (2), 95, 107 (5), 179, 181a, 190 (5), 195 (4), 199, 207 (3), 218 (2), 223 final paragraph, 224 penultimate paragraph, 225a penultimate paragraph, 245 (2), 248 (4) final paragraph, 255 (2), 255 (3), 260 second paragraph, 264 second paragraph, 266 final paragraph, 279, 280, 283, read in conjunction with the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The elements of the Convention which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community,
- (2) The Council authorised the Commission to negotiate the accession of the Community to the Convention in question,
- (3) Negotiations were successfully concluded and the resulting instrument has been signed on behalf of the Community on 15 September, 2005 subject to a possible conclusion at a later date in accordance with the Council Decision adopted on 10 May 2005,
- (4) Some Member States are parties to the Convention while the ratification process is underway in other Member States,
- (5) The conditions permitting the Community to deposit the instrument of approval provided for in Article 67 (3) of the Convention have been fulfilled,
- (6) The Convention should be approved to enable the Community to become a party to it within the limits of its competence,

¹ OJ C , , p. .

² OJ C , , p. .

- (7) The Community shall, when depositing the instrument of approval, also deposit a declaration on the extent of the European Community's competence with respect to matters governed by the Convention under Article 67 (3) thereof,
- (8) The Community shall, when depositing the instrument of approval, also deposit a statement concerning the settlement of disputes under Article 66 (2) thereof

HAS DECIDED AS FOLLOWS:

Article 1

The United Nations Convention against Corruption is hereby approved on behalf of the Community.

The text of the Convention is set out in Annex I.

Article 2

The President of the Council is authorised to designate the person(s) empowered to deposit the Community's instrument of formal confirmation in order to bind the Community. The instrument of formal confirmation shall comprise a declaration of competence according to Article 67 (3) of the Convention, as set out in Annex II. It shall also contain a statement as set out in Annex III.

Done at Brussels,

*For the Council
The President*

ANNEX I
[the text of the Convention]

ANNEX II
DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN
COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE UNITED
NATIONS CONVENTION AGAINST CORRUPTION

Article 67 (3) of the United Nations Convention against corruption provides that the instrument of ratification, acceptance or approval of a regional economic integration organisation shall contain a declaration on the extent of its competence.

- (1) The Community notes that, for the purposes of the Convention, the term “states parties” applies to regional economic integration organisations within the limits of their competence. To the extent that provisions of Community law are affected by the provisions of the Convention, the European Community has an exclusive competence to accept such obligations with respect to its own public administration. In this regard, the Community declares that it has power under the Treaty establishing the European Community to deal with the following issues:
- development, implementation and maintenance of preventive anti-corruption policies and practices
 - establishment of a preventive anti-corruption body or bodies, and provision of the means for the public to inform them of incidents which may constitute corruption
 - regulation of recruitment, conditions of service, remuneration, provision of training etc. for non-elected officials under the Staff Regulations and implementing rules to those Regulations
 - promotion of transparency and avoidance of conflicts of interest in the design of its systems for performance of the duties of public officials
 - development and implementation of codes of conduct
 - ensuring appropriate standards in relation to public procurement and management of public finances
 - enhancing the transparency of its organisation, functioning and decision-making processes
 - with due regard to the independence of judicial bodies of the European Communities, development, implementation and maintenance of measures to strengthen their integrity and prevent opportunities for corruption
- (2) The Community also points out that it has competence with regard to progressively establishing the internal market, comprising an area without internal frontiers in which the free movement of goods, capital and services is ensured in accordance with the provisions of the Treaty establishing the European Community. For this purpose, the Community has adopted measures to

- ensure transparency and the equal access of all candidates for public contracts and markets, which contributes to preventing corruption,
- ensure appropriate standards on accounting and auditing,
- combat money laundering, which at present do not, however, include measures concerning cooperation among judicial and law enforcement authorities.

Where it has adopted measures, it is for the Community alone to enter into external undertakings with third States or competent international organisations which affect those measures or alter their scope.

- (3) Community policy in the sphere of development cooperation as well as cooperation with other third countries complements policies pursued by Member States and includes provisions to combat corruption.
- (4) The scope and exercise of Community competence are, by their nature, subject to continuous development and the Community will complete or amend this declaration, if necessary, in accordance with Article 67 (3).
- (5) The United Nations Convention against Corruption shall apply, with regard to the competence of the Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof.

Pursuant to Article 299, this declaration is not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories.

ANNEX III
STATEMENT

With respect to Article 66, paragraph 2, the Community points out that, according to Article 34, paragraph 1, of the Statute of the International Court of Justice, only States may be parties before that Court. Therefore, under Article 66, paragraph 2, of the Convention, in disputes involving the Community only dispute settlement by way of arbitration will be available.