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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

In its resolution 53/111 of 9 December 1998, the United Nations' General Assembly (UNGA) decided to establish an open-ended intergovernmental ad-hoc committee charged with drawing up a Convention against transnational organised crime (UNTOC), supplemented by three Protocols covering the following areas:

- Prevention, suppression and punishment trafficking in persons, especially women and children (Trafficking Protocol);
- Smuggling of migrants by land, air and sea (Smuggling Protocol) and
- Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (Firearms Protocol).

The first formal session of the ad-hoc committee took place in Vienna in January 1999. In 2000 the Council authorised the Commission to negotiate the UNTOC and 'United Nations Firearms Protocol' (UNFP) on behalf of the European Community¹ in addition to the other Protocols.

The Commission actively participated in the UN negotiations in Vienna, in close cooperation with its Member States and non-EU G8 countries. Negotiations on the UNTOC were completed in July 2000 while finalisation of the Smuggling and Trafficking Protocols took until October 2000. The UNGA adopted these three instruments at its 55th session on 15 November 2000 and opened them for signature. Negotiations on the UNFP lasted half a year longer (until May 2001) and this instrument was adopted by the UNGA at its 55th session on 31 May 2001² and thereafter opened for signature.

On 12 December 2000, in Palermo, the European Community along with all EU Member States formally signed these three instruments. Authorisation to sign the UNFP was given by the Council in October 2001³ and this instrument was formally signed by the European Community at the United Nations Headquarters in New York on 16 January 2002.

The Union approved the conclusion of the UNTOC in April 2004,⁴ and the Smuggling and Trafficking Protocols in July 2006.

The conclusion of the UNFP was left for a later stage because it was considered that the Protocol comprised provisions requiring the adoption of new legislation and amendments to existing one. Those provisions would affect Union rules on record-keeping, marking of firearms, deactivation of firearms, requirements for export, import and transit licensing or authorisation systems, strengthening of controls at export points and brokering activities.

In 2005, the Commission published a Communication on measures for ensuring greater security of explosives, detonators, bomb-making equipment and firearms in the European Union⁵. Directive 2008/51/EC amending Council Directive 91/477 ECC of 18 June 1991 on

¹ Decision of 31 January 2000.

² UN General Assembly Resolution A/RES/55/255.

³ Council Decision 2001/748/EC, OJ L 280 of 24.10.2001, p.5.

⁴ Council Decision (2004/579/EC) of 29 April 2004 on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime, OJ, L 261 of 6.8.2004, p. 69.

⁵ Communication on measures to ensure greater security in explosives, detonators, bomb making equipment and fire-arms of 18.07.2005; COM(2005) 329 final.

control of the acquisition and possession of weapons and Regulation (EU) n.258/2012 implementing art.10 of the UN Firearms Protocol and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition represent the concrete follow-up to this Communication

The UNFP entered into force on 3 July 2005. To date, 18 EU Member States have signed it and 16 Member States are contracting parties, which includes 12 Member States that have ratified (Belgium, Bulgaria, Cyprus, Estonia, Italy, Lithuania, Poland, Slovakia, Slovenia, Portugal, Sweden and Finland) and four Member States that have acceded to it (Spain, Latvia, Netherlands and Romania) .

General context

The Council and Commission Action Plan implementing The Hague Programme on strengthening freedom, security and justice in the European Union⁶ listed among its relevant actions a proposal on the conclusion - on behalf of the European Community - of the UNFP. Its successor the Stockholm Programme⁷ highlighted the trafficking in arms as one of the illegal activities that continue to threaten the internal security of the European Union and reaffirmed that the Union should continue to promote ratification of international conventions (and their Protocols) in particular those developed under the auspices of the United Nations. Firearms' trafficking was also cited in the Internal Security Strategy⁸ as one of the forms of organised crime which the European Union needed to tackle.

Existing provisions in the area addressed by the proposal

Several EU legal acts have been adopted aiming at facilitating and eliminating barriers for the transfers of conventional arms within the internal market or aiming at regulating the exports of conventional arms to third countries:

- Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended.
- On 12/13 June 2007 the Council adopted a Recommendation on a standard procedure in Member States for cross-border enquiries by police authorities in investigating supply channels for seized or recovered crime-related firearms, which – also through use of its annexed handbook - will improve tracing activities and law enforcement cooperation in the field.
- Directive 2008/51/EC of 21 May 2008 amending Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons in order to integrate the appropriate provisions required by the UNFP as regards intra-European Union transfers of weapons⁹.
- Directive 2009/43/EC of the European Parliament and the Council sets the rules and procedures applicable to the intra-community transfers of defence-related products. In its Article 4.1 it provides that 'no further authorisation by other Member States shall be required for the passage through Member States or for the entrance onto the territory of the Member State where the recipient of defence-related products is located.

⁶ OJ C 198, 12.8.2005, point 4.2, International legal Order, (o), p.20.

⁷ EU Council Document 17024/09, CO EUR-PREP 3 JAI 896 POLGEN 229 of 2 December 2009.

⁸ Commission Communication, 'The Internal security strategy in action: Five steps towards a more secure Europe,' COM(2010) 673.

⁹ Directive 2008/51/CE published on the OJ L 179 of 8/7/2008); entered in force on 20 July 2008 (transposition was due by 28/07/2010).

- On 8 March 2012, the Council adopted Regulation 258/2012 to combat illicit arms trafficking through improved tracing and control of exports of civilian firearms from the European Union, including measures for imports and transit. This Regulation brings the EU legislation into line with Article 10 of the UNFP.¹⁰ It is based on the principle that firearms and related items should not be transferred between states without the knowledge and consent of all states involved. It does not apply to firearms intended for military purposes. It only addresses trade with and transfers from or to countries outside the European Union.

Consistency with the other policies and objectives of the Union

The conclusion of the UNFP by the European Union is consistent with the current EU policies on measures to counter transnational crimes, to strengthen the fight against illicit trafficking in firearms including their exports control and tracing and to reduce the proliferation and spread of small arms around the world.

2. RESULTS OF CONSULTATION WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

Extensive consultations of different stakeholders have been carried out in parallel to the adoption of the European Union laws aiming at adapting Union law to the relevant provisions of the Protocol. An additional Impact Assessment is not required because this proposal represents the final step in fulfilling an international obligation, and Union law already complies with the standards set out in the Protocol.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

This proposal contains a first Article that approves the Protocol on behalf of the European Union. The second Article authorises the President of the Council to designate the person empowered to deposit, on behalf of the European Union, the instrument of approval. Annex I comprises the declaration of the extent of the European Union's competence with respect to matters governed by the Protocol, which has to be deposited together with the instrument of approval (Art. 17 (3) Firearms Protocol).

The Protocol promotes cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The text contains provisions to:

- Maintain detailed records on the import, export and in-transit movements of firearms;
- Adopt an international system for marking firearms at the time of manufacture and each time they are imported;
- Establish a harmonised licensing system governing the import, export, in-transit movement and re-export of firearms;
- Prevent the theft, loss or diversion of firearms through the strengthening of export controls, export points and border controls;
- Exchange information regarding authorised producers, dealers, importers and exporters, the routes used by illicit traffickers, best practice in combating trafficking

¹⁰ Regulation (EU) n.258/2012 published on the OJ L94 of the 30 March 2012.

in order to enhance states' ability to prevent, detect and investigate illicit trafficking in firearms

Legal basis

The Protocol covers issues coming under the competence of the Union, because they are within the scope of the common commercial policy and because the conclusion of the UNFP is likely to affect EU legal acts or alter their scope (article 3(2) TFEU). Accordingly both Article 114 and Article 207 of the TFEU, are the substantive legal basis for this decision.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

5. CONCLUSIONS

The UNFP is the first global instrument in the fight against transnational organised crime and trafficking in firearms. It sets out a very useful multilateral framework and a variety of important minimum standards for all participating States.

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the UNFP by the European Union on the legal basis of Articles 114 and 207 TFEU, in conjunction with 218(6)(a) thereof.

The Commission accordingly proposes that the Council adopt the attached Decision.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207, in conjunction with and 218(6) (a) thereof;

Having regard to the proposal from the Commission¹¹,

Having regard to the consent of the European Parliament¹²,

Whereas:

- (1) The elements of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition ("the Protocol") which are covered by the competences of the Union were negotiated by the Commission, with the approval of the Council, on behalf of the Union.
- (2) In accordance with Council Decision 2001/748/EC¹³ the Protocol was signed on 16 January 2002, subject to its conclusion at a later date.
- (3) The conclusion of the United Nations Convention against Transnational Organized Crime was approved on behalf of the European Union by Council Decision 2004/579/EC of 29 April 2004¹⁴ which is a condition for the European Union to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention.
- (4) The Protocol provides for measures falling within the scope of the Union's Common Commercial Policy. Several European Union legal acts have been adopted aiming at facilitating and eliminating barriers for the transfers of conventional arms within the internal market or aiming at regulating the exports of arms to third countries.
- (5) A legally binding instrument on the highest possible common international standards for the transfer and control of arms concerns matters that fall under Union competence because they are within the scope of the Common commercial policy or the conclusion of the Protocol is likely to affect the abovementioned European Union legal acts or alter their scope.

¹¹ OJ, p.

¹² OJ, p.

¹³ OJ L 280 of 24.10.2001, p.5

¹⁴ OJ L 261 of 06.08.2004

- (6) Insofar as the provisions of the Protocol fall within the scope of competences conferred on the Union the agreement should be approved on behalf of the European Union,
- (7) The Union must, when depositing the instrument of approval, also deposit a declaration on the extent of the European Union's competence with respect to matters governed by the Protocol as required under Article 17 (3) of the Protocol,
- (8) The control of the acquisition and possession of firearms in the Union as well as the formalities for the movements of firearms within the Member States are regulated by Council Directive 91/477/EEC amended by Directive 2008/51/EC of the European Parliament and the Council,
- (9) The rules and procedures applicable to the intra-community transfers of defence-related products are regulated by Directive 2009/43/EC of the European Parliament and the Council.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, is hereby approved on behalf of the European Union.

The Union's instrument of formal approval shall comprise a declaration of competence according to Article 17 (3) of the Protocol as set out in Annex I.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the deposit of the instrument of approval provided for in Article 17(3) of the Protocol, in order to express the consent of the European Union to be bound by the Protocol.

Article 3

This Decision shall enter into force on ¹⁵.

Done at Brussels,

For the Council
The President

¹⁵ The date of entry into force of the Decision will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ANNEX I

Declaration concerning the competence of the European Union with regard to matters governed by the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Article 17 (3) of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition provides that the instrument of ratification, acceptance or approval of a regional economic integration organisation shall contain a declaration specifying the matters governed by the Protocol in respect of which competence has been transferred to the organisation by its Member States which are Parties to the Protocol.

The European Union has exclusive competence over commercial policy. It also has shared competence over rules for the achievement of the internal market, and exclusive competence as regards provisions of the agreement which may affect or alter the scope of common rules adopted by the European Union. The Union has adopted rules as regards notably the fight against illicit manufacturing of and trafficking in firearms, regulating standards and procedures on commercial policy of the Member States concerning in particular record keeping, marking of firearms, deactivation of firearms, requirements for exports, import and transit licensing authorisation systems strengthening of controls at export points and brokering activities.

The Protocol to fight against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition shall apply, with regard to the competences transferred to the European Union, to the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in that Treaty.

The scope and the exercise of such Union competence are, by their nature, subject to continuous development, and the Union will complete or amend this declaration, if necessary, in accordance with Article 17 (3) of the Protocol.