
**Interinstitutional File:
2003/0196(CNS)
2003/0197(CNS)**

5535/2/06

REV 2

LIMITE

CRIMORG 12

MIGR 5

NOTE

from: Presidency

to: Article 36 Committee

No. prev. doc.: 13559/05 CRIMORG 113 MIGR 57 + ADD 1 + ADD 2
5535/06 CRIMORG 12 MIGR 5

No. Cion prop.: COM (2005) 503 final

Subject: - Amended proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime

- Amended proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime

Chronological background

1. On 22 August 2003 the Commission transmitted a proposal to the Council for a Council Decision on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime and of two Protocols to that Convention. On 17 October 2003, the Council decided to consult the European Parliament on this proposal and asked the European Parliament for its opinion. On 13 January 2004, the Parliament approved the conclusion of the United Nations Convention Against Transnational Organised Crime (UNTOC) and the two Protocols.

2. On 29 April 2004 the Council adopted a Decision authorising the Commission to conclude the UN Convention against Organised Crime¹. No agreement was reached on the draft Council decisions for the conclusion by the Community of two Protocols to UNTOC.

3. On 18 October 2005 the Commission transmitted to the Council two amended proposals on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime².

4. Further to the discussions on these proposals in the Multidisciplinary group on organised crime and after having consulted the Legal Services of the Council and the Commission, the Presidency, in an effort to take this file forward presented a revised draft of the above Council Decisions. It was deemed expedient, for each of the two protocols, to have two separate Council decisions: one for matters covered by Part III, Title IV of the Treaty establishing the European Community and another one for matters covered by Articles 179 and 181a of that Treaty. This was done in view of the particular position of Denmark. The two separated proposals for each Protocol contain the same declaration of competence.

5. These proposals were discussed at the MDG meeting of 8 February 2006 and further to the discussions, some minor amendments were made, which are underlined in the annex. Some delegations³ continued to have problems with the proposed texts and demanded that a list of adopted acts from which the Community competence flows be inserted in the declaration of competence. The Commission, which, at the demand of some delegations, had circulated, for purely illustrative purposes, a non-paper with such a list of acts, strongly opposed this demand. The Commission non-paper also prompted reactions from other delegations, who thought there could be no reference to ECJ judgment 176/03 of 13 September 2005⁴ and that there was no community competence concerning Articles 5 and 6 of the Trafficking Protocol.

¹ 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.

² Doc. 13559/05 CRIMORG 113 MIGR 57 + ADD 1 + ADD 2.

³ DK, FR, IT and PT.

⁴ AT, DK, FR, IE, IT, PT and SE.

6. The Presidency invites the Article 36 Committee to decide whether such a list of Community acts should be inserted in the declarations of competence. Whilst delegations might find that such a solution is more transparent, it must be borne in mind that it also creates certain legal risks as the list of adopted Community acts in such case needs to be very precise and complete, lest the Council decisions be annulled by the Court of Justice¹. The drawing up of these lists in such a way that they are agreeable to all delegations is moreover likely to be a very cumbersome and difficult exercise.

7. *The Presidency invites the Article 36 Committee to agree on the draft Council decisions as set out in the annex.*

¹ As has been done in case C-29/99, Commission v Council, *Rec.* 2002-12, I, 11221.

2003/0196 (CNS)

Amended proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, insofar as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179 and 181a in conjunction with the first subparagraph of Article 300(2) and 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 Protocol 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 instructed the Commission to negotiate the accession of the Community to the international agreement in question,
- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Council Decision (2001/87/EC) of 8 December 2000³,

¹ OJ, p.

² OJ, p.

³ OJ L 30 of 1.2.2001, p. 44

- (4) Some Member States are parties to the Protocol while the ratification process is under way in other Member States,
- (5) The conclusion of the Convention was approved on behalf of the European Community by Council Decision (2004/579/EC) of 29 April 2004 which is a condition for the European Community to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention,
- (6) The other conditions permitting the Community to deposit the instrument of approval provided for in Article 36 (3) of the Convention and Article 21 (3) of the Protocol have been fulfilled,
- (7) Insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community, the conclusion of the Protocol should be approved on behalf of the Community,
- (8) Insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, the conclusion of the Protocol on behalf of the European Community should be approved through a separate decision of the Council,¹
- (9) The Community must, 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 Protocol under Article 21 (3) of the Smuggling Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol against the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community.

The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 21 (3) of the Protocol as set out in Annex II.

¹ OJ, p.

Article 2

This decision shall apply insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community.

Article 3

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community.

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council,

The President

ANNEXES

ANNEX I will include the text of the Protocol.

ANNEX II**DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, AIR AND SEA, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME**

Article 21 (3) of the Protocol provides that the instrument of accession 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 Protocol against the smuggling of migrants by land, air and sea shall apply, with regard to the competences transferred to the European 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 and the Protocols annexed to it.

This declaration is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community.

This declaration is equally without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

Pursuant to Article 299, this declaration is also 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 Protocol by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Protocol. The scope and the exercise of such Community competence are, by their nature, subject to continuous development as the Community further adopts relevant rules and regulations, and the Community will complete or amend this declaration, if necessary, in accordance with Article 21 (3) of the Protocol.

The Community points out that it has competence with regard to crossing of external borders of the Member States, regulating standards and procedures when carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months. The Community is also competent for measures on immigration policy regarding conditions of entry and residence and measures to counter illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, it can take measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the aforementioned areas. In these fields the Community has adopted (...) rules and regulations and, it is hence for the Community, where it has adopted such rules and regulations, to enter into external undertakings with third States or competent international organisation.

In addition, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to prevent and combat smuggling of migrants.

2003/0196 (CNS)

Amended proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62 point 2 and 63 point 3, 66 in conjunction with the first subparagraph of Article 300(2) and 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 Protocol 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 instructed the Commission to negotiate the accession of the Community to the international agreement in question,

¹ OJ, p.
² OJ , p.

- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Council Decision (2001/87/EC) of 8 December 2000¹,
- (4) Some Member States are parties to the Protocol while the ratification process is under way in other Member States,
- (5) This decision is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, hence the UK and Ireland are not bound by this Decision to the extent that it concerns the exercise of an external power by the Community in fields where its internal legislation does not bind the UK and/or Ireland,
- (6) This decision is without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, hence Denmark does not take part in its adoption and is not bound by it,
- (7) The conclusion of the Convention was approved on behalf of the European Community by Council Decision (2004/579/EC) of 29 April 2004 which is a condition for the European Community to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention,
- (8) The other conditions permitting the Community to deposit the instrument of approval provided for in Article 36 (3) of the Convention and Article 21 (3) of the Protocol have been fulfilled,
- (9) Insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, the conclusion of the Protocol should be approved on behalf of the Community,
- (10) Insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community, the conclusion of the Protocol on behalf of the European Community should be approved through a separate decision of the Council²,

¹ OJ L 30 of 1.2.2001, p. 44

² OJ , p.

(11) The Community must, 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 Protocol under Article 21 (3) of the Smuggling Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol against the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community.

The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 21 (3) of the Protocol as set out in Annex II.

Article 2

This decision shall apply insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.

Article 3

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community.

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council,

The President

ANNEXES

ANNEX I will include the text of the Protocol.

ANNEX II**DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, AIR AND SEA, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME**

Article 21 (3) of the Protocol provides that the instrument of accession 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 Protocol against the smuggling of migrants by land, air and sea shall apply, with regard to the competences transferred to the European 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 and the Protocols annexed to it.

This declaration is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community.

This declaration is equally without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

Pursuant to Article 299, this declaration is also 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 Protocol by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Protocol. The scope and the exercise of such Community competence are, by their nature, subject to continuous development as the Community further adopts relevant rules and regulations, and the Community will complete or amend this declaration, if necessary, in accordance with Article 21 (3) of the Protocol.

The Community points out that it has competence with regard to crossing of external borders of the Member States, regulating standards and procedures when carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months.

The Community is also competent for measures on immigration policy regarding conditions of entry and residence and measures to counter illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, it can take measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the aforementioned areas. In these fields the Community has adopted (...) rules and regulations and, it is hence for the Community, where it has adopted such rules and regulations, to enter into external undertakings with third States or competent international organisation.

In addition, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to prevent and combat smuggling of migrants.

2003/0197 (CNS)

Amended proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, insofar as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179 and 181a in conjunction with the first subparagraph of Article 300(2) and 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 Protocol 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 instructed the Commission to negotiate the accession of the Community to the international agreement in question,

¹ OJ, p.

² OJ, p.

- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Council Decision (2001/87/EC) of 8 December 2000¹,
- (4) Some Member States are parties to the Protocol while the ratification process is under way in other Member States,
- (5) The conclusion of the Convention was approved on behalf of the European Community by Council Decision (2004/579/EC) of 29 April 2004 which is a condition for the European Community to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention,
- (6) The other conditions permitting the Community to deposit the instrument of approval provided for in Article 36 (3) of the Convention and Article 16 (3) of the Protocol have been fulfilled,
- (7) Insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community, the conclusion of the Protocol should be approved on behalf of the Community,
- (8) Insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, the conclusion of the Protocol on behalf of the European Community should be approved through a separate decision of the Council²,
- (9) The Community must, 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 Protocol under Article 16 (3) of the Trafficking Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community. The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 16 (3) of the Protocol as set out in Annex II.

¹ OJ L 30 of 1.2.2001, p. 44.

² OJ, p.

Article 2

This decision shall apply insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community.

Article 3

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community. This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council,

The President

ANNEXES

ANNEX I will include the text of the Trafficking Protocol.

ANNEX II

**DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN
COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE PROTOCOL TO
PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY
WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL ORGANISED CRIME**

Article 16 (3) of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children 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 Protocol to prevent, suppress and punish trafficking in persons, especially women and children shall apply, with regard to the competences transferred to the European 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 and the Protocols annexed to it.

This declaration is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community.

This declaration is equally without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

Pursuant to Article 299, this declaration is also 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 Protocol by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Protocol. The scope and the exercise of such Community competence are, by their nature, subject to continuous development as the Community further adopts relevant rules and regulations, and the Community will complete or amend this declaration, if necessary, in accordance with Article 16 (3) of the Protocol.

The Community points out that it has competence with regard to crossing of external borders of the Member States, regulating standards and procedures when carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months.

The Community is also competent for measures on immigration policy regarding conditions of entry and residence and measures to counter illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, it can take measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the aforementioned areas. In these fields the Community has adopted (...) rules and regulations and, it is hence for the Community, where it has adopted such rules and regulations, to enter into external undertakings with third States or competent international organisation.

In addition, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to prevent and combat trafficking in persons.

2003/0197 (CNS)

Amended proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62 point 2 and 63 point 3, 66 in conjunction with the first subparagraph of Article 300(2) and 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 Protocol 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 instructed the Commission to negotiate the accession of the Community to the international agreement in question,

¹ OJ, p.

² OJ, p.

- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Council Decision (2001/87/EC) of 8 December 2000¹,
- (4) Some Member States are parties to the Protocol while the ratification process is under way in other Member States,
- (5) This decision is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, hence the UK and Ireland are not bound by this Decision to the extent that it concerns the exercise of an external power by the Community in the fields where its internal legislation does not bind the UK and/or Ireland,
- (6) This decision is without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, hence Denmark does not take part in its adoption and is not bound to it,
- (7) The conclusion of the Convention was approved on behalf of the European Community by Council Decision (2004/579/EC) of 29 April 2004 which is a condition for the European Community to become a Party to the Protocol, pursuant to Article 37 (2) of the Convention,
- (8) The other conditions permitting the Community to deposit the instrument of approval provided for in Article 36 (3) of the Convention and Article 16 (3) of the Protocol have been fulfilled,
- (9) Insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, the conclusion of the Protocol should be approved on behalf of the Community,
- (10) Insofar as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community, the conclusion of the Protocol on behalf of the European Community should be approved through a separate decision of the Council²,
- (11) The Community must, 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 Protocol under Article 16 (3) of the Trafficking Protocol,

¹ OJ L 30 of 1.2.2001, p. 44.

² OJ , p.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community.

The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 16 (3) of the Protocol as set out in Annex II.

Article 2

This decision shall apply insofar as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.

Article 3

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community. This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council,

The President

ANNEXES

ANNEX I will include the text of the Trafficking Protocol.

ANNEX II

**DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN
COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE PROTOCOL TO
PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY
WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL ORGANISED CRIME**

Article 16 (3) of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children 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 Protocol to prevent, suppress and punish trafficking in persons, especially women and children shall apply, with regard to the competences transferred to the European 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 and the Protocols annexed to it.

This declaration is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community.

This declaration is equally without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

Pursuant to Article 299, this declaration is also 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 Protocol by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Protocol. The scope and the exercise of such Community competence are, by their nature, subject to continuous development as the Community further adopts relevant rules and regulations, and the Community will complete or amend this declaration, if necessary, in accordance with Article 16 (3) of the Protocol.

The Community points out that it has competence with regard to crossing of external borders of the Member States, regulating standards and procedures when carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months.

The Community is also competent for measures on immigration policy regarding conditions of entry and residence and measures to counter illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, it can take measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the aforementioned areas. In these fields the Community has adopted (...) rules and regulations and, it is hence for the Community, where it has adopted such rules and regulations, to enter into external undertakings with third States or competent international organisation.

In addition, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to prevent and combat trafficking in persons.