

# EUROPEAN PARLIAMENT

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## REPORT

1. on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime  
(COM(2003) 512 – C5-0487/2003 – 2003/0195(CNS))

2. on the 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  
(COM(2003) 512 – C5-0488/2003 – 2003/0196(CNS))

3. on the 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  
(COM(2003) 512 – C5-0489/2003 – 2003/0197(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Martine Roure

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 17 October 2003 the Council consulted Parliament, pursuant to Article 300(3), first subparagraph of the EC Treaty, on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime (COM(2003) 512 – 2003/0195(CNS)).

By letter of 17 October 2003 the Council consulted Parliament, pursuant to Article 300(3), first subparagraph of the EC Treaty, on the 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 (COM(2003) 512 – 2003/0196(CNS)).

By letter of 17 October 2003 the Council consulted Parliament, pursuant to Article 300(3), first subparagraph of the EC Treaty, on the 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 (COM(2003) 512 – 2003/0197(CNS)).

At the sitting of 5 November 2003 the President of Parliament announced that he had referred the proposals to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Women's Rights and Equal Opportunities for its opinion (C5-0487/2003, C5-0488/2003, C5-0489/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Martine Roure rapporteur at its meeting of 30 September 2003.

The committee considered the proposals for Council decisions and draft report at its meetings of 25 November and 16 December 2003.

At the latter meeting it adopted the draft legislative resolutions by 24 votes to 1.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Johanna L.A. Boogerd-Quaak, vice-chairwoman; Giacomo Santini, vice-chairman; Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Felipe Camisón Asensio (for Gérard M.J. Deprez pursuant to Rule 153(2)), Marco Cappato (for Maurizio Turco), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Giuseppe Di Lello Finuoli, Jacqueline Foster (for Giuseppe Brienza pursuant to Rule 153(2)), Marie-Thérèse Hermange (for Thierry Cornillet), Georg Jarzembowski (for Timothy Kirkhope pursuant to Rule 153(2)), Eva Klamt, Alain Krivine (for Fodé Sylla), Marjo Matikainen-Kallström (for Mary Elizabeth Banotti), Marcelino Oreja Arburúa, Hubert Pirker, Heide Rühle, Olle Schmidt (for Baroness Ludford), Ingo Schmitt (for Hartmut Nassauer), Ole Sørensen (for Bill Newton Dunn), Ulrich Stockmann (for Michael Cashman pursuant to Rule 153(2)), Joke Swiebel, Christian Ulrik von Boetticher and Diana Wallis (for Francesco Rutelli pursuant to Rule 153(2)).

The Committee on Women's Rights and Equal Opportunities decided on 10 December 2003 not to deliver an opinion.

The report was tabled on 18 December 2003.

## 1. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the United Nations Convention Against Transnational Organised Crime (COM(2003) 512 – C5-0487/2003 – 2003/0195(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the proposal for a Council decision (COM(2003) 512)<sup>1</sup>,
  - having regard to Articles 47, 55, 95, 135, 179 and 280 of the EC Treaty,
  - having regard to Article 300(2), first subparagraph, and Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0487/2003),
  - having regard to Rules 67 and 97(7) of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0485/2003),
1. Approves the conclusion of the agreement;
  2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States.

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<sup>1</sup> Not yet published in OJ.

## 2. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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 (COM(2003) 512 – C5-0488/2003 – 2003/0196(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the proposal for a Council decision (COM(2003) 512)<sup>1</sup>,
  - having regard to Articles 62(2) and 63(3) of the EC Treaty,
  - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0488/2003),
  - having regard to Rules 67 and 97(7) of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0485/2003),
1. Approves the conclusion of the agreement;
  2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States.

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<sup>1</sup> Not yet published in OJ.

### 3. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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  
(COM(2003) 512 – C5-0489/2003 – 2003/0197(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the proposal for a Council decision (COM(2003) 512)<sup>1</sup>,
  - having regard to Articles 62(2) and 63(3) of the EC Treaty,
  - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0489/2003),
  - having regard to Rules 67 and 97(7) of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0485/2003),
1. Approves the conclusion of the agreement;
  2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States.

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<sup>1</sup> Not yet published in OJ.

## **EXPLANATORY STATEMENT**

### **Background**

The United Nations Convention Against Transnational Organised Crime and the protocols thereto against trafficking in persons and the smuggling of migrants, whose conclusion the European Parliament is being asked to approve, are based on United Nations General Assembly Resolution 53/111 of 9 December 1998. This resolution provided for the establishment of an intergovernmental committee charged with elaborating an international convention against organised crime, supplemented by protocols.

The Commission participated in the negotiations, in close cooperation with EU Member States. The negotiations on the Convention itself were completed in July 2000 while those on the Smuggling and Trafficking Protocols lasted until October 2000. In December 2000 a high-level conference was held in Palermo for the purpose of signing the Convention and the Protocols. At this conference, the Commission officially signed the three instruments, one of which, i.e. the Convention, entered into force on 29 September 2003, following the deposit of the fortieth instrument of ratification.

### **Aim of the Convention**

The Convention is designed to enable signatory states to cooperate effectively in fighting organised crime by harmonising definitions of individual offences in the different national legal systems, so that an act constituting an offence in one state party will also be recognised as such in the other signatory states. In this way, it will be the first global instrument designed to combat criminal networks laying down universal definitions of certain fundamental criminal law concepts relating to the fight against organised crime. It is also the first legally binding United Nations instrument in this field.

The Convention requires states to criminalise four types of serious offences: involvement in an organised criminal network, money laundering, obstruction of justice and corruption. It also identifies means of improving cooperation between states, in particular with reference to mutual legal assistance, joint investigations and extradition. Specific provisions also deal with the traceability of criminal money, the seizure and confiscation of proceeds of crime and the protection of victims and witnesses. The two protocols provide for stringent measures to combat the smuggling of migrants and trafficking in human beings - in particular women and children - by protecting such people against slavery, sexual exploitation and illegal employment. It should be noted, in this connection, that the Trafficking Protocol includes measures to provide victims with both legal and material assistance. Article 6 of this protocol requires each State Party to ensure not only that information is made available on relevant court and administrative proceedings but also that measures are taken to provide for the physical and psychological recovery of victims.

### **Rapporteur's position**

Your rapporteur unreservedly approves the Community's signing of this instrument of international law, adopted under the aegis of the United Nations, which represents the only



possible response to world-scale such problems. To tackle highly organised networks which fully exploit any loopholes in national legal systems, the widest possible cooperation is required, based on common procedures and minimum harmonisation of legal standards. In this connection, the fact that the Convention has been signed by 147 states is to be welcomed, even though only 56 of these have ratified it and these include only three of the European Union's current Member States<sup>1</sup>.

However, given the importance and implications of the conclusion of these instruments, your rapporteur regrets that the European Parliament was not more closely associated in their elaboration, especially since the 'Palermo Convention' establishes legal obligations which will probably lead to the adoption of Community acts. It would therefore have been desirable for Parliament to be consulted in the early stages, i.e. before the Convention had an impact on the Community legal system. The Convention will in fact entail more than merely transposing obligations: it will undoubtedly become a source of inspiration for Community law, to which the EU will be able to refer in seeking to improve the legal framework relating to cooperation in the field of criminal law.

Since the Community signed the Convention in December 2000, the EU desire to move towards the establishment of an area of freedom, security and justice has been illustrated by the elaboration of a number of instruments coming under the Convention's scope, including the European arrest warrant and measures adopted to tackle money laundering, trafficking in human beings and illegal immigration, to mention but a few examples<sup>2</sup>. By adopting these instruments, the EU has been able to go further than the United Nations because of the smaller number of countries it comprises, the mutual trust on which relations between its Member States are, to a large extent, based, and the relatively homogeneous nature of their legal systems and procedures. It has also been obliged to go further as a result of the abolition of internal borders, which has provided a strong incentive to remove obstacles to closer cross-border cooperation. Nevertheless, your rapporteur considers that the adoption of too many separate, if not fragmented, and too often uncoordinated initiatives, undermines the system's clarity and jeopardises the planned establishment of a common judicial area. The high level of fragmentation and heterogeneity of the European legal framework in this area thus runs the risk of leading to confusion and, possibly, legal uncertainty<sup>3</sup>. Your rapporteur therefore believes that an effort should be made to put an end to this tendency and ward off this danger by adopting a more comprehensive Community instrument, based on the Palermo Convention and including at the very least the main principles on which homogeneous and effective action against organised crime is to be founded. This is, in any event, a possible option for the future.

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<sup>1</sup> Situation as at 15 November 2003. The three EU countries are Denmark, Spain and France.

<sup>2</sup> See, in particular, report A5-0073/03 on the proposal for a Regulation of the European Parliament and the Council on the prevention of money laundering by means of customs cooperation, report A5-0397/02 on the proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities and report A5-0183/01 on the Council Framework Decision on combating trafficking in human beings.

<sup>3</sup> See, in this connection, 'The European Union and the United Nations Convention against Transnational Organised Crime', by Stefano Betti.

## MINORITY OPINION

by Maurizio Turco and Marco Cappato

The UN Conventions on transnational organised crime and its protocols on smuggling of migrants and trafficking in persons present some shortcomings that cannot be hidden. First of all we cannot agree on the proposal made by article 12 that, in the effort to facilitate confiscation of criminal proceeds, suggests that the burden of the proof concerning the demonstration of the lawful origin of proceeds should be switched from the prosecutor to the alleged offender. This is in contradiction with a fundamental legal principle in criminal law. The establishment of liability of legal persons, eventually criminal, as requested by art. 10, is also problematic. The UN Convention also promotes the Italian 'pentitismo' at the international level, while it had distorting effects in the administration of a fair justice in Italy. In the effort to speed up extradition procedures, traditional guarantees for individuals sought for extradition are left behind. The Protocols strengthen the prohibitionist regime of immigration and legal prostitution. It is furthermore to note that the Vatican is not party to any such or other Convention on money laundering and control on financial operations, for reasons we cannot understand and support and without any reaction from the international community. For all these reasons we object to the report.