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NOTE

From:	Presidency
To:	Delegations
Subject:	Information on the modifications to the competences of the European Union with regard to the United Nations Convention against Transnational Organised Crime and the Protocols thereto following the Lisbon Treaty

The Commission services have informally presented a document with Information on the modifications to the competences of the European Union with regard to the United Nations Convention against Transnational Organised Crime and the Protocols thereto following the Lisbon Treaty. This document is annexed to this Presidency note.

Information on the modifications to the competences of the European Union with regard to the United Nations Convention against Transnational Organised Crime and the Protocols thereto following the Lisbon Treaty

This information concerns the modifications to the competences of the European Union ('EU' or 'Union') with regard to matters governed by the United Nations Convention against Transnational Organised Crime (UNTOC) and the Protocols thereto¹ since the entry into force of the Treaty of Lisbon².

With the entry into force of the Treaty of Lisbon, the powers of the European Union that succeeded the European Community have changed. This change creates the legal obligation to inform the depositary of the new competences and to specify the scope and extent of the EC (now EU) competences, pursuant to Article 36(3) UNTOC, Article 21(3) of the Protocol against Migrant Smuggling, and Article 16(3) of the Protocol against Trafficking in Persons. The information contained below supplements the information contained in the notification of 8 March 2010 to the Secretary-General of the United Nations, in his capacity as depositary of the UN conventions.³

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- ¹ As far as the Protocol on Firearms is concerned, a new Declaration of Competence is not required. The EU does not need to modify the declaration in light of the revision of Directive 92/477 /EEC on control of the acquisition and possession of weapons: Directive (EU) 2017/853 of 17 May 2017 amending Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 137/22 of 24.5.2017. The text of the current declaration is still correct, as it does not refer to specific EU legislation and thus capturing the new Directive: "*[t]he European Union has exclusive competence [...] as regards provisions of the agreement which may affect or alter the scope of common rules adopted by the European Union*". It 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.*"
- ² The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007), entered into force on 1 December 2009 (<https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>)
- ³ <https://treaties.un.org/pages/historicalinfo.aspx#EuropeanUnion>

Notably, the UNTOC and its Protocols are mixed competence agreements. They contain provisions that fall both within exclusive competence of the EU and within shared competence jointly together with EU Member States.

The EU acquired new competences under Title V of the Treaty of the Functioning of the European Union (Articles 82 and 83 TFEU). These new competences comprise important aspects of judicial cooperation in criminal matters (including mutual recognition of judicial decisions between EU Member States) and of police cooperation (Articles 87(2) and (3), and 89 TFEU). As regards substantive criminal law, they extend particularly to serious crime with a cross-border dimension, including terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime that are relevant to the Convention and its Protocols. In addition, the EU has exercised its competence by legislating in these policy areas, such as anti-money laundering, smuggling of migrants, trafficking in human beings, terrorism, drug trafficking, environmental criminal law, and the freezing and confiscation of assets. Furthermore, the EU has established bodies responsible for investigating, prosecuting crimes against the Union's financial interests.

The Union notes that it has also competence to counter fraud and any other illegal activities affecting the financial interests of the Union (Article 325 of the Treaty on the Functioning of the European Union), including in questions relating to anti-corruption. It has exercised its competence in this area, notably with the establishment of the European Anti-Fraud Office, and the adoption of detailed rules on the criminal and administrative aspects of the fight against illegal activities affecting the financial interests of the Union.

The Union has also acquired the competence to establish the European Public Prosecutor's Office (EPPO) (Article 86 TFEU). Established with Regulation (EU) 2017/1939⁴, the EPPO is competent to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the Union's financial interests, notably money laundering involving property derived from such offences, fraud affecting the Union's financial interests, corruption that damages or is likely to damage the Union's financial interests, and misappropriation that damages such interests⁵. The EPPO is also competent for offences regarding participation in a criminal organisation as defined in Framework Decision 2008/841/JHA⁶, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit any of the above-mentioned offences affecting the Union's financial interests.

In the areas mentioned above, it is for the Union alone to enter into external undertakings with other countries or competent international organisations if such undertakings were to affect common rules or alter their scope.

In the sphere of development cooperation, the European Union has competence to carry out activities and conduct a common policy. This includes support to partner countries in the ratification and implementation of the United Nations Convention against Transnational Organised Crime (UNTOC) and the use of provisions to combat cross-border crime in agreements with partner countries. The exercise of this competence shall not prevent Member States from exercising their competences. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1–71.

⁵ The EPPO became operational on 1 June 2021, when it assumed its investigative and prosecutorial tasks, in accordance with Article 120(2) of Regulation (EU) 2017/1939.

⁶ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.