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THE COUNCIL

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NOTE

from : the Presidency

to : Pre-accession Pact Experts Group on Organised Crime (PAPEG)

Subject : Presidency discussion paper for consideration by the Pre-Accession Pact Experts Group on Organised Crime concerning the draft United Nations Convention against Transnational Organised Crime.

1. Introduction

Work is proceeding on the preparation of a comprehensive United Nations convention on transnational organised crime and three additional protocols which deal respectively with illegal trafficking in firearms, the smuggling of migrants and trafficking in persons. At present the UN Ad Hoc Committee which is drafting the convention and the protocols is undertaking a second reading of the Conventions and a first reading of the protocols. The EU Member States have been coordinating their activities in relation to the draft UN convention and its protocols for some time. To a certain degree this has been based on a Common Position on the Convention adopted by the Council last March. Further efforts are being made to strengthen that process and, as appropriate, additional Common Positions may be adopted.

The Presidency view is that, given the importance of the proposed convention and its protocols, they should also be discussed by the PAPEG and that the opportunity should be taken to secure as much coordination as possible between the Member States of the Group concerning the relevant UN negotiations.

In the circumstances, the Presidency believes that it would be appropriate for the PAPEG to focus on the topics which will be examined at the next session of the UN Ad Hoc Committee which will be held in Vienna from 4 to 15 October 1999. In that context it is envisaged that discussions will take place on the following provisions of the draft convention: Article 4 (money laundering), Article 4 bis (measures to combat money laundering), Article 7 (confiscation), Article 7 bis (international cooperation for purposes of confiscation), Article 7 ter (disposal of confiscated assets), Article 10 (extradition) and Article 14 (mutual legal assistance; paragraphs 14 ff.). The draft protocol on illegal trafficking in firearms will also be considered. In addition it is possible that informal meetings will take place in respect of specific issues.

2. a) Money laundering

Article 4 of the draft convention which relates to money laundering is modelled closely on the 1990 Council of Europe Convention on Laundering. Search, Seizure and Confiscation of the Proceeds from Crime and it appears to be acceptable to most UN countries, subject to further discussions on certain points. One of the elements of the EU Common Position adopted by the Council is that, in so far as money laundering is concerned, the new convention should extend to a broad range of predicate offences. This is the approach which has been pursued by EU Member States in the UN discussions and it takes account of the need to strengthen anti-laundering in the field of organised crime which provided the basis for the Joint Action of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime.

The EU Common Position also states that the UN Convention should be consistent with the 40 recommendations of the Financial Action Task Force (FATF) which have set the generally recognised and accepted international standard for combating money laundering. In that regard the relevant provision of the text of the Convention is Article 4 bis which deals with measures against laundering. At present two options are set out in respect of that article. The first of these options would require State Parties to operate domestic regulatory regimes for financial institutions doing business within their jurisdictions to deter and detect laundering. Under the second option, State Parties would be obliged to go further in combating laundering and to adopt and adhere to the standards established by the FATF. In accordance with the Common Position, the EU Member States have expressed their support for the second option.

b) Confiscation

Most of the provisions of the draft Convention on confiscation are copied from the 1988 UN Convention and they have not given rise to significant difficulties. One particular issue which has been raised is linked to the manner in which confiscated proceeds should be disposed of. In that regard a number of UN countries have suggested that certain confiscated proceeds should be paid into a fund which would be used to enhance international cooperation against organised crime. The general view of EU Member States is that it would be impracticable to operate such a fund because it would not be possible to predict the level of resources that would be available. Furthermore it could be very difficult to ensure that the appropriate contributions would be made to the fund.

c) Extradition

Article 10 of the draft Convention is concerned with extradition. It has not yet been discussed in detail by the UN Ad Hoc Committee to date. A number of amendments to that article have been put forward, and they include proposals which have been tabled by the Dutch delegation to ensure that serious offences involving an organised

criminal group will be extraditable (A/AC.254/L.45). The proposals by the Dutch delegation are in line with the EU Common Position which refers to the adoption of an approach under which the draft Convention should apply as broadly as possible to the activities of criminal organisations and to international cooperation for combating such organisations. In addition the French and the Swedish delegations have proposed a new formulation of Article 10 which seeks to make the text more effective in a number of respects, including the adoption of procedures to expedite and simplify extradition in appropriate cases (A/AC.254/L.47). It should also be noted that the Polish delegation has put forward proposals to promote speedy and simplified extradition and to provide for a broad application of Article 10 (A/AC.254/5/Add.7).

d) Mutual legal assistance

The first half of Article 14 of the draft Convention, which relates to mutual assistance in criminal matters, was examined at the last session of the Ad Hoc Committee and the remaining paragraphs (14 to 22) are due to be considered at its next session. Several amendments have been introduced to this article and the overall approach which has been adopted by EU delegations, in keeping with the Common Position, is to support the inclusion in the convention of provisions which will make mutual assistance as effective and as efficient as possible in the fight against serious organised crime. In that context reference can be made, for example, to efforts which have been made by a number of countries, including EU States, to permit assistance to be sought at an early stage in an investigation where there are links to organised crime. In addition EU Member States have been concerned that Article 14 should take account of improvements in new technology such as videoconferencing.

e) Draft firearms protocol

One of the most significant issues which has yet to be determined in relation to the draft protocol on illegal trafficking of firearms is the question of the type of weapons which should be covered. This is a matter to which EU Member States have devoted some

attention. The main view which has emerged is that it would be appropriate that the provisions of the protocol should apply to firearms and to other destructive devices which are subject to the activities of organised criminal groups. In addition it should be borne in mind that the proposals in the protocol to impose control and monitoring requirements concerning the marking, import, export and transit of firearms raise important issues in so far as the Union is concerned. This is particularly the case because of the operation of the Single Market within which the concept of importing and exporting goods has been abolished. The provisions of Directive 91/477/EEC on the control of acquisition and possession of firearms is also relevant with reference to the draft protocol.

3. Conclusion

The Presidency invites the PAPEG to consider the above items, and any additional matters which delegations may wish to raise, with a view to securing general cooperation for the purpose of the UN negotiations.

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