



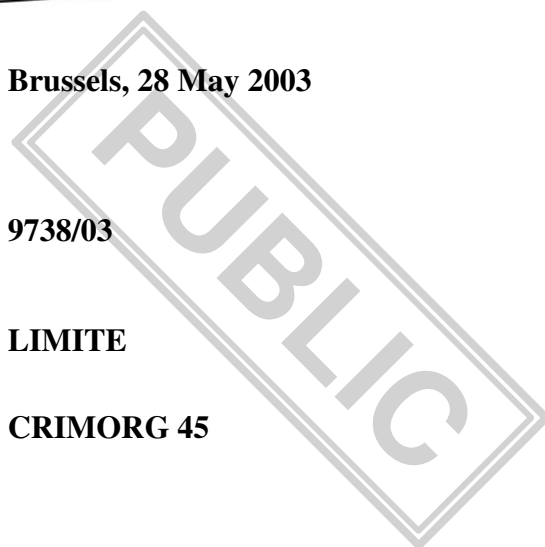
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 May 2003

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LIMITE

CRIMORG 45



COVER NOTE

from :	Presidency and Commission
to :	MDG delegations
Prev. doc no.:	7888/03 CRIMORG 26
Subject :	UNTOC Firearms Protocol

This questionnaire was prepared jointly by Presidency and Commission.

The Member States and Acceding States are requested to send their replies to these questions to the Commission, to the attention of Mrs. Heike Buss (++ 32 (0)2 295.17.44; Heike.Buss@cec.eu.int) and to the Council General Secretariat, to the attention of Mr. Ulf Johansson (++ 32 (0)2. 285.909.90; ulf.johansson@consilium.eu.int).

Delegations are requested to send in their replies **no later than 25 July 2003.**

DRAFT - Questionnaire on the implementation of the UN Firearms Protocol

1. BACKGROUND

On 2 April 2003, the Multidisciplinary Group on Organised Crime (MDG) discussed certain aspects of the UN Firearms Protocol¹.

Information on the state of signature/ratification of the UN Firearms Protocol was exchanged. Pursuant to Article 17 (1) of the UN Firearms Protocol, the Protocol has been open for signature until 12 December 2002. 11 EU Member States and 6 acceding States have signed the UN Firearms Protocol which has altogether 52 signatory states. Forty ratifications are necessary for the UN Firearms Protocol to enter into force. To date (May 2003), 4 states have ratified the Protocol, none of which is a EU Member State or acceding State. Most EU Member States have established groups of experts or working groups that are considering the amendments needed for implementing the Protocol.

At the April MDG meeting the interpretation of some of the Protocol's articles were discussed. At the end of the meeting, the Presidency concluded that further discussion in the MDG would be needed on the open questions to be addressed in order to implement the Protocol. This discussion should be prepared with a questionnaire to be sent out to EU Member States and acceding States.

2. ARTICLE 4 (2) - SCOPE OF PROTOCOL

Finding a common understanding of Article 4 (2) is important as it delimits the scope of application of the Protocol. Two questions arise in this context. The first concerns the meaning of "state-to-state transaction" and "state transfer". The Interpretative notes for the official records of the negotiation of the UN Firearms Protocol² state that "the words 'state-to-state transactions' refer only to transactions by States in a sovereign capacity." The official UN records therefore provide only partial help.

¹ United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (http://www.odccp.org/pdf/crime/a_res_55/255e.pdf)

² Interpretative notes for the official records (travaux préparatoires) of the negotiation 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, document number A/55/383/Add. 3, elaborated by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime during its twelfth session 26.2.-2.3. 2001 (http://www.unodc.org/pdf/crime/session12/crime_cicp_convention_session_12.html)

An informal meeting of firearm experts in the margins of the MDG on 11/5/2001 discussed the possibility for an interpretative statement on the scope of the Protocol. A draft interpretative statement was presented that reads as follows: “*Article 4 – scope: The EU interprets the terms ‘transaction’ and ‘transfer’ as referring to duly authorised transfers of firearms by, to, from or on behalf of governmental authorities*” (CRIMORG 26, 7888/03 of 28 March 2003).

The second question is whether a firearm that falls under Article 4 (2) is exempted from the application of the UN Firearms Protocol in its entirety. One could argue, for instance, that since marking would not generally be considered a “transaction” or a “transfer”, the basic marking requirement (Article 8 (1) a) of the Protocol) would generally apply to all firearms, including those made for military, law enforcement or national security forces. Such interpretation would avoid creating large volumes of unmarked firearms which could later be diverted or disposed of and then illicitly trafficked.

Questions:

1. How shall “state-to-state transaction” and “state transfer” be interpreted which exempt a state from the application of the UN Firearms Protocol pursuant to its Article 4 (2)?
2. Should such exemption from the application of the Protocol cover the Protocol in its entirety or should some of its articles apply nevertheless? In the latter case, which articles?
3. Should EU Member States and acceding States make a declaration at the time of ratification of the UN Firearms Protocol that interprets Article 4 (2)?
4. In case of an affirmative reply to question 3, is the statement in the document CRIMORG 26, 7888/03 of 28 March 2003 acceptable? If the statement in the document CRIMORG 26, 7888/03 were not acceptable, which amendments would make it acceptable?

3. ARTICLE 10 – IMPORT/EXPORT/TRANSIT LICENSING SYSTEM

Article 10 UN Firearms Protocol requests each State Party to establish or maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

Questions:

1. Do you have a domestic import/export/transit licensing system in place for firearms, their parts and components and ammunition? Does it comply with the provisions of Article 10 UN Firearms Protocol?

2. Which national authority is in charge of the import/export/transit licensing system for firearms, their parts and components and ammunition or would be in charge if such a system were to be established?

4. ARTICLE 12 (1) - INFORMATION EXCHANGE

Article 12 (1) UN Firearms Protocol invites States Parties to exchange information on a) relevant case-specific information (such as authorised producers, dealers, importers, exporters and carriers of firearms and ammunition), b) organised criminal groups known to be active in the field of firearms manufacturing and trafficking, c) means of concealment, methods and means, including routes used by organised criminal groups and d) legislative experiences and practices. Article 12 (2) stipulates that States Parties shall also provide to or share with each other scientific and technological information useful to law enforcement authorities.

At EU level, the ARROW route policing project can be mentioned as example for intensified joint action in the area of illicit firearms trafficking.¹ It was set up upon initiative of the Council's Police Co-operation Working Group and co-financed by the Community's OISIN programme. The final report of project ARROW recommended, inter-alia, the setting up of a network of expert contact points for international information exchange and sharing in the field of illicit trafficking of firearms. It also commended the creation of secure information exchange solutions to support the confidential or restricted information exchange between national contact points.

Note that Community legislation provides for administrative information exchange on civil firearms in the context of the internal market. Article 13 (1) of the Weapons Directive 91/477/EEC² requires EU Member States to communicate "all useful information" concerning definitive transfers of firearms from one EU Member States to another. Paragraph 3 of the same Article stipulates that Member States shall set up networks for the exchange of information for this purpose.

Questions:

1. Was a network of expert contact points set up for international information exchange and sharing in the field of combating illicit trafficking of firearms? In case of negative reply do you consider it necessary to set up such a network of contact points?

¹ Final report on the ARROW route policing project, ENFOPOL 51 9178/01 of 30 May 2001.

² Council Directive of 18 June 1991 on control of the acquisition and possession of weapons, OJ L 256 of 13.9.1991, p. 51

2. Do you consider it necessary to create secure information exchange solutions to support the confidential or restricted information exchange between national contact points? Do you consider existing information systems like SIS/SIRENE, ESCN or Europol INFOEX¹ adequate tools for this purpose?

3. Do you have suggestions on how to improve the exchange of information between law enforcement and judicial authorities of EU Member States in the fields mentioned in Article 12 (1) and (2) UN Firearms Protocol?

4. Do you have suggestions on how to improve the exchange of information between law enforcement and judicial experts in the fields mentioned in Article 12 (1) and (2) UN Firearms Protocol with third countries?

5. ARTICLE 12 (4) - TRACING OF FIREARMS

The question of tracing, i.e. the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser (see Article 3 (f) UN Firearms Protocol) is of crucial importance to the fight against illicit firearms trafficking. The main components of tracing are namely marking, record keeping, and international co-operation. Accordingly, Articles 7 (record-keeping), 8 (marking) and 12 (4) (international co-operation) UN Firearms Protocol refer to the tracing of firearms.

The European Commission's Directorate-General Internal Market has already started consultations with governmental firearm experts from EU Member States in the framework of considerations for amendments of the EC Weapons Directive. The discussions include reflections on possible amendments to the EC Weapons Directive that flow from Articles 7 and 8 of the UN Firearms Protocol.

The following tools facilitate the international co-operation in tracing firearms: the Schengen Information System provides a tool for police forces, border and customs authorities in EU Member States, with the exception of the United Kingdom and Ireland, to search for lost and stolen firearms. At international level, Interpol is currently enhancing IWETS² in order to provide by the end of the year, if everything goes on schedule, a) tracing of firearms/explosives; b) capability to query a database of stolen, lost or recovered firearms/explosives; c) use of firearms reference table for the identification of firearms and d) electronic bulletin board function for all users to post, share and access investigative documents. A very recent initiative is a project proposal, submitted for funding under the

¹ SIS stands for Schengen Information System (database), SIRENE is shorthand for Supplementary Information Request at National Entry (communication network) and ESCN is Europol's Secure Communication Network. Europol INFOEX is a database system that is used for the exchange of operational information between Member States' Liaison desks at Europol and between Liaison desk and Europol officials.

² IWETS stands for Interpol Weapons and Explosives Tracking System

Community's AGIS programme in 2003, that aims at establishing an international database on markings of firearms by 2005 (project leader: Germany's federal police office *Bundeskriminalamt*). Commission services are currently finalising the evaluation procedure – a final funding decision can be expected in June.

The final report of project ARROW (see previous section) recommended, inter-alia, setting up of a weapons tracing and early warning system for the purposes of Member States and their national contact points.

Questions:

1. Do you consider it useful and necessary to set up a weapons' tracing and early warning system for the purposes of Member States and their national contact points in order to enhance law enforcement co-operation among EU Member States? In the affirmative, what should be the main features of such a system and who should host it? Do you see a role for Europol in this regard?
2. Do you have other suggestions on how to facilitate the transnational tracing of firearms in the EU for law enforcement purposes?

6. ARTICLE 14 - ASSISTANCE TO THIRD COUNTRIES

Article 14 UN Firearms Protocol calls upon States Parties to co-operate with each other, as appropriate, so that States Parties may receive, upon request, training and technical assistance for effectively implementing the UN Firearms Protocol.

The European Union Strategy for the Beginning of the New Millennium on the Prevention and Control of Organised Crime¹ comprises a recommendation on third country co-operation regarding the United Nations Convention against transnational organised crime and its protocols. It reads as follows: "Recommendation 38 - The European Union and Member States should seek to assist countries on request in the full implementation, when ratified, of the draft United Nations Convention against Transnational Organised Crime and its protocols."

Although the UNTOC and its protocols are not yet ratified, they may already provide guidance in third country assistance and it is therefore of interest to exchange information on assistance planned or provided, if any. The following Community programmes and initiatives offer, in principle, the possibility for assistance to third countries in the implementation of one or several areas covered by the UN Firearms Protocol: European

¹ OJ C 124 of 3.5.2000, p. 1.

Development Fund, TACIS, PHARE, CARDS and AGIS. Moreover, the Small Arms and Light Weapons Joint Action 2002/589/CFSP¹, a second pillar instrument, may finance weapons collection, security sector reform and demobilisation and reintegration programmes.

Question:

To what extent has or is training or assistance provided to third countries in the implementation of the UN Firearms Protocol?

7. ARTICLE 16 (2) - RESERVATION

Article 16 (2) UN Firearms Protocol stipulates that the settlement of disputes concerning the interpretation or application of the Protocol shall be achieved by means of negotiation, then arbitration and finally reference of the dispute to the International Court of Justice. Parties to the UN Firearms Protocol may declare not to be bound by this provision.

Question: Do you plan to introduce a reservation pursuant to Article 16 (2)?

8. PREPARATION OF A DRAFT FRAMEWORK DECISION ON FIREARMS TRAFFICKING

The Commission is considering the elaboration of a draft Framework Decision that draws on the offences that should be criminalised according to Article 5 Firearms Protocol and establishes minimum rules relating to the constituent elements and penalties.

A mandate flows from the Justice and Home Affairs Council of 20 September 2001 that invited “the Member States to step up co-operation within the European Union on methods of detecting explosives and arms and on surveillance of the production, storage, transfer and trafficking of arms and explosives...” and “the Commission to examine the measures to be taken to harmonise further the legislation in this field where necessary and with regard to the issue of firearms licenses” (paragraph 19 of the 20th September JAI Council conclusion).

Gathering information on the current national legislation in EU Member States and candidate countries for accession to the EU in 2004 is a first step in preparing a draft Framework Decision on firearms trafficking.

The definitions of firearm, parts and components, ammunition, illicit manufacturing and illicit trafficking as established by Article 3 UN Firearms Protocol shall serve as reference although it is understood that national definitions may not be identical.

¹ Council Joint Action of 12 July 2002 on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, OJ L 191 of 19.7.2002, p. 1. Projects financed by the SALW Joint Action may include weapons collection, security sector reform and demobilisation and reintegration programmes.

Questions:

1. Are the following conducts established as criminal offences in domestic law when committed intentionally:

(i) illicit manufacturing of firearms, their parts and components and ammunition;

(ii) illicit trafficking in firearms, their parts and components and ammunition;

(iii) falsifying or illicitly obliterating, removing or altering the marking(s) on firearms [that serve to identify the manufacturer, the country or place of manufacture and the serial number]?

2. What are the penalties established for each of the conducts listed under question 1 above, if they are established as criminal offences? What are the penalties under aggravating circumstances, if applicable?

3. In case one or several of the conducts listed under question 1 above are not established as criminal offences, what are the constituent elements of the criminal offence(s) established under domestic law that come closest to the conduct(s) listed under question 1? Which penalties apply to these offences?

4. Is instigation of, aiding, abetting or attempt to commit the offences listed under question 1, or, if applicable, the offences provided in reply to question 3, punishable under national law?
