

# Procedure file

Basic information	
CNS - Consultation procedure Decision	2003/0196(CNS) Procedure completed
UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air	
See also Decision 2004/579/EC <a href="#">2003/0195(CNS)</a>	
Subject	
7.10.08 Migration policy	
7.30.30 Action to combat crime	
7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		01/06/2006
		ALDE <a href="#">CAVADA Jean-Marie</a>	
	Former committee responsible		
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		30/09/2003
		PSE <a href="#">ROURE Martine</a>	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<b>FEMM</b> Women's Rights and Gender Equality	The committee decided not to give an opinion.	
	Former committee for opinion		
	<b>FEMM</b> Women's Rights and Equal Opportunities	The committee decided not to give an opinion.	
European Commission	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2746</a>	24/07/2006
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2725</a>	27/04/2006
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>		

Key events			
21/08/2003	Legislative proposal published	<a href="#">COM(2003)0512</a>	Summary
05/11/2003	Committee referral announced in Parliament		
16/12/2003	Vote in committee		Summary
15/12/2003	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0485/2003</a>	
13/01/2004	Decision by Parliament	<a href="#">T5-0006/2004</a>	Summary
16/10/2005	Amended legislative proposal for reconsultation published	<a href="#">COM(2005)0503</a>	Summary
07/04/2006	Formal reconsultation of Parliament		

27/04/2006	Debate in Council	<a href="#">2725</a>	Summary
16/06/2006	Committee report tabled for plenary, reconsultation	<a href="#">A6-0215/2006</a>	
19/06/2006	Vote in committee		Summary
04/07/2006	Results of vote in Parliament		
04/07/2006	Decision by Parliament	<a href="#">T6-0281/2006</a>	Summary
24/07/2006	Act adopted by Council after consultation of Parliament		
24/07/2006	End of procedure in Parliament		
22/09/2006	Final act published in Official Journal		

### Technical information

Procedure reference	2003/0196(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	International agreement
Legislative instrument	Decision
	See also Decision 2004/579/EC <a href="#">2003/0195(CNS)</a>
Legal basis	EC Treaty (after Amsterdam) EC 066; EC Treaty (after Amsterdam) EC 063; EC Treaty (after Amsterdam) EC 062; EC Treaty (after Amsterdam) EC 300-p2-a1; EC Treaty (after Amsterdam) EC 179; EC Treaty (after Amsterdam) EC 300-p3-a1; EC Treaty (after Amsterdam) EC 181
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/36019

### Documentation gateway

Legislative proposal	<a href="#">COM(2003)0512</a>	22/08/2003	EC	Summary
Committee draft report	PE329.938	18/11/2003	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0485/2003</a>	16/12/2003	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0006/2004</a> OJ C 092 16.04.2004, p. 0001-0075 E	13/01/2004	EP	Summary
Amended legislative proposal for reconsultation	<a href="#">COM(2005)0503</a>	17/10/2005	EC	Summary
Supplementary legislative basic document	<a href="#">08174/2006</a>	05/04/2006	CSL	Summary
Committee final report tabled for plenary, reconsultation	<a href="#">A6-0215/2006</a>	16/06/2006	EP	
Text adopted by Parliament after reconsultation	<a href="#">T6-0281/2006</a>	04/07/2006	EP	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
---------------------	-------------------------

### Final act

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

**PURPOSE** : to conclude, on behalf of the EC, the Protocol Against the Smuggling of Migrants by Land Sea and Air, supplementing the UN Convention Against Transnational Organised Crime (UNTOC). **CONTENT** : in its Resolution 53/111 of 9 December 1998, the United Nations' General Assembly (UNGA) decided to establish a committee charged with elaborating a Convention against transnational organised crime (UNTOC), supplemented by three Protocols: - to prevent, suppress and punish trafficking in persons, especially women and children (Trafficking Protocol); - against the smuggling of migrants by land, air and sea (Smuggling Protocol); - against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (Firearms Protocol). On 12 December 2000, the EC signed three instruments in Palermo, along with all EU Member States. The Firearms Protocol was signed by the EC on 16 January 2002. UNTOC enters into force on 29 September 2003. The Smuggling Protocol has not yet entered into force. It requires ratification by at least 40 States. A regional economic integration organisation cannot ratify the UNTOC (or a Protocol) before at least one of its Member States has already done so. Of the 15 EU Member States, Spain and France have already deposited a document of ratification for the UNTOC and the Smuggling and Trafficking Protocols with the UN Secretariat General; the other Member States are still in the process of ratification. Draft decisions to conclude, on behalf of the EC, the UNCTOD and the Trafficking Protocol, are presented in parallel with his proposal. (See CNS/2003/0195 and CNS/2003/0197.) The Protocol's provision on measures to be taken at borders includes the possibility of a closer co-operation between border control authorities and the imposition of sanctions against carriers. These measures are of a standard that complies with the *acquis communautaire*. The Protocol also contains provisions requiring the Contracting Parties to control the security and quality of their travel and identity documents, including visa, and to verify the legitimacy and validity of such documents where there is a suspicion that they are being used for the purposes of trafficking in persons or the smuggling of migrants. The Protocol also includes a saving clause stating that the provisions of the Protocol are without prejudice to the obligations of States under International law, including the 1951 Geneva Convention and the 1967 Protocol relating to the status of refugees and the principle of non-refoulement contained therein. Finally, the Protocol's obligations for States with regard to facilitating and accepting the return and repatriation of persons who are their own nationals or holding a permanent residence authorisation for their territories are in line with the Community's ongoing negotiations on the conclusion of agreements with third countries on the readmission of persons illegally entering or staying on the territories of Member States. The United Kingdom, Ireland and Denmark are not bound by the provisions of the Smuggling Protocol which are subject to Community competence. The Smuggling Protocol is the first global instrument on the fight against transnational organised crime and smuggling of migrants. It sets a very useful multilateral framework and a variety of important minimum standards for all participating States.?

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

The European Parliament adopted a resolution drafted by Martine ROURE (PES, France) and approved the conclusion of the Agreement.?

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

**PURPOSE** : to amend the proposed 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, in light of the numerous Community legislative acts which have been adopted since the presentation of the initial proposal by the Commission in 2003.

**PROPOSED ACT** : Council Decision.

**CONTENT** : since the Commission proposed, in August 2003, the conclusion, on behalf of the European Community, of the protocol against organised crime, the protocol against the smuggling of migrants and the protocol against trafficking in persons, the only proposal relating to the Convention was adopted by the Council on 27 April 2004 (see CNS/2003/0195). The proposals concerning the protocol against the smuggling of migrants and the trafficking of persons still have to be adopted due to discussions between the Council and the Commission on the scope of Community competence with regard to these protocols.

Having regard to the adoption of a series of legislative instruments on the areas covered by the two protocols and adopted in 2004, it is proposed, on the one hand, to include articles 66, 179 and 181 A of the EC Treaty to the legal basis for the conclusion of the protocols, and on the other hand, to bring about the necessary amendments to the textual description of the Community competence in the declaration of competence annexed to the draft Council Decisions.

The legislative instruments concerned are as follows :

Article 66 of the EC Treaty:

- § Council Regulation 377/2004/EC on the creation of an immigration liaison officers network ?Immigration? : concerns Article 10 of the protocol against the smuggling of migrants and Article 10 of the protocol against trafficking in persons;
- § Council Decision 2004/512/EC establishing a visa information system (VIS) : concerns Article 10 of the protocol against the smuggling of migrants and Article 10 and 11 of the protocol against trafficking in persons;
- § Council Regulation 2007/2004/EC of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union : concerns Articles 10, 14 and 18 of the protocol

against smuggling of migrants and Articles 8 and 10 of the protocol against trafficking in persons.

Articles 179 and 181 A of the EC Treaty: Regulation 491/2004/EC of the European Parliament and of the Council establishing a technical and financial assistance programme to third countries in the areas of migration and asylum (AENEAS programme) : concerns Articles 14 and 15 of the protocol against the smuggling of migrants and articles 9 and 10 of the protocol against the trafficking in persons.

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

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. In view of the important changes that have been made to the text of the original Commission proposals, it will be necessary to reconsult the Parliament.

On 29 April 2004, the Council adopted a Decision authorising the Commission to conclude the UN Convention against Organised Crime (CNS/2003/0195). No agreement was reached on the draft Council decisions for the conclusion by the Community of two Protocols to UNTOC (CNS/2003/0196 and CNS/2003/0197).

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 Crime.

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;
- § 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.

Following the discussions at the Multidisciplinary group on organised crime on 8 February 2006, the JHA Counsellors meeting of 28 February 2006 and the CATS meeting of 8 March 2006, consensus was reached on these agreements at the Coreper meeting of 29 March 2006.

As a consequence, the Council presents a revised and consolidated version of these texts which the Parliament is now called upon to examine.

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

Pending the opinion of the European Parliament, the Council endorsed a general approach on draft decisions on the conclusion, on behalf of the European Community, of a protocol against the smuggling of migrants by land, air and sea of a protocol to prevent, suppress and punish trafficking in persons, especially women and children.

Both protocols supplement the United Nations Convention against transnational organised crime.

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

The committee adopted the report by its chair, Jean-Marie CAVADA (ALDE, FR), approving the amended proposal on the conclusion of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention Against Transnational Organised Crime. The amended proposal had been submitted to Parliament for reconsultation.

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

The European Parliament adopted a resolution drafted by Jean-Marie CAVADA (ALDE, FR), approving the amended proposal on the conclusion of the Protocol, which had been submitted to Parliament for reconsultation.

## UN Convention against transnational organised crime (UNTOC): protocol against the smuggling of migrants by land, sea and air

---

**PURPOSE:** to approve the Protocol against the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against transnational organised crime.

**LEGISLATIVE ACT:** Council Decision 2006/617/EC 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, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.

**CONTENT:** this Decision aims to conclude the Protocol against the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against transnational organised crime.

To recall, the Convention against transnational organised crime (UNTOC), is supplemented by three Protocols, of which this Protocol (Smuggling Protocol) is one. The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

This Protocol applies to the prevention, investigation and prosecution of the offences involving the smuggling of migrants and detailed in the Protocol, where the offences are transnational in nature and involve an organised criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Migrants will not become liable to criminal prosecution under this Protocol for the fact of having been the objects of the criminal behaviour that is proscribed by the Protocol. The Protocol's provision on measures to be taken at borders includes the possibility of a closer co-operation between border control authorities and the imposition of sanctions against carriers. The Protocol also contains provisions requiring the Contracting Parties to control the security and quality of their travel and identity documents, including visa, and to verify the legitimacy and validity of such documents where there is a suspicion that they are being used for the purposes of trafficking in persons or the smuggling of migrants. It includes a saving clause which clarifies that the provisions of the Protocol are without prejudice to the obligations of States under International law, including the 1951 Geneva Convention and the 1967 Protocol relating to the status of refugees and the principle of non-refoulement.

Each State Party must adopt legislative measures to establish as criminal offences: the smuggling of migrants; producing a fraudulent travel or identity document or procuring such a document; or enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State.

The Decision is linked to the implementation of another supplementary Protocol to the Convention concluded, on behalf of the EC, to prevent, suppress and punish trafficking in persons, especially women and children (Trafficking Protocol.) (Please see [CNS/2003/0197](#)).

Legal instrument: for reasons of Community competence in relation to the conclusion of the Protocol, it was necessary to have two separate Council decisions:

- one decision for matters relating to Part III, Title IV of the Treaty establishing the European Community (this Decision);
- another Decision for matters falling within the scope of Articles 179 and 181a of the Treaty (Decision 2006/616/EC) adopted in parallel to this Decision.

The legislation takes account of the position of Denmark and Denmark does not take part in its adoption and is not bound by it.

Lastly, a declaration is annexed to the Decision on the extent of the Community's competence with respect to matters governed by the Protocol under Article 21(3) of the Smuggling Protocol.

**ENTRY INTO FORCE:** the protocol enters into force when all the procedures necessary have been completed.