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

2003/0196(CNS) - 24/07/2006 - Final act

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-refoulment.

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.