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Subject: World Health Organization (WHO): Framework Convention on Tobacco Control
- Protocol on illicit trade in tobacco products - Consolidated text and "Red Lines"

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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THE EUROPEAN UNION**

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**UD 344
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NOTE

from:	General Secretariat
to:	Delegations
Subject:	World Health Organization (WHO): Framework Convention on Tobacco Control - Protocol on illicit trade in tobacco products - Consolidated text and "Red Lines"

Delegations will find attached the consolidated text and red lines concerning the above Protocol.

The preamble and Part III are reproduced from doc. 15968/2/10 REV 2, in combination with doc. 7150/2/10 REV 2. Parts IV and V are reproduced from doc. 7458/10 RESTREINT UE, with the exception of Art. 12-14 and 30-32, which are reproduced from doc. 6839/10 RESTREINT UE.

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ANNEX

Preamble

The Parties to this Protocol,

CONSIDERING that on 21 May 2003, the Fifty-sixth World Health Assembly adopted by consensus the WHO Framework Convention on Tobacco Control, which came into force on 27 February 2005;

RECOGNIZING that the WHO Framework Convention on Tobacco Control is one of the United Nations' most rapidly ratified treaties and a fundamental tool for attaining the objectives of the World Health Organization;

NOTING that at the first session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, which was held in Geneva on 6 – 17 February 2006, the “Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control” were adopted by consensus;

CONSIDERING that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition;

DETERMINED also to give priority to their right to protect public health;

DEEPLY CONCERNED that the magnitude and pervasiveness of illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

RECOGNIZING further that illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the accessibility and affordability of tobacco products;

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CONCERNED by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on the health and well-being of young people, the poor and other vulnerable groups;

SERIOUSLY CONCERNED about the disproportionate economic and social implications of illicit trade in tobacco products on developing countries and countries with economies in transition;

AWARE OF THE NEED to develop scientific, technical and institutional capacity to plan and implement appropriate national, regional and international measures to eliminate all forms of illicit trade in tobacco products;

ACKNOWLEDGING that access to resources and relevant technologies is of great importance for enhancing the ability of the Parties, particularly in developing countries and countries with economies in transition, to eliminate all forms of illicit trade in tobacco products;

ACKNOWLEDGING also that, although Free Zones are established to facilitate legal trade, they have been used to facilitate the globalization of the illicit trade in tobacco products, both in relation to the illicit transit of smuggled products and in the manufacture of illicit tobacco products;

RECOGNIZING also that illicit trade in tobacco products undermines and adversely affects the economies of the Parties and threatens their stability, security and sovereignty;

ALSO AWARE that illicit trade in tobacco products generates huge financial profits that are used to fund transnational criminal activity, which penetrates, contaminates and corrupts government objectives and legitimate commercial and financial businesses at all levels;

RECOGNISING that the illicit trade in tobacco products equally undermines health objectives and causes losses of revenue to the economies of the Parties

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EMPHASIZING the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

MINDFUL of Article 6.2 of the WHO Framework Convention on Tobacco Control, which encourages Parties to prohibit or restrict, as appropriate, sales to and/or importation by international travellers of tax-and duty-free tobacco products, which are often diverted into illicit trade;

RECOGNIZING in addition that tobacco and tobacco products in transit find a channel for illicit trade;

TAKING INTO ACCOUNT that effective action to prevent and combat illicit trade in tobacco products requires a comprehensive international approach to, and close cooperation on, all aspects of illicit trade, including, as appropriate, illicit trade in tobacco products and in manufacturing equipment

RECOGNIZING still further the importance of other international agreements, such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption;

INTENDING to build strong links between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime and other bodies, as appropriate;

RECALLING Article 15 of the WHO Framework Convention on Tobacco Control, in which Parties recognize, inter alia, that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacture and counterfeiting, is an essential component of tobacco control; and

CONVINCED that supplementing the WHO Framework Convention on Tobacco Control by a comprehensive protocol will be a powerful, effective means to counter illicit trade in tobacco products and its grave consequences;

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RECALLING that, in accordance with Article 2.1 of the WHO Framework Convention on Tobacco Control, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with the Convention and its protocols and are in accordance with international law;

Hereby agree as follows:

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Article 1

Use of terms

- “Carton” means packaging for five or more unit packs of tobacco products.
- “Cash” means:
 - (a) bearer-negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or other wise in such form that title thereto passes upon delivery and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee’s name omitted;
 - (b) currency (banknotes and coins that are in circulation as a medium of exchange).
- “Cigarette” means any product, other than cigars, cigarillos, pipe tobacco and water pipe tobacco, that contains tobacco and is intended to be burned or heated under ordinary conditions of use, and includes, without limitation, any "roll -your- own" tobacco which, because of its appearance, type, packaging or labelling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.
- “Commercial” means done with profit as the main objective, the evaluation of which should be based on criteria such as the status of the operator engaged in the activity, the nature and quantity of products involved, the place where the products are located, the mode of transport used and the documents related to the products.
- “Conference of the Parties” means the Conference of the Parties established by Article 23 of the WHO Framework Convention on Tobacco Control.
- “Confiscation” means the permanent deprivation of property by a competent authority and includes forfeiture, where applicable.
- “Controlled delivery” means allowing illicit or suspect consignments to pass out of, through or onto the territory of one or more States with the knowledge and under the supervision of their competent authorities, with a view to investigating an offence and identifying those involved in commission of the offence.
- “Convention Secretariat” means the Secretariat to the WHO Framework Convention on Tobacco Control.

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- “Due diligence” means conducting a reasonable, state-of-the-art investigation before the commencement of, or during the course of, a business relationship for the purpose of ascertaining whether a business partner or prospective business partner is complying with or can reasonably be expected to comply with his or her legal obligations under this Protocol.
- 'Free Zone' means a part of the territory of a State where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory and are not subject to the usual customs control.
- “Illicit trade” means any practice or conduct prohibited by law, including smuggling, illicit manufacturing and counterfeiting, and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.
- “Intermingling” means mixing together tobacco products with non-tobacco products.
- “License” means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.
- “Manufacturing equipment” means machinery which is designed to be used solely for the manufacture of tobacco products and is integral to the tobacco products making process.
- “Master case” means packaging for about 10 000 cigarettes.
- “Party” means, unless the context indicates otherwise, a Party to this Protocol.
- "Personal data" means any information relating to an identified or identifiable natural person.
- "Processing of personal data" means any operation or set of operations which is performed upon personal data, such as collection, recording, organization, storage, alteration, retrieval, consultation, use, disclosure, combination, blocking, erasure or destruction, as well as transfers of personal data across national borders.
- “Proceeds of crime” means any property derived from or obtained, directly or indirectly, through the commission of a criminal offence under this Protocol.
- “Regional economic integration organization” means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its member States in respect of those matters¹.

¹ Where appropriate, national will refer to regional economic integration organizations.

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- “Seizure” means temporary prohibition of the transfer, conversion, disposition or movement of property, including cash, or temporary assumption of custody or control of property by a competent authority.
- “Suspicious transactions” means transactions that do not correspond or conform to ordinary commercial practices in the tobacco trade.
- “Tobacco products” means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.
- “Tracing” means the re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by tobacco products through their respective supply chains of manufacture, sale, distribution, storage, shipment, import or export, or any part thereof.
- “Tracking” means systematic monitoring by competent authorities or any other person acting on their behalf of the route or movement taken by tobacco products through their respective supply chains of manufacture, sale, distribution, storage, shipment, import or export, or any part thereof.

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Article 2

Relation between the protocol and other agreements and legal instruments

The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.

The Parties to the Protocol that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.

Parties to this Protocol that are also Parties to the United Nations Convention against Transnational Organized Crime shall ensure the full application of the provisions of the latter Convention that are relevant to illicit trade in tobacco products. Parties to this Protocol that have not become Parties to the United Nations Convention against Transnational Organized Crime shall consider applying the relevant provisions of that Convention, as appropriate, to cases of illicit trade in tobacco products. In particular, they shall consider application of Articles 5, 6, 8, 10–13, 15, 16 and 18 of the United Nations Convention against Transnational Organized Crime.

Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, in particular under, but not limited to, the United Nations Convention against Transnational Organized Crime.

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Article 4

General obligations

In addition to the provisions of Article 15 of the WHO Framework Convention on Tobacco Control, Parties shall,

1. Adopt and implement effective measures to control or regulate the supply chain of goods covered by the provisions of this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;
2. Take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;
3. Adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;
4. Cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the offences covered by this Protocol;
5. Cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure¹ exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and
6. Within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.

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7. Implement this Protocol with full respect for the dignity, human rights and fundamental freedom of persons, in line with the Charter of the United Nations, and the Universal Declaration of Human Rights;
8. Protect personal data of every individual, regardless of nationality or residence, in line with the existing high international standards, in particular the UN Guidelines for the Regulation of Computerized Personal Data files, and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108), and its Additional Protocol (ETS 181).²

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² It is understood that this provision should be in a separate Article.

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Article 5

Licence or equivalent approval system

1. In light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the commercial conduct of any of the following activities by any legal or natural person except pursuant to a licence or equivalent approval system (hereafter “licence”) granted by a competent authority:
 - (a) Manufacturing tobacco products;
 - (b) Transporting commercial quantities of tobacco products;
 - (c) Import or export or wholesaling, brokering, warehousing or distribution of tobacco products or manufacturing equipment;
 - (d) Manufacture of manufacturing equipment unless it is subject to a control and verification system.

Each Party may decide that the obligations in this paragraph do not apply to:

- Tobacco products on which all taxes have been discharged; or
- Legal and natural persons that are already subjected to an equivalent approval system for tax or customs purposes.

2. Each Party shall endeavour to license, to the extent considered appropriate, any legal or natural person engaged in:
 - (a) Retailing of tobacco and tobacco products;
 - (b) Commercial growing of tobacco, except for traditional small scale growers, farmers and producers.
3. With a view to ensuring an effective licensing system, each Party shall:
 - (a) Establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national legislation to conduct the activities specified in paragraph 1 of this Article;

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- (b) Require that each application for a licence contains all the necessary information about the applicant, which should include:
- (i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers and proof of his or her official identification;
 - (ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, complete names of its directors and the names of any designated representatives, including the representatives' complete names and proof of their official identification;
 - (iii) precise business location of the manufacturing unit(s) and production capacity of the business run by the applicant;
 - (iv) details of tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make;
 - (v) description of where manufacturing equipment will be installed and used;
 - (vi) documentation regarding any unlawful conduct, including criminal offences committed, which is directly related to tobacco transactions and which has been the subject of a final judicial sanction;
 - (vii) identification of the bank accounts intended to be used in the relevant transactions and
 - (viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated legitimate demand.
- (c) Monitor and collect any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity in accordance with national laws;

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- (d) Take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
 - (e) Undertake measures such as periodic review, renewal, inspection or audit of licenses, in particular with regard to any unlawful conduct, including criminal offences committed, which is directly related to tobacco transactions and which has been the subject of a final judicial sanction;
 - (f) Oblige licensed or equivalently approved manufacturers of tobacco products and manufacturing equipment to inform the competent authority in advance of any change of location of their business.
4. Each Party shall ensure that no licence shall be assigned and/or transferred without prior approval from the designated or established competent authority.
5. Each Party shall endeavour to adopt and apply control and verification measures to the international transit, within its territory of tobacco, tobacco products and manufacturing equipment in conformity with the provisions of this Protocol in order to prevent illicit cross-border trade in such products.

Red Line

For the purpose of Article 5, Directive 118/2008 must be accepted as an equivalent approval system.

The Protocol must not impose obligations that exceed those already set out in Directive 118/2008 (with the exception of the obligations concerning tobacco and manufacturing equipment, which are not covered by Directive 118/2008).

It is understood that those tobacco products, such as snuffing, which might not be subject to excise duties, are exempted from the obligations set out in Article 5(1).

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Article 6 *Due Diligence*

1. Each Party shall require, subject to its national laws or legally binding and enforceable agreements, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products:
 - (a) Conduct due diligence before the commencement of, or during the course of, a business relationship for the purpose of ascertaining whether a customer or prospective customer is complying with or can be expected to comply with the provisions of this Protocol;
 - (b) Monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and
 - (c) Report to the designated competent national authorities any evidence that the customer is engaged in activities in contravention of this Protocol or is otherwise not compliant with its provisions.

2. Due diligence pursuant to paragraph 1 of this Article may include requirements for customer identification, such as obtaining and updating information relating to the following:
 - (a) Establishing that the legal or natural person holds a licence in accordance with Article 5;
 - (b) When the customer is a natural person, information regarding his or her identity, including full name, business registration number (if any), applicable tax registration numbers and verification of his or her official identification;
 - (c) When the customer is a legal person, information regarding its identity, including full name, business registration number, date and place of incorporation, corporate headquarters, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, complete names of its directors and any designated legal representatives, including the representatives' complete names and verification of their official identification;
 - (d) Documentation or a declaration regarding any criminal records;
 - (e) Identification of the bank accounts intended to be used in transactions;

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- (f) A description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products; and
 - (g) A description of the location where manufacturing equipment for use in the manufacture of tobacco products will be installed and used.
3. Each Party shall, on the basis of the information reported in paragraph 1(c), take all the necessary measures to ensure compliance with this Protocol.

Red Line

The legality of the concept of “blocked customers”, as laid down in paragraphs 6-9 is questionable. These paragraphs must therefore be deleted. Such deletion should not necessarily be suggested by the EU and could be part of a bargaining tactic; but if no other Party proposes this change, the EU must do so.

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Article 8 *Record-keeping*

1. Each Party shall require, as appropriate, that all natural and legal persons engaged in the commercial sale of tobacco or in the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment maintain complete and accurate records of all such transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.

2. Each Party shall require persons licensed in accordance with Article 5 to provide the following information to the designated competent authorities, on request:
 - (a) general information on market volumes, trends, forecasts and other relevant information; and
 - (b) the quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock in tax and customs warehouses under the regime of transit or duty suspension as of the date of the request.

3. With respect to tobacco products and manufacturing equipment sold or manufactured on the territory of the Party for export -or subject to duty-suspended movement in transit on the territory of the Party, each Party shall, as appropriate, require that persons licensed in accordance with Article 5, provide to the designated competent authorities in the country of departure (electronically where the infrastructure exists) at the time of departure from their control with the following information, on request:
 - (a) date of shipment from the last point of physical control of the products;
 - (b) details concerning the products shipped (including brand, amount, warehouse); intended shipping routes and destination;
 - (c) identity of the natural or legal person(s) to whom the products are being shipped;
 - (d) mode of transportation, including the identity of the transporters;
 - (e) expected date of arrival of the shipment at the intended shipping destination; and
 - (f) intended market of retail sale or use.

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4. If feasible, each Party shall require that retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage, in accordance with its national laws and regulations.
5. For the purposes of implementing paragraph 1 of this Article, each Party shall adopt effective legislative, executive, administrative or other measures to require that all records are:
 - (a) Maintained for a period of not less than five years;
 - (b) Made available to the designated competent authorities; and
 - (c) Maintained in a format as required by the designated competent authorities.
6. Each Party shall, as appropriate and subject to national laws, establish a system for sharing details contained in all records kept in accordance with this Article with other Parties.
7. Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing improved systems for record-keeping.

Red Line

The Protocol must not impose obligations that exceed those already set out in Directive 118/2008 (with the exception of the obligations concerning manufacturing equipment, which is not covered by Directive 118/2008).

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Article 9

Security and preventive measures

1. Each Party shall, in accordance with its national laws, require that all natural and legal persons subject to Article 5, take necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, amongst others:
 - (a) Reporting to the designated competent national authorities the cross-border transfer³ of cash in amounts stipulated in national laws or regulations;
 - (b) Supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use; and
 - (c) Reporting to the designated competent national authorities all suspicious transactions.
2. Each Party shall require, in accordance with its national laws, that payments for transactions relating to the manufacture, sale, distribution, storage, shipment, import or export of tobacco products and manufacturing equipment be allowed only in the currency and in the same amount as the invoice for those products, and only by wire or cheque from financial institutions located on the territory of the intended market of retail sale of the tobacco products and shall not be operated through any other alternative remittance system.
3. Each Party shall ensure that any contravention of the requirements of this Article is subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, as appropriate, suspension or cancellation of a license and prohibition of the licensee from re-applying for a license during a stipulated period.

Red Line

“Intermingling” must not be re-introduced in Article 9.

³ In the context of this provision, the EU interprets "cross-border transfer" to mean "transfer made between EU Member States and third countries".

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Article 10

Sale by Internet, telecommunication or any other evolving technology

Each party may, in accordance with the fundamental principles of its legal system and in accordance with national law, ban the retail sales of tobacco products by any manner of distance sales, including internet, telecommunication or other evolving technology based modes of sale.

In any event, all distance sales of tobacco products shall be subject to the provisions of this Protocol.

Red Line

A ban on distance sales of tobacco products to end consumers must not be imposed on Parties. However, each Party must be entitled to establish such a ban in their jurisdiction if they so wish.

With regard to the text of Article 10, the following fall back position could be accepted:

“Each Party shall require that all natural and legal persons engaged in any transaction with regard to tobacco products through the internet telecommunications or any other evolving technology based modes of sale comply with all relevant obligations covered by this Protocol.”

As a final option, the EU could support full deletion of Article 10, in the understanding that each Party must be entitled to establish a ban on distance sales of tobacco products to end-consumers in their jurisdiction if they so wish.

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Article 11

Duty free sales and free zones

1. Each party may, in accordance with national law, implement effective measures to ban duty free sales of tobacco and tobacco products.

In any event, all duty free trade in tobacco and tobacco products shall be subject to the provisions of this Protocol.

2. Free Zones shall be subject to all provisions of this Protocol such as licensing/equivalent approval system, tracking and tracing, customer identification, and anti-money laundering provisions. In addition, the intermingling of tobacco products with non-tobacco products on import to and export from Free Zones shall be prohibited.

Red Line

A ban on duty-free sales of tobacco products must not be imposed on Parties. However, each Party must be entitled to establish such a ban in their jurisdiction if they so wish.

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PART IV: OFFENCES

Article 12

Unlawful conduct including criminal offences

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures, as may be necessary, to establish all of the following conduct as unlawful under its domestic law:
 - (a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products contrary to the provisions of this Protocol;
 - (b)
 - (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;
 - (ii) any other acts of smuggling of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products not covered by paragraph (b) (i);
 - (c)
 - (i) counterfeiting tobacco products or manufacturing equipment used in the manufacture of tobacco products or counterfeiting packaging, applicable fiscal stamps, unique identification markings, or any other markings or labels;
 - (ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting counterfeit tobacco products or counterfeit manufacturing equipment used in the manufacture of tobacco products or counterfeit fiscal stamps or unique identification markings, or any other markings or labels;
 - (iii) defacing, falsifying, removing, altering or otherwise interfering with applicable fiscal stamps, unique identification markings, or any other required markings or labels affixed to tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products in order to, directly or indirectly, obtain any advantage, financial or other material benefit;

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- (d) intermingling tobacco products with non-tobacco products during the progression through the supply chain of tobacco products, including during storage, warehousing, transit, transportation, import or export, for the purpose of concealing or disguising tobacco products;
- [(e) using Internet, telecommunication or any other evolving technology-based modes of sale of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products, in contravention of the provisions of this Protocol;] *(Final formulation depends on outcome of the discussions on Article 10)*
- (f) obtaining, by a person licensed in accordance with Article 5, tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products from a person who should be, but is not, licensed in accordance with Article 5;
- (g) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
- (h)
 - (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products and when not contrary to the right against self incrimination;
 - (ii) mis-declaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products or any other information specified in the protocol to:
 - a) evade the payment of applicable duties, taxes and other levies, or
 - b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
 - (iii) failing to create or maintain records covered by this Protocol or maintaining false records.

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2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 of this Article shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.
3. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish the following conduct as criminal offences, when committed intentionally:
 - (a) Converting or transferring property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - (b) Concealing or disguising the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - (c) Acquiring, possessing or using property, knowing, at the time of receipt, that such property is the proceeds of crime.
4. With respect to criminal offences established in accordance with paragraphs 2 and 3 of this Article, each Party shall, subject to the basic principles of its domestic law, and having regard to the nature and gravity of the offence, adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:
 - (a) Participating in, associating with or conspiring to commit an offence;
 - (b) Attempting to commit an offence;
 - (c) Aiding, abetting, or inciting the commission of an offence.
5. For the purposes of implementing or applying paragraph 3 of this Article, each Party shall [...] include as predicate offences, the serious criminal offences, as defined by national law, established in accordance with paragraphs 2 and 4 of this Article as a result of which proceeds have been generated.
6. Knowledge, intent, or purpose required as an element of an offence established in accordance with paragraph 3 of this article may be inferred from objective factual circumstances.

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Article 13

Liability of legal persons

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the unlawful conduct including criminal offences established in accordance with Article 12 of this Protocol.
2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with Article 12 of this Protocol.

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Article 14

Prosecutions and Sanctions

1. Each Party shall adopt such measures as may be necessary to ensure that legal and natural persons held liable for the unlawful conduct including criminal offences established in accordance with Article 12 are subjected to effective, proportionate and dissuasive sanctions.
2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct including criminal offences established in accordance with Article 12 are exercised to maximize the effectiveness of law enforcement measures in respect of those unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences.
3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal offences established in accordance with this Protocol and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a Party and that such unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law.

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Article 15

Search of premises and seizure of evidence

Each Party shall adopt such legislative, executive, administrative and other measures as may be necessary to authorize competent authorities to search a building, receptacle, means of transport or place for evidence, including tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products, with respect to a commission of an offence under Article 12.1 of this Protocol, and to seize such evidence when found, in accordance with its national law.

Red Line

The EU can agree with the wording of Article 15 but would appreciate if, in accordance with the presumption of innocence, the word “suspected” could be added before “commission of an offence under Article 12.1”

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Article 16 Confiscation and seizure of assets

1. Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences covered by Article 12.1 of this Protocol or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by Article 12.1 of this Protocol.
2. Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this Article for the purpose of eventual confiscation.
3. If proceeds of crime have been transferred, transformed or converted, in part or in full, into other property or to another person who has knowledge or ought reasonably to have known of the commission of offences covered by this Protocol, such property shall be liable to the measures referred to in this Article instead of the proceeds.
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.
6. For the purposes of this Article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized and to hear or adjudicate civil claims of another Party against any licensee. Parties shall not decline to act under the provisions of this paragraph on the grounds of bank secrecy or any common law revenue rule or its equivalent.

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7. Parties may consider the possibility of requiring that a person under investigation demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.
9. Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.
10. Without prejudice to the provisions of this Article and the provisions of Article 18, Parties may allow retention of the property, equipment or other instrumentalities used in or destined for use in criminal offences covered by this Protocol for training and law enforcement purposes, provided that the confiscated materials are destroyed by using environmentally friendly methods following such use.

Red Line

The EU is of the opinion that confiscation of property should be considered in the light of a revised version of Article 12.

The EU is of the position that the wording of Article 16, paragraph 3, should be aligned with UNTOC Art. 12.3.

As Regards Article 16, paragraph 6, the EU is of the opinion that banking secrecy should not apply to criminal offences and that the issue of civil claims should be dealt with in a separate paragraph.

RESTREINT UE

Article 17 *Seizure payments*

For the purpose of eliminating illicit trade in tobacco products, the Parties may consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount equivalent to lost taxes and duties from the producer, manufacturer, importer or exporter of seized tobacco, genuine tobacco products or equipment used in the production of tobacco products.

Red Line

The EU can support the wording of Article 17 but would appreciate if the wording “if the violation has occurred with the rules provided in the Protocol” is added to the end of the Article.

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Article 18 *Destruction*

1. All confiscated manufacturing equipment, tobacco, counterfeit and contraband cigarettes and other tobacco products shall be destroyed. Such destruction shall be by using environmentally friendly methods upon completion of any legal process in relation to the tobacco products in question.
2. Confiscated material other than tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products may be retained for the purposes of training and other law enforcement purposes.
3. Parties shall take necessary measures for the early destruction of seized tobacco and tobacco products and for the admissibility as evidence of duly certified samples of small quantities of such substances.

Red Line

The EU would suggest deletion of Article 18, paragraph 3 as it is covered by paragraph 1

RESTREINT UE

PART V: INTERNATIONAL COOPERATION

Article 20

Information sharing: statistical data

1. The Parties shall, for the purpose of achieving the objectives of this Protocol, exchange relevant information on matters such as:
 - (a) Details of seizures of tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products, including case reference information where appropriate, quantity, value of seizure, product description, description of entities involved, date and place of manufacture; *modi operandi* including means of transport, concealment, routing and detection; counterfeit and genuine brands; and taxes evaded;
 - (b) Import, export, transit, tax-paid and duty-free sales and, quantity or value of production of tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products;
 - (c) Data on the agricultural production of tobacco;
 - (d) Trends, concealment methods, and *modi operandi* used in the illicit trade in tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products; and
 - (e) Any other relevant information, as agreed by the Parties.
2. [...]
3. [...]
4. The Parties shall cooperate with each other and competent international organizations to build capacity of Parties to collect and exchange information.
5. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party.

RESTREINT UE

Red Line

The EU should keep its position open and be ready to discuss it again, depending on the outcome on paragraph 1 of this Article[, during the negotiation on the spot in Geneva.]

As regards Article 20, paragraph 1 b) compatibility with the Export Control System (ECS) should be checked.

It is not clear if statistical data is administrative or criminal, the EC needs clarification.

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Article 21

Information sharing: operational data

The Parties shall exchange, on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purpose of detection or investigation of illicit trade in tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products, the following information, subject to national law:

- (a) Records of licensing for the legal and natural persons concerned;
- (b) Information for identification, monitoring and prosecution of legal or natural persons involved in illicit trade in tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products;
- (c) Records of investigations and prosecutions; and
- (d) Records of payment for import, export or duty free sales of tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products.

Red Line

The EU should try to keep the current text as it stands but if the text is softened during INB3 it should not be opposed.

RESTREINT UE

Article 24

Assistance and cooperation: investigation and prosecution of offences

1. The Parties agree to take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of legal or natural persons engaged in illicit trade in tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products.
2. Each Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products (including, where permitted under domestic law, judicial authorities) can cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a designated authority to serve as a national centre for the collection, analysis and dissemination of information among the other authorities and with other Parties.

Red Line

The EU would suggest adding “and in accordance with their national law” after “where appropriate” in Article 24, paragraph 1.

The EU would suggest adding “/authorities” after “designated authority” in Article 24, paragraph 2 and in the end of this paragraph the wording “in consistency with its national legal system”.

RESTREINT UE

Article 25

Protection of sovereignty

1. Parties shall carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Protocol entitles a Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Red Line

Already coordinated before INB 2 , as set out in document 14406/08 UD 189 SAN 227 COPEN 193 DROIPEN 78⁴, based however on the initial draft text of the Protocol, which since then has been revised.

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⁴ With regard to this Article, doc. 14406/08 refers in turn to doc. 13939/08. The latter document, which was issued on 8 October 2008 in view of the second meeting of the INB, lays down "preliminary positions met with a broad consensus". Concerning "Protection of sovereignty", the position was as follows: *"No remarks were made on those provisions"*.

RESTREINT UE

Article 26 *Jurisdiction*

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 12.1 when:
 - (a) The offence is committed in the territory of that Party; or
 - (b) The offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.

2. Subject to Article 25, a Party may also establish its jurisdiction over any such criminal offence when:
 - (a) The offence is committed against that Party;
 - (b) The offence is committed by a national of that Party or a stateless person who has his or her habitual residence in its territory; or
 - (c) The offence is:
 - (i) one of those established in accordance with Article 12.1 and is committed outside its territory with a view to the commission of a crime within its territory;
 - (ii) one of those established in accordance with Article 12.1 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 12.1 within its territory.

3. For the purposes of Article 31 and 33, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences covered by this Protocol when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

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4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the criminal offences covered by this Protocol when the alleged offender is present in its territory and it does not extradite him or her.
5. If a Party exercising its jurisdiction under paragraph 1 or 2 of this Article has been notified, or has otherwise learned, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Protocol does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Red Line

Already coordinated before INB 2 , as set out in document 14406/08 UD 189 SAN 227 COPEN 193 DROIPEN 78⁵, based however on the initial draft text of the Protocol, which since then has been revised.

⁵ With regard to this Article, doc. 14406/08 refers in turn to doc. 13939/08. The latter document, which was issued on 8 October 2008 in view of the second meeting of the INB, lays down "preliminary positions met with a broad consensus". Concerning "Jurisdiction", the position was as follows:

"A general scrutiny reservation was entered on this provision. The two following issues were raised:

- *need to clarify which criminal offences this provision is related to;*
- *need to keep non binding provisions, namely for paragraphs 2 and 4."*

RESTREINT UE

Article 27

Joint investigations

Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The Parties involved shall ensure that the sovereignty of the Party in whose territory such investigation is to take place is fully respected.

Red Line

Already coordinated before INB 2, as set out in document 14406/08 UD 189 SAN 227 COPEN 193 DROIPEN 78⁶, based however on the initial draft text of the Protocol which since then has been revised.

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⁶ The suggested line to take in doc. 14406/08 is "OK".

RESTREINT UE

Article 28 *Law enforcement cooperation*

1. Each Party shall adopt effective measures to:
 - (a) Enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences covered by this Protocol;
 - (b) Ensure effective cooperation among the competent authorities, agencies, customs, police and other law enforcement agencies;
 - (c) Cooperate with other Parties in conducting inquiries with respect to criminal offences covered by this Protocol concerning:
 - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - (ii) the movement of proceeds of crime or property derived from the commission of such offences; and
 - (iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences.
 - (d) Provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - (e) Facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;
 - (f) Exchange information with other Parties on specific means and methods used by natural or legal persons in committing such offences, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
 - (g) Exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Protocol.

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2. With a view to giving effect to this Protocol, Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Protocol as the basis for mutual law enforcement cooperation in respect of the offences covered by this Protocol. Whenever appropriate, Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. Parties shall endeavour to cooperate within their means to respond to transnational illicit trade committed through the use of modern technology.

Red Line

The EU is of the opinion that as this Article is based upon Article 27 UNTOC, it would be better to literally copy this provision from UNTOC, in order not to create any misunderstanding.

Article 29 – Mutual administrative assistance

[...]

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Article 30

Mutual Legal Assistance

1. The Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with [paragraphs 2, 3 and 4 of] Article 12 of this Protocol.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 13 of this Protocol in the requesting Party.
3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested Party.
4. The provisions of this Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

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5. Paragraphs 6 to 24 of this Article shall apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty of mutual legal assistance. If the Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 24 of this Article in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate co-operation.
6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible.
7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

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8. A request for mutual legal assistance shall contain:
- (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;
 - (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned;
 - (f) The purpose for which the evidence, information or action is sought;
 - [(g) deleted]
9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.
11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay.

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12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.
13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party.
14. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this Article;
 - (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
 - (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - [(d) deleted]
 - (e) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.
15. Reasons shall be given for any refusal of mutual legal assistance.
16. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.
17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

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18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party.
19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party on progress of its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.
20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
21. Before refusing a request pursuant to paragraph 14 of this Article or postponing its execution pursuant to paragraph 20 of this article, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.
22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.
23. In the event of a request, the requested Party:
 - (a) Shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

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(b) May, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

24. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article.

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Article 31

Extradition

1. [This Article shall apply to the criminal offences established in accordance with paragraphs 2, 3 and 4 of Article 12 of this Protocol when:
 - (a) The person who is the subject of the request for extradition is located in the territory of the request Party;
 - (b) The criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and
 - (c) The offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least [one]/[...]years or by a more severe penalty of the requested and requesting Parties.]

[...]
- [2. deleted]
3. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies.
5. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves.
6. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

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7. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies.
8. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall co-operate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
9. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 8 of this Article.
10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
11. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present.

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12. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
13. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
14. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
15. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

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Article 32

Measures to ensure extradition

1. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.
3. Any person regarding whom the measures in accordance with paragraph 1 of this Article are being taken, shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) Be visited by a representative of that State.

Article 33

Extradition of alleged offenders

[...]

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