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Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, with regard to the draft
Rules of Procedures at the Conference of State Parties to the Arms Trade Treaty (ATT)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Arms Trade Treaty (ATT) aims to contribute to international and regional peace, security and stability by regulating the international trade in conventional arms and eradicating illicit arms trade. It sets standards for transfers of conventional weapons and requires State Parties to review all arms exports to ensure conventional arms and munitions will not be used inter alia in Human Rights abuses, terrorism and violations of humanitarian law.

Initiated by UN Resolution 61/89 adopted in 2006, the ATT was adopted on 2 April 2013 by the UN General Assembly. The ATT entered into force on 24 December 2014 following ratification by 50 State Parties. 69 states have ratified the ATT including 26 EU Member States.

The ATT provides, inter alia, for measures (such as import and export controls), which fall within the scope of the Union's Common Commercial Policy. In this domain, the ATT addresses areas of Union law where the degree of regulation has already reached an advanced stage. Moreover, the following EU secondary legislation related to the internal market is also of relevance: a) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, b) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, and c) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition.

Under Article 17(1) and (2) of the ATT, a Conference of States Parties must be convened by the provisional Secretariat within 18 months after entering into force of the ATT and must adopt by consensus its rules of procedure at the first session. This first session of the Conference of State Parties will take place on 24-27 August in Mexico. A final preparatory meeting takes place in Geneva on 6-8 July to present the work of the drafting Committee on the RoP and finalise negotiations in this regard.

The Conference of State Parties is responsible for reviewing the implementation of the ATT, considering amendments to the ATT, and consider issues arising from the interpretation of the ATT. Therefore, the Conference of State Parties will deal with questions partly falling under EU exclusive competence. Moreover, the RoP to be adopted will govern the way the Conference of State Parties will work and make decisions. Thus, the RoP need to considered a decision that will have direct impact on EU exclusive competence and the EU participating as observer in the Conference. In view of the intention of the Member States to vote for the RoP at the Conference of State Parties, the Commission proposes the adoption of a Council Decision within the meaning of Article 218(9) TFEU establishing the position on the RoP to be adopted on behalf of the European Union at the first session of the Conference.

- **Consistency with existing policy provisions in the policy area**

Not applicable

- **Consistency with other Union policies**

In accordance with the rules on external competence as laid down in Article 3 of the Treaty on the Functioning of the European Union (TFEU), the ATT includes matters that fall under exclusive competence of the Union.

Decision taken under the ATT, such as the adoption of the RoP of the Conference of State Parties to the ATT may impact on EU exclusive competences. Therefore, the RoP shall not contain any provisions that:

- (1) may prevent Member States to apply:
 - (a) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended;
 - (b) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses, as amended;
 - (c) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended.
- (2) may restrict the free movement of goods, persons, services and capital within the Union's internal market, unless the restriction is specifically justified by Articles 36, 45(3), 52(1), 65, or 346 TFEU.
- (3) may restrict exports or imports from/into the Union, or transit through the territory of the Union shall be compatible with any applicable provisions of Union law, including in particular:
 - (a) Council Regulation (EC) No 260/2009 of 26 February 2009, on the common rules for imports;
 - (b) Council Regulation (EC) No 1061/2009, of 19 October 2009, establishing common rules for exports;
 - (c) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition and
 - (d) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended.

These various European Union legal acts are part of the *acquis* and it is therefore essential that they are not put in question by the adoption of the RoP of the Conference of State Parties to the ATT directly or indirectly. This extends to any amendments of the EU legislation in question as well as foreseeable future EU legislation in policy areas affected by the ATT.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of the proposed Council Decision is Article 218(9) TFEU which provides that "*[the] Council, on proposal of the Commission [...] shall adopt a decision [...] establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects [...]*".

As it is not party to the ATT, the European Union as such cannot adopt the RoP of the Conference of State Parties to the ATT. However, the Conference of States Parties must be regarded as a body set up by an international agreement within the meaning of Article 218(9) TFEU; and the rules of procedure of that Conference must be regarded as an act having legal effects within the meaning of that Article. Therefore Article 218(9) TFEU is of application albeit the fact that the EU is not party to the ATT.

Given that the RoP have legal effect on areas which are within the exclusive competence of the EU, it is necessary that the Union institutions and the Member States take all the measures to cooperate in adopting the RoP of the ATT and to ensure the implementation of the commitments resulting from that Treaty. The Rules of Procedure should in particular allow sufficient time for consultation and discussion among EU Member States and the Union Institutions of draft acts having legal effects to be adopted by the Conference of State Parties.

- **Subsidiarity (for non-exclusive competence)**

See above

- **Proportionality**

The proposal is consistent and proportionate within the meaning of Article 218(9).

- **Choice of the instrument**

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3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Not applicable

- **Collection and use of expertise**

The Commission did not seek any external expertise for the preparation of this proposal

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

Proposal has no implications on fundamental rights

4. BUDGETARY IMPLICATIONS

None

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

Article 1

Due to the impossibility of the EU to become party to the Treaty, the article establishes the EU position on the draft Rules of Procedure of the Conference of State Parties to the ATT to be adopted at the Conference's first session as these constitute an act having legal effects within the meaning of Article 218(9) TFEU.

Article 3

The purpose of the decision is to authorise the Member States with respect to those matters falling under the exclusive competence of the Union to act on behalf of the European Union within the legal boundaries set by the Treaty, and so the decision is addressed to them.

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COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, with regard to the draft Rules of Procedures at the Conference of State Parties to the Arms Trade Treaty (ATT)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Arms Trade Treaty (hereinafter referred to as the 'ATT') entered into force on 24 December 2014. 26 Member States ratified the ATT. The European Union is not State Party to the ATT.
- (2) Pursuant to Article 17 of the ATT, a conference of State Parties shall be convened by the provisional Secretariat, established under Article 18 thereof, no later than a year following the entering into force of the ATT. The Conference of State Parties shall adopt by consensus its rules of procedures at its first session which will take place on 24-27 August 2015.
- (3) Some of the provisions of the ATT concern matters that fall under the exclusive competence of the Union because they are within the scope of the Common Commercial Policy or affect the Internal Market rules for the transfer of conventional arms and explosives.
- (4) The Conference of State Parties shall review the implementation of the ATT, interpret and implement it, and may consider amendments to it. Its rules of procedure will govern how the Conference of State Parties will work and take decisions. Therefore its Rules of Procedure are to be considered as an act having legal effects within the meaning of Article 218(9) TFEU.

HAS ADOPTED THIS DECISION:

Article 1

The position of the Union on the Rules of Procedures of the Conference of State Parties to the ATT to be held on 24-27 August 2015 shall be in accordance with the Annex to this Decision and shall be adopted by the Member States which are State Parties to the ATT, acting jointly in the interest of the Union.

Minor changes to the position set out in annex of this Decision may be agreed to by the representatives of the Union on the spot without further decision of the Council.

Article 2

This Decision shall enter into force on .

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*