COUNCIL DECISION

of 24 July 2006

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

(2006/617/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62 point 2, Article 63 point 3 and Article 66, in conjunction with the first subparagraph of Article 300(2) and first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) The elements of the Protocol which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community.

(2) The Council instructed the Commission to negotiate the accession of the Community to the international agreement in question.

(3) Negotiations were successfully concluded and the resulting instrument was signed by the Community on 12 December 2000 in accordance with Council Decision 2001/87/EC of 8 December 2000 [2].

(4) Some Member States are parties to the Protocol while the ratification process is under way in other Member States.

(5) This Decision is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen *acquis* into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, hence the UK and Ireland are not bound by this Decision to the extent that it concerns the exercise of an external power by the Community in fields where its internal legislation does not bind the UK and/or Ireland.

(6) This Decision is without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, hence Denmark does not take part in its adoption and is not bound by it.

(7) The conclusion of the Convention was approved on behalf of the Community by Council Decision 2004/579/EC of 29 April 2004 [3], which is a condition for the Community to become a Party to the Protocol, pursuant to Article 37(2) of the Convention.

(8) The other conditions permitting the Community to deposit the instrument of approval provided for in Article 36(3) of the Convention and Article 21(3) of the Protocol have been fulfilled.

(9) In so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty, the conclusion of the Protocol should be approved on behalf of the Community.

(10) In so far as the provisions of the Protocol fall within the scope of Articles 179 and 181a of the Treaty, the conclusion of the Protocol on behalf of the Community should be approved by means of a separate decision of the Council [4].

(11) The Community should, when depositing the instrument of approval, also deposit a declaration on the extent of the Community's competence with respect to matters governed by the Protocol under Article 21(3) of the Smuggling Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol against the smuggling of migrants by land, air and sea, supplementing the United Nations Convention against transnational organised crime, as set out in Annex I, is hereby approved on behalf of the European Community.

The Community's instrument of formal confirmation shall comprise a declaration of competence according to Article 21(3) of the Protocol as set out in Annex II.

[1] Not yet Published In the Official Journal.
[2] OJ L 30, 1.2.2001, p. 44.
[3] OJ L 261, 6.8.2004, p. 69.
[4] See page 24 of this Official Journal.

Article 2

This Decision shall apply in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty.

Article 3

The President of the Council is authorised to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community.

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 July 2006.

For the Council

The President

K. RAJAMÄKI

ANNEX I

PROTOCOL

against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime

PREAMBLE

THE STATES PARTIES TO THIS PROTOCOL,

DECLARING that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

RECALLING General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

CONVINCED of the need to provide migrants with humane treatment and full protection of their rights,

TAKING INTO ACCOUNT the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

CONCERNED at the significant increase in the activities of organised criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

ALSO CONCERNED that the smuggling of migrants can endanger the lives or security of the migrants involved,

RECALLING General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organised crime and of discussing the elaboration of, *inter alia*, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

CONVINCED that supplementing the United Nations Convention against Transnational Organised Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

HAVE AGREED AS FOLLOWS:

I. GENERAL PROVISIONS

Article 1

Relation with the United Nations Convention against Transnational Organised Crime

1. This Protocol supplements the United Nations Convention against Transnational Organised Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

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.

Article 3

Use of terms

For the purposes of this Protocol:

(a) 'smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) 'illegal entry' shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) 'fraudulent travel or identity document' shall mean any travel or identity document:

(i) that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a State; or

(ii) that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) that is being used by a person other than the rightful holder;

(d) 'vessel' shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this 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.

Article 5

Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

Criminalisation

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) the smuggling of migrants;

(b) when committed for the purpose of enabling the smuggling of migrants:

(i) producing a fraudulent travel or identity document;

(ii) procuring, providing or possessing such a document;

(c) 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 by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) organising or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

(a) that endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) that entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. SMUGGLING OF MIGRANTS BY SEA

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorisation from the flag State to take appropriate measures with regard to that vessel. The flag State may authorise the requesting State, *inter alia*:

(a) to board the vessel;

(b) to search the vessel; and

(c) if evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorised by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorisation made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorisation to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorisation of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorisation to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) ensure the safety and humane treatment of the persons on board;

(b) take due account of the need not to endanger the security of the vessel or its cargo;

(c) take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.

III. PREVENTION, COOPERATION AND OTHER MEASURES

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organised criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) the identity and methods of organisations or organised criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) the authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) to ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) to ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialised training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organisations, non-governmental organisations, other relevant organisations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) improving the security and quality of travel documents;

(b) recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organised criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(d) improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(e) the humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organised criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organised criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, [1] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

(a) establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

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[1] Ibid., vol. 596, Nos 8638 to 8640.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organisations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. FINAL PROVISIONS

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognised principles of non-discrimination.

Article 20

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organisation of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organisations provided that at least one member State of such organisation has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organisation may deposit its instrument of ratification, acceptance or approval if at least one of its Member States has done likewise. In that instrument of ratification, acceptance or approval, such organisation shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organisation shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organisation of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organisation shall declare the extent of its competence with respect to matters governed by this Protocol. Such organisation shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the 90th day after the date of deposit of the 40th instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by member States of such organisation.

2. For each State or regional economic integration organisation ratifying, accepting, approving or acceding to this Protocol after the deposit of the 40th instrument of such action, this Protocol shall enter into force on the 30th day after the date of deposit by such State or organisation of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organisations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their Member States that are Parties to this Protocol. Such organisations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party 90 days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organisation shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed this Protocol.

ANNEX II

Declaration concerning the competence of the European Community with regard to matters governed by the Protocol Against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention Against Transnational Organised Crime

Article 21(3) of the Protocol provides that the instrument of accession of a regional economic integration organisation shall contain a declaration specifying the matters governed by the Protocol in respect of which competence has been transferred to the organisation by its Member States which are Parties to the Protocol.

The Protocol against the smuggling of migrants by land, air and sea shall apply, with regard to the competences transferred to the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof and the Protocols annexed to it.

This declaration is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen *acquis* into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community.

This declaration is equally without prejudice to the position of Denmark under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

Pursuant to Article 299, this declaration is also not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Protocol by the Member States concerned on behalf of and in the interests of those territories. In accordance with the provision referred to above, this declaration indicates the competence that the Member States have transferred to the Community under the Treaties in matters governed by the Protocol. The scope and the exercise of such Community competence are, by their nature, subject to continuous development as the Community further adopts relevant rules and regulations, and the Community will complete or amend this declaration, if necessary, in accordance with Article 21(3) of the Protocol.

The Community points out that it has competence with regard to the crossing of external borders of the Member States, regulating standards and procedures when carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months. The Community is also competent for measures on immigration policy regarding conditions of entry and residence and measures to counter illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, it can take measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the aforementioned areas. In these fields the Community has adopted rules and regulations and, where it has done so, it is hence solely for the Community to enter into external undertakings with third States or competent international organisations.

In addition, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to prevent and combat smuggling of migrants.