(Acts adopted pursuant to Title VI of the Treaty on European Union)

SECOND JOINT POSITION

of 13 November 1997

defined by the Council on the basis of Article K.3 of the Treaty on European Union on negotiations held in the Council of Europe and the OECD on the fight against corruption

(97/783/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3 (2) (a) and K.5 thereof,

Whereas the Member States attach special importance to the combating of corruption on an international level;

Having regard to the Protocol, drawn up by the Council on 27 September 1996, to the Convention on the protection of the European Communities' financial interests [1];

Having regard to the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, drawn up by the Council on 26 May 1997 [2];

Having regard to the joint position on negotiations held in the Council of Europe and the OECD on the fight against corruption;

Having regard to the communication of 21 May 1997 from the Commission to the European Parliament and the Council on a Union policy against corruption;

Whereas in November 1996 the Committee of Ministers of the Council of Europe adopted a programme of action against corruption which includes the drawing up of a criminal law convention on corruption as a matter of priority;

Whereas on 26 May 1997 the Council at Ministerial Level of the OECD adopted a recommendation on corruption in international commercial transactions and decided to start negotiations on an international convention to make bribery of foreign public officials a criminal offence in accordance with the common elements included in the recommendation, which could be open for signature by the end of 1997;

Taking into account the negotiations under way in the Council of Europe and the OECD and mindful of the need to ensure compatibility with the ongoing work of the Union;

Desiring to protect the best interests of the Union and to avoid unnecessary duplication or incompatibility with the two international instruments drawn up in the Council of Europe and the OECD;

Whereas the European Council meeting in Amsterdam approved the Action Plan of the High Level Group on Organized Crime, which advocates a comprehensive plan to combat corruption;

Whereas the application of different principles in this area should lead to an equivalent and balanced approach and should take into account international instruments already adopted, particularly those of the Union, such as in the areas concerning liability of companies, penalties and international cooperation,

HAS DEFINED THIS JOINT POSITION:

Article 1

In the negotiations at the OECD and the Council of Europe to draw up one or more conventions, the Member States of the European Union intend to uphold the following positions:

1. the scope of the OECD convention should cover bribery of a foreign public official in order to obtain or retain business or an unfair advantage in inter-

[1] OJ C 313, 23. 10. 1996, p. 2.
[2] OJ C 195, 25. 6. 1997, p. 1.

national commercial transactions. The Member States of the European Union will ensure in the negotiations under way that the draft Convention results in legal rules which are compatible, particularly as regards the definition of the offence, with those enshrined in the Convention adopted by the European Union;

2. in the draft OECD convention, the definition of 'foreign public official' should be confined to anyone appointed or elected to a legislative, administrative or judicial office in a foreign country, anyone holding a public position or performing a public task in a foreign country and anyone employed by a public international organization. Parties to the OECD convention should be allowed to apply the principle of assimilation in relation to government ministers, judges and parliamentarians along the lines of Article 4 (1) of the European Union Convention on corruption of 26 May 1997;

3. it should be made clear in the OECD proceedings that influence peddling is not covered. That issue should be addressed in discussions at the Council of Europe;

4. Member States should advocate the introduction of rules on jurisdiction which shall ensure an equivalent level of commitment for all State parties in the suppression of acts of active corruption. To that end, they should advocate that at least the following principles should be reflected in the conventions:

   — jurisdiction over the offences identified by the conventions should be established in cases in which they are committed in whole or in part in their territory,

   — any State party should be prepared either to extradite its nationals or to submit the case to its competent authorities for the purpose of prosecution if appropriate,

   — it should be possible for the provisions on jurisdiction and/or extradition to be applicable subject to observance of specific cases or conditions.

   These principles are without prejudice to the adoption in the conventions of rules on jurisdiction which go further for purposes of suppression of international corruption;

5. in order to ensure that the OECD and Council of Europe conventions are properly applied, provisions should be made for an effective, coordinated and streamlined monitoring mechanism with clearly defined powers and responsibilities;

6. in view of the importance of the OECD convention for international trade, the provisions of the convention and its implementation at national level must be such as to ensure that the convention will come into force in respect of the main OECD exporting countries. In the same way, the Council of Europe convention must also require a significant number of ratifications;

7. the conventions should include specific provisions on international cooperation only if there is a proven need for such provisions. If that is the case, Member States will ensure that they defend the principles in Article 1 (2) of the first joint position, defined by the Council on the basis of Article K.3 of the Treaty on European Union on negotiations held in the Council of Europe and the OECD on the fight against corruption [1] adopted on 6 October 1997.

Article 2

This joint position shall be published in the Official Journal.

Done at Brussels, 13 November 1997.

For the Council
The President
R. GOEBBELS

[1] OJ L 279, 13. 10. 1997, p. 1.