INTRODUCTION

1. The European Union (EU) is very grateful for the efforts of the Coordinator on MOTAPM, Ambassador Carlos Antonio da Rocha Paranhos of Brazil, and, in particular, for the hard work he and his team did during the last session.

2. The European Union takes this opportunity to reaffirm its support to the President-designate’s request to the Coordinator, the Chairperson of the Meeting of Military Experts, General Gerson Menandro Garcia de Freitas, and the Coordinator’s whole team to continue to coordinate the MOTAPM process in the run-up to the Review Conference. The EU considers very important that the discussions and decisions to be taken on MOTAPM at the Review Conference be actively and carefully prepared under the Coordinator’s able guidance. For its part, the EU is able and willing to engage in these preparations on the basis of the positions which the EU has stated at the previous CCW meetings and outlined in more detail in previous comments by the EU to the Coordinator.

3. The EU has now reviewed in more detail the Coordinator’s report presented at the end of the fifteenth session of the Group of Governmental Experts (GGE), and would like to provide the following comments on it.

GENERAL COMMENTS

4. The European Union refrains from commenting on the descriptive parts of the report with the understanding that they are put forward under the personal responsibilities of the Coordinator and the Chairperson of the Meeting of the Military Experts and are not intended to reflect wider agreement. Therefore the European Union will focus its detailed comments below exclusively

5. The European Union notes the Coordinator's confirmation, stated during the fifteenth session of the GGE, that nothing can be agreed before everything is agreed. The European Union is grateful to the Coordinator for this important clarification. It is with this understanding that the EU now wishes to provide comments on the report presented by the Coordinator at the end of the fifteenth session of the GGE. The European Union continues to support the set of recommendations as contained in document CCW/GGE/XII/WG.2/1/Rev 2. The comments made prior to and during the fifteenth session of the GGE remain valid. With this understanding, the EU will continue to engage pragmatically in discussing the text annexed to the report presented on 6 September.

**TITLES OF THE DOCUMENT**

6. The European Union notes that the Coordinator has used the expression "MOTAPM/AVM". The European Union’s view is that in the title and throughout the text, the term MOTAPM should be used. The AP II regulates all mines. Some provisions of the AP II concern only anti-personnel mines and would also like to recall that the Coordinator's official mandate was on "MOTAPM".

7. In the view of the EU, the title of the document should be kept short and simple, that is, “Set of provisions on MOTAPM”. That would not prejudge, or limit beforehand, the provisions that could be included in the document.

**ARTICLE 1**

8. Paragraph 3: The purpose of this paragraph would be better covered by the following: "This Set of provisions is without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for stricter obligations or which have wider applicability." The European Union is uncomfortable with the mentioning of the CCW Convention itself in this kind of context, as the goal of the EU is that a new legally binding Protocol be annexed to the CCW Convention. The EU does not think that a specific reference to the CCW is necessary or desirable in this context. The CCW is part of the international humanitarian law and the desired effect regarding the CCW is best captured by only referring to IHL.

**ARTICLE 2**

9. Paragraph 1 (b): It is the view of the European Union that the last sentence, which is in italics, should be deleted.

10. Paragraph 1 (e): This language is a significant improvement as compared to the previous paper that was circulated in August. Also the language on marking of the PMA later in the text
(now in Technical Annex A) has improved from the paper presented in August. However, both
the definition of the Perimeter-marked area (PMA) (contained now in the article on definitions)
and the provisions on marking of the PMA (contained now in the Technical Annex A) would be
better placed in the main body of the Set of provisions text. However, the EU will need to see the
proposed language on detectability and active life before completing its analysis on the PMA
question. Therefore the EU may complement its comments later.

11. Paragraph 1 (h): To be in line with the terminology used in the AP II, the term "Self-
deactivation" should be replaced by "Self-deactivating".

ARTICLES 3 AND 4

General comments

12. For the EU, as for the great majority of States, the inclusion of legally binding
commitments on detectability and active life constitute key objectives for a MOTAPM
instrument.

13. The EU supports option 1 and looks forward to the Coordinator’s further reporting on his
consultations with the countries that have not so far been able to join the consensus on a legally
binding language on detectability and active life. The EU continues to encourage the Coordinator
to seek consensus on the basis of option 1 and the language proposed by the EU.

14. Regarding the language of option 1, the EU notes only the need to make it technically
consistent with the rest of the "Set of Provisions", as follows:

Article 3

15. Paragraph 4: Replace "chapter" by "Article".

16. Paragraph 6: Replace "chapter" by "Article" and "20" by "4".

17. Paragraph 7: Replace "chapter" by "Article" and "recommendations" by "provisions"
throughout.

Article 4

18. Paragraph 4: Replace "24 and 25" by "1 and 2".

ARTICLE 5

General comments

19. The coherence of the Article's title and text, as well as the sequence of the provisions
would benefit from some further work. As a preliminary remark, the title (measures etc) is
probably too weak as the text rightly contains prohibitions. Also, clearer distinctions could be
made between prohibitions, restrictions, provisions on cooperation etc, by sequencing the Article
differently or by dividing the Article into several Articles.

Specific comments

20. Paragraph 2 (e): This paragraph should be deleted.

21. Paragraph 6: In the view of the European Union, for the sake of ensuring consistency and
to avoid any possible misunderstanding, the definition of terms used should refer not only to
definitions in Article 2(7) of the AP II but also to definitions in Article 3(7) of the AP II.

22. Paragraph 7 (a) and (c): In the view of the European Union, for the sake of ensuring
consistency and to avoid any possible misunderstanding, the definition of terms used should in
all cases refer explicitly to the definitions used in AP II.

23. General comment on paragraphs 11-13: The EU would like to enquire on the reason for
the insertion of these paragraphs. These paragraphs would seem to relate to compliance with the
Set of provisions. However, they would provide only a limited basis for compliance provisions.
The EU proposes that the compliance issue be dealt with more comprehensively and refers to
this last point of at the end of these comments.

24. Specific comment on paragraph 11: Most victims are caused by MOTAPM laid by non-
state actors. There are organizations doing valuable work to engage the non-state actors (NSAs)
to abandon use of anti-personnel landmines (APLs) and to commit themselves to implement
international norms and instruments, such as the Ottawa Convention. This approach should not
be excluded as regards the MOTAPM. The EU is concerned that retaining paragraph 11 with its
current wording could make it impossible for any organization to engage NSAs to implement
the provisions of the future MOTAPM Protocol. The EU will also need to study other implications
of this wording from the IHL viewpoint and would encourage the Coordinator to consult with
international humanitarian organizations and notably the ICRC on their views regarding the
wording of this paragraph.

ARTICLE 7

25. The EU is concerned that the formula "agreed by the parties" may be more restrictive
than "permitted by such party" that is used in AP II Article 10 paragraph 3. It is the view of the
EU that the language in the set of provisions should not be more restrictive than the language in
AP II and . The EU would, therefore, propose reverting back to the AP II formula "permitted by
such party".

ARTICLE 9

26. Paragraph 1 (b): The provision contained in this paragraph is very important, but the EU
has doubts whether the provision can be effective with a PMA exception. Therefore only the
alternative language in subparagraph (b) in italics should be retained and the language proposed
first on normal characters should be deleted.
27. Paragraph 1 (c): Reference is made to the comment above. A full stop should be inserted after the word "certificate" and the rest of the text in this paragraph should be deleted.

28. The EU may complement its comments later, depending on what standards the Coordinator will propose for detectability and active life.

29. A new paragraph should be added between the current paragraphs 3 and 4 with the following language: "The provisions and prescriptions of this Article will be effective upon the entry into force of this set of provisions, irrespective of the transition period which the State could avail itself of in order to meet the requirements set for detectability and active life of MOTAPM."

ARTICLE 10

30. Paragraph 2 (b): The EU notes that the Coordinator has used the term "demining" instead of "mine clearance" which was the term used in AP II in this connection and would suggest using the same terminology as in AP II.

ARTICLE 11

31. Paragraph 1 (c): See comment on Article 10 paragraph 2 (b).

ARTICLE 12

32. The text proposed first should be retained. In the view of the EU, the States Parties are very close to reaching a consensus on the section on fuze design in Technical Annex B. The EU does not believe that its deletion, thereby losing the results of years of expert work, would lead to a significant change in the position of any country in the MOTAPM process.

TECHNICAL ANNEX A

33. The EU proposes to add "This Annex is legally binding on High Contracting Parties".

34. The EU reiterates its comment on Article 2 paragraph 1 (e) and may come back to it.

35. The following sentence should be inserted at the end of "chapter" 1, that is after 1 d (iii): "The marking shall be visible, legible, durable, and resistant to environmental effects, as far as possible." This sentence is needed here among the provisions on minefield recording, even if this same sentence may be pertinent also in some other relevant parts of the set of provisions.
36. The EU proposes replace "qualified personnel" by "authorized personnel". This would be coherent with the language in Article 2 (e).

OTHER REMARKS

37. The EU notes that the question of the compliance mechanism is not addressed in the set of provisions. The EU is aware that in the MOTAPM process, this question has been put aside awaiting for the outcome of the general discussion on the compliance mechanism to be introduced to the CCW Convention. This general discussion has now entered its final stage. The EU takes note, in this context, of the latest President-designate's proposal on compliance (CCW/GGE/XV/2/Rev 2, dated 5 September 2006, and in particular paragraph 11 of Article 7ter/Part III contained therein). According to this paragraph, applicable to the CCW Convention itself, "the provisions of ... shall not prejudice any possible future provisions on compliance to be decided upon the High Contracting Parties". In the EU’s point of view, if the MOTAPM process leads to a legally binding Protocol to be annexed to the CCW Convention, which is the EU’s goal, this new MOTAPM Protocol should not have a compliance mechanism that is weaker than that in AP II. This remark is valid both on contents and on legal status of the compliance mechanism. The EU considers this remark important as the AP II already regulates MOTAPM in many respects.