

COUNCIL
OF THE
EUROPEAN UNION
—
GENERAL SECRETARIAT
—
DG H
Justice and Home Affairs



***INSTRUMENTS AND TEXTS
PUBLISHED IN THE OFFICIAL JOURNAL
OF INTEREST IN THE FIGHT AGAINST
ORGANIZED CRIME***

(VOLUME I)

Issued on 13 February 1997



Volume I 1. EC/EU Instruments and other Texts

Volume II 2. First Pillar Instruments

(It is to be noted that these instruments are all of relevance to the prevention of crime in general and that mechanisms for their monitoring are foreseen by the Treaties)

Volume III 2. First Pillar Instruments (continued)

VOLUME I

1. EC/EU INSTRUMENTS AND OTHER TEXTS

1) Drafted under Article K TEU

1A) Instruments essential to fight against Organized Crime

- Council Act of 27 September 1996, Convention relating to Extradition between the Member States of the European Union	1
- Council Act of 26 July 1995, Convention on the protection of the European Communities' financial interests	14
- Council Act of 27 September 1996, Protocol to the Convention on the protection of the European Communities' financial interests	24
- Council Act of 26 July 1995, on the establishment of a European Police Office (Europol Convention)	34
- Joint Action of 10 March 1995, conc. the Europol Drugs Unit	66
- Joint Action of 29 November 1996, on cooperation between customs authorities and business organizations in combating drug trafficking	69
- Joint Action of 29 November 1996, conc. the creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement cooperation between the Member States of the European Union	71
- Joint Action of 17 December 1996, conc. the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking	73
- Council Resolution of 20 December 1996, on individuals who cooperate with the judicial process in the fight against international organized crime	76
- Council Resolution of 23 November 1995, on the protection of witnesses in the fight against international organized crime	78

-	Council Act of 26 July 1995, Convention on the use of information technology for customs purposes	79
 1B) Instruments which are of relevance to the fight against Organized Crime		
-	Council Act of 10 March 1995, Convention on simplified extradition procedure between the Member States of the European Union	94
-	Joint Action of 29 November 1996, establishing an intensive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children	101
-	Joint Action of 29 November 1996, conc. the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking	105
-	Joint Action of 15 October 1996, conc. the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union	107
-	Joint Action of 16 December 1996, extending the mandate given to the Europol Drugs Unit	109
-	Council Resolution of 29 November 1996, on measures to address the drug tourism problem within the European Union	110
-	Council Resolution of 20 December 1996, on sentencing for serious illicit drug-trafficking	111
-	Council Resolution of 29 November 1996, on the drawing up of police/customs agreements in the fight against drugs	113
-	Council Resolution of 16 December 1996, on measures to combat and dismantle the illicit cultivation and production of drugs within the European Union	115
-	Council Resolution of 6 December 1994, on the legal protection of the financial interests of the Communities .	116

1C) Instruments which may be of relevance to the fight against Organized Crime

- Council Act of 23 July 1996, Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of the European Police Office	118
- Agreement of 26 July 1995, on provisional application between certain Member States of the European Union of the Convention on the use of information technology for customs purposes	132
- Joint Action of 28 October 1996, on a programme of incentives and exchanges for legal practitioners (GROTIUS)	139
- Joint Action of 28 October 1996, introducing a programme of training, exchanges and cooperation in the field of identity documents (SHERLOCK)	143
- Joint Action of 25 September 1995, on measures implementing Article K.1 of the Treaty	146
- Joint Action of 14 October 1996, providing for a common framework for the initiatives of the Member States concerning liaison officers	149
- Joint Action of 15 July 1996, concerning action to combat racism and xenophobia	152
- Joint Action of 20 December 1996, providing a common programme for the exchange and training of, and cooperation between, law enforcement authorities (OISIN) . .	155
- Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control	159
- Council Resolution of 14 October 1996, laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998	161
- Council Recommendation of 27 September 1996, on combating the illegal employment of third-country nationals	168

VOLUME II

2) FIRST PILLAR INSTRUMENTS

(it is to be noted that these instruments are all of relevance to the prevention of crime in general and that mechanisms for their monitoring are foreseen by the Treaties).

2A) Instruments essential to fight against Organized Crime

- Council Regulation of 13 December 1990,
laying down measures to be taken to discourage the diversion of
certain substances to the illicit manufacture of narcotic drugs
and psychotropic substances 171
- Council Regulation of 18 December 1995,
on the protection of the European Communities financial
interests 176
- Council Directive of 14 December 1992,
on the manufacture and the placing on the market of certain
substances used in the illicit manufacture of narcotic drugs
and psychotropic substances 180
- Council Directive of 10 June 1991,
on prevention of the use of the financial system for the purpose
of money laundering 187
- Council Regulation of 11 November 1996,
concerning on-the-spot checks and inspections carried out by
the Commission in order to protect the European Communities'
financial interests against fraud and other irregularities 194

2B) Instruments which are of relevance to the fight against Organized Crime

- Council Directive of 19 December 1997,
concerning mutual assistance by the competent authorities of the
Member States in the field of direct taxation 198
- Council Decision of 24 July 1995,
accepting Resolution N° 49 on short-term measures to ensure the
security and the efficient functioning of the TIR transit regime 204
- Council Regulation of 23 May 1985,
on the reinforcement of supervision of the application of
Community rules on fruit and vegetables 207
- Council Regulation of 21 December 1989,
on scrutiny by Member States of transactions forming part of
the system of financing by the Guarantee Section of the
European Agricultural Guidance and Guarantee Fund and
repealing Directive 77/435/EEC 209
- Council Regulation of 19 June 1989,
laying down general rules on controls in the wine sector 215

-	Council Regulation of 4 March 1991, concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) N° 283/72	224
-	Council Regulation of 22 June 1995, on measures to be taken with regard to certain beneficiaries of operations financed by Guarantee Section of the EAGGF	229
-	Council Regulation of 27 November 1992, establishing an integrated administration and control system for certain Community aid schemes	232
-	Council Regulation of 9 December 1992, on the export of cultural goods	237
-	Council Regulation of 1 February 1993, on the supervision and control of shipments of waste within, into and out of the European Community	242
-	Council Directive of 14 June 1993, coordinating procedures for the award of public supply contacts . . .	270
-	Council Directive of 14 June 1993, conc. the coordination of procedures for the award of public works contracts	323
-	Council Directive of 18 June 1992, relating to the coordination of procedures for the award of public service contracts	353
-	Council Directive of 18 June 1991, on control of the acquisition and possession of weapons	377
-	Council Directive of 15 March 1993, on the return of cultural objects unlawfully removed from the territory of a Member State	385

VOLUME III

2) FIRST PILLAR INSTRUMENTS (continued)

2C) Instruments which may be of relevance to the fight against Organized Crime

-	Council Regulation of 19 December 1994, setting up a Community regime for the control of exports of dual-use goods	391
-	Council Regulation of 8 February 1993, on the establishment of a European Monitoring Centre for Drugs and Drug Addiction	398

-	Commission Regulation of 19 October 1976, conc. the application of the provisions on Euratom safeguards	406
-	Council Regulation of 22 December 1994, laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods	463
-	Council Directive of 13 November 1989, coordinating regulations on insider dealing	469
-	Council Decision of 20 June 1991, on the adoption of a programme of Community action on the subject of the vocational training of customs officials (MATTHAEUS programme)	472
-	Council Directive of 19 June 1995, conc. the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)	478
-	Council Directive of 21 May 1992, on the conservation of natural habitats and of wild fauna and flora	497
-	Council Directive of 17 December 1973, on the approximation of the laws of the Member States relating to devices to prevent the unauthorized use of motor vehicles	541
-	Commission Directive of 8 November 1995, adapting to technical progress Council Directive 74/61/EEC relating to devices to prevent the unauthorized use of motor vehicles	549
-	Council Directive of 5 April 1993, on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses	593
-	Council Directive of 16 July 1985, supplementing Directive 81/602/EEC conc. the prohibition of certain substances having a hormonal action and of any substances having a thyrostatic action	609

**COUNCIL
OF THE
EUROPEAN UNION**

GENERAL SECRETARIAT

DG H
Justice and Home Affairs



1. EC/EU INSTRUMENTS AND OTHER TEXTS

COUNCIL ACT

of 27 September 1996

drawing up the Convention relating to extradition between the Member States of the European Union

(96/C 313/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the improvement of extradition between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

DECIDES that the Convention, including the Annex thereto, the text of which is appended hereto and which

is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, 27 September 1996.

*For the Council**The President*

M. LOWRY

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation for the achievement of these objectives,

STRESSING that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly in so far as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

BEARING IN MIND that by Act of 10 March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

TAKING ACCOUNT of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

CONSIDERING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

HAVE AGREED AS FOLLOWS:

*Article 1***General provisions**

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

- of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the 'European Convention on Extradition'),
- the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the 'European Convention on the Suppression of Terrorism'),
- the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in

relations between the Member States which are party to that Convention, and

- the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the 'Benelux Treaty') in relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

*Article 2***Extraditable offences**

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2 (2) of the European Convention on Extradition and Article 2 (2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

*Article 3***Conspiracy and association to commit offences**

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

(a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

or

(b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the

conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2) (b) of the European Convention on Extradition or in Article 11 (2) (b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

*Article 4***Order for deprivation of liberty in a place other than a penitentiary institution**

1

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12 (2) (a) of the European Convention on Extradition or Article 11 (2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

*Article 5***Political offences**

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 18 (2), declare that it will apply paragraph 1 only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

and

(b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3 (4) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. The provisions of Article 3 (2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.

4. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

Article 6

Fiscal offences

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.

2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

Extradition of nationals

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.

2. When giving the notification referred to in Article 18 (2), any Member State may declare that it will not grant extradition of its nationals or will authorize it only under certain specified conditions.

3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However,

such reservations may be renewed for successive periods of the same duration.

Twelve months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

Article 8

Lapse of time

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

Article 9

Amnesty

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

Article 10

Offences other than those upon which the request for extradition is based

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

(a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

(b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;

(c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty;

(d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1 (d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1 (d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6 (3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6 (3).

Article 11

Presumption of consent of the requested Member State

Each Member State, when giving the notification referred to in Article 18 (2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14 (1) (a) of the European Convention on Extradition and Article 13 (1) (a) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10 (1) still applies.

Article 12

Re-extradition to another Member State

1. Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18 (2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union⁽¹⁾ provides otherwise or where the person concerned consents to be re-extradited to another Member State.

Article 13

Central authority and transmission of documents by facsimile

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18 (2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

⁽¹⁾ OJ No C 78, 30. 3. 1995, p. 1.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

Article 14

Supplementary information

When giving the notification referred to in Article 18 (2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorized to communicate and receive such supplementary information.

Article 15

Authentication

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

Article 16

Transit

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

- (a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit *vis-à-vis* the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited,
 - the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment,
 - the nature and the legal description of the offence,
 - a description of the circumstances in which the offence was committed, including the date and place;
- (b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;
- (c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);
- (d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

Article 17

Reservations

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

Article 18

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of

the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

Article 19

Accession of new Member States

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18 (4) shall apply to acceding Member States.

Article 20

Depositary

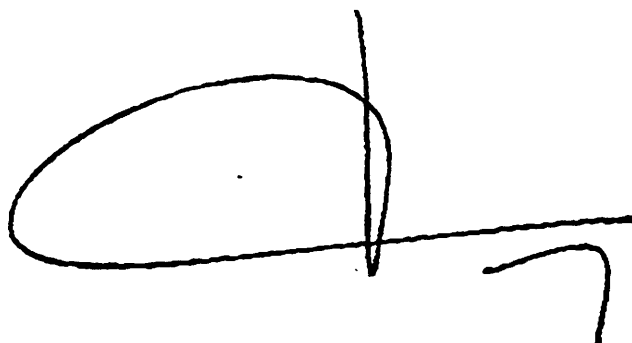
1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

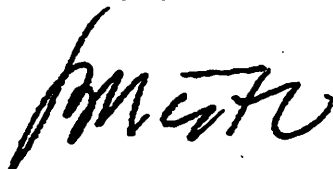
In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to each of the Member States.

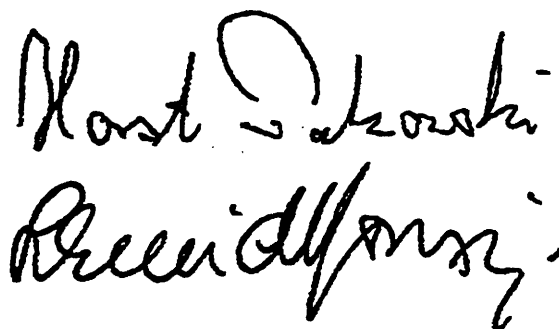
Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark



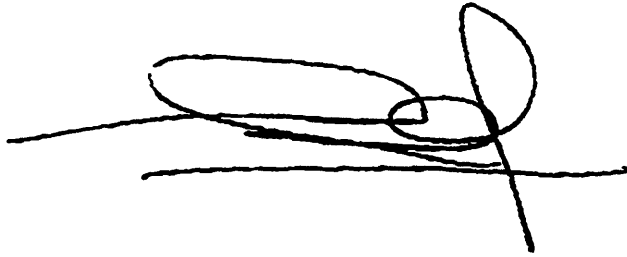
Für die Regierung der Bundesrepublik Deutschland



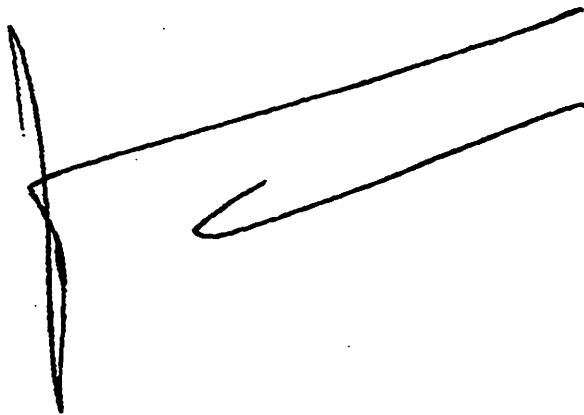
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España




Pour le gouvernement de la République française



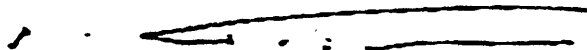
Thar ceann Rialtas na hÉireann
For the Government of Ireland



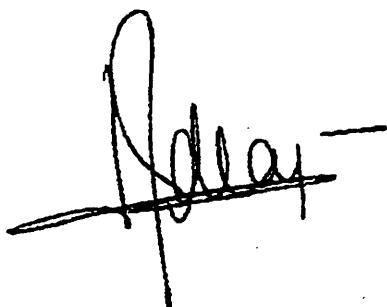
Per il Governo della Repubblica italiana



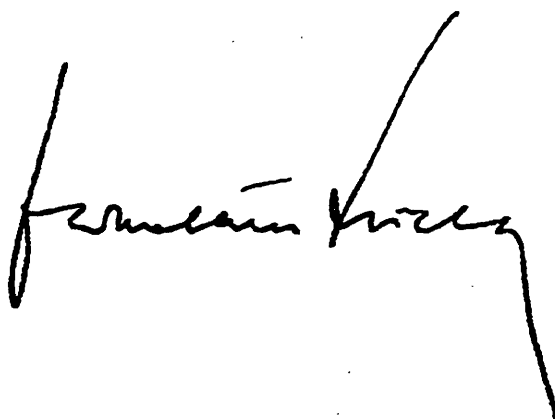
Pour le gouvernement du Grand-Duché de Luxembourg



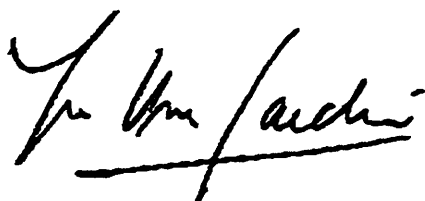
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



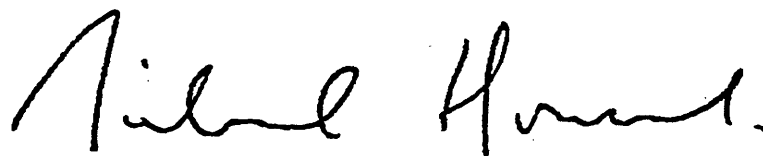
Suomen hallituksen puolesta
På finska regeringens vägnar



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



ANNEX

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognized by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28 September 1954 and by the Protocol relating to the Status of Refugees of 31 January 1967.

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that — as indicated during their negotiations on accession to the Schengen agreements — they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6 (1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

Declaration on the concept of 'nationals'

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3 (4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7 (2) of this Convention.

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities in defence of freedom,
- and
- distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

Council declaration on the follow up to the Convention

The Council declares:

- (a) that it considers that there should be a periodic review, on the basis of information supplied by the Member States, of:
- the implementation of this Convention,
 - the functioning of this Convention after its entry into force,
 - the possibility for Member States to amend the reservations entered in the framework of this Convention with a view to easing the conditions for extradition or withdrawing its reservations,
 - the general functioning of extradition procedures between the Member States;
- (b) that it will consider, one year after entry into force of this Convention, whether jurisdiction should be given to the Court of Justice of the European Communities.
-

COUNCIL ACT

of 26 July 1995

drawing up the Convention on the protection of the European Communities' financial interests

(95/C 316/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the combating of fraud affecting the European Communities' financial interests as a matter of common interest coming under the cooperating provided for in Title VI of the Treaty;

Whereas, in order to combat such fraud with the utmost vigour, it is necessary to draw up a first agreement, to be supplemented shortly afterwards by another legal instrument, in such a way as to improve the effectiveness of protection under criminal law of the European Communities' financial interests;

HAVING DECIDED that the Convention, the text of which is given in the Annex and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 July 1995

*For the Council**The President*

J. A. BELLOCH JULBE

ANNEX

CONVENTION

Drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 July 1995;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

NOTING that fraud affecting Community revenue and expenditure in many cases is not confined to a single country and is often committed by organized criminal networks;

CONVINCED that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition;

CONVINCED of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty which can give rise to extradition;

RECOGNIZING that businesses play an important role in the areas financed by the European Communities and that those with decision-making powers in business should not escape criminal responsibility in appropriate circumstances;

DETERMINED to combat together fraud affecting the European Communities' financial interests by undertaking obligations concerning jurisdiction, extradition, and mutual cooperation,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

— non-disclosure of information in violation of a specific obligation, with the same effect,

— the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect.

2. Subject to Article 2 (2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

3. Subject to Article 2 (2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1.

4. The intentional nature of an act or omission as referred to in paragraphs 1 and 3 may be inferred from objective, factual circumstances.

Article 2

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding ECU 50 000.

2. However in cases of minor fraud involving a total amount of less than ECU 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2.

Article 3

Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the

principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1, by a person under their authority acting on behalf of the business.

Article 4

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Article 1 and 2 (1) when:

- fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory,
- a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State,
- the offender is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred.

2. Each Member State may declare, when giving the notification referred to in Article 11 (2), that it will not apply the rule laid down in the third indent of paragraph 1 of this Article.

Article 5

Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Articles 1 and 2 (1), when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State a criminal offence involving the conduct described in Articles 1 and 2 (1), and it does not extradite that person to that other Member State solely on the ground of his or her nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. A Member State may not refuse extradition in the event of fraud affecting the European Communities'

financial interests for the sole reason that it concerns a tax or customs duty offence.

4. For the purposes of this Article, a Member State's own nationals shall be construed in accordance with any declaration made by it under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of the Article.

Article 6

Cooperation

1. If a fraud as defined in Article 1 constitutes a criminal offence and concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

Article 7

Ne bis in idem

1. Member States shall apply in their national criminal laws the 'ne bis in idem' rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 11 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

- (a) if the facts which were the subject of the judgment rendered abroad took place on its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly on the territory of the Member State where the judgment was rendered;
- (b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgment rendered abroad were committed by an official of the Member State contrary to the duties of his office.

3. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

4. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of Article 1 or 10 of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

Article 9

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 10

Transmission

1. Member States shall transmit to the Commission of the European Communities the text of the provisions transposing into their domestic law the obligations imposed on them under the provisions of this Convention.

2. For the purposes of implementing this Convention, the High Contracting Parties shall determine, within the Council of the European Union, the information to be communicated or exchanged between the Member States or between the Member States and the Commission, and also the arrangements for doing so.

Article 11

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their constitutional requirements for adopting this Convention.
3. This Convention shall enter into force 90 days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

Article 12

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

Article 13

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Til bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el veintiseis de julio de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, gaélica, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles den seksogtyvende juli nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechsundzwanzigsten Juli neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Ιουλίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil, an séú lá is fiche de Iúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zesentwintigste juli negentienhonderd vijfennegentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

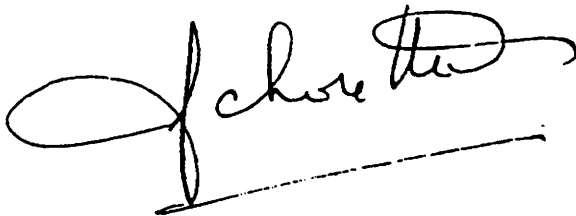
Tehty Brysselissä kahdentenkymmenentenäkuudentena päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Utfärdad i Bryssel den tjugosjätte juli nittonhundranittiofem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

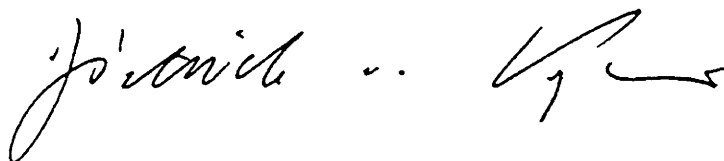
Für die Regierung des Königreichs Belgien



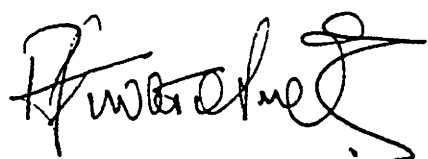
For regeringen for Kongeriget Danmark



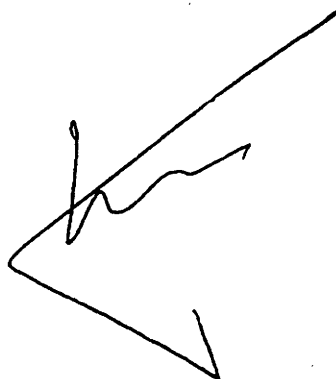
Für die Regierung der Bundesrepublik Deutschland



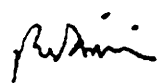
Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



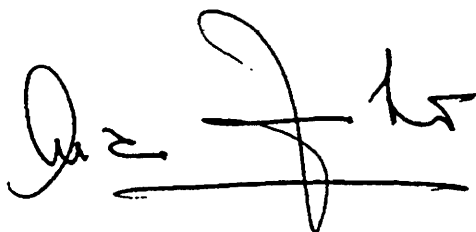
Pour le gouvernement de la République française



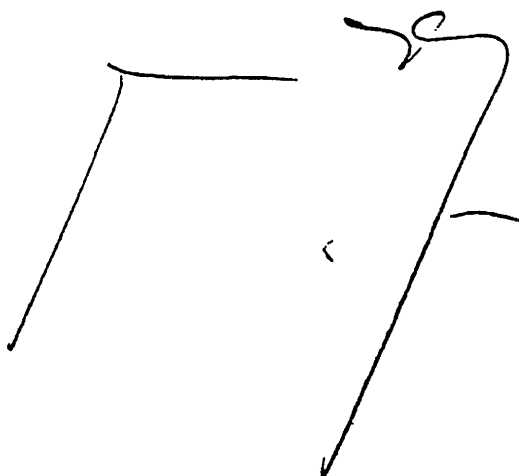
Thar ceann Rialtas na hÉireann
For the Government of Ireland



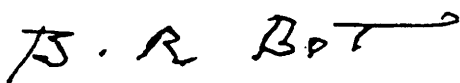
Per il governo della Repubblica italiana



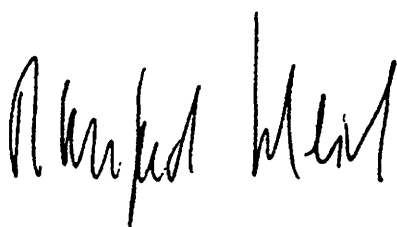
Pour le gouvernement du grand-duché de Luxembourg



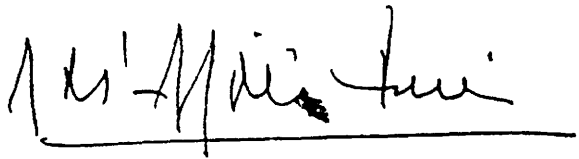
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



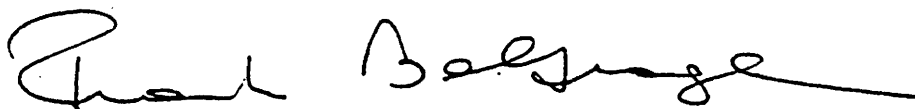
Pelo Governo da República Portuguesa



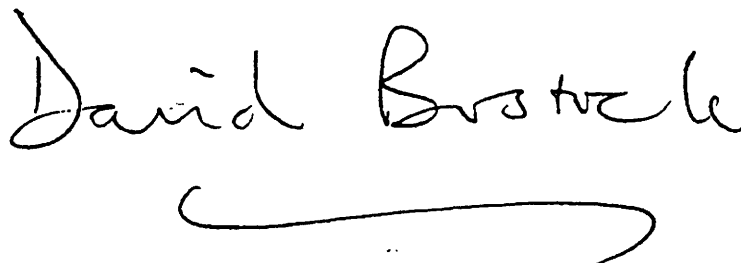
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



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

COUNCIL ACT

of 27 September 1996

drawing up a Protocol to the Convention on the protection of the European Communities' financial interests

(96/C 313/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the combating of crime damaging the European Communities' financial interests as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

Whereas by its Act of 26 July 1995 the Council drew up, as a first agreement, the Convention on the protection of the European Communities' financial interests which is intended more specifically to combat fraud that damages those interests;

Whereas, as a second stage, this Convention needs to be supplemented by a protocol directed in particular at acts

of corruption that involve national and Community officials and damage or are likely to damage the European Communities' financial interests;

DECIDES that the Protocol, the text of which is set out in the Annex hereto and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 27 September 1996.

For the Council

{ The President

M. LOWRY

ANNEX

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 for combating fraud affecting Community revenue and expenditure;

AWARE that the financial interests of the European Communities may be damaged or threatened by other criminal offences, particularly acts of corruption by or against national and Community officials, responsible for the collection, management or disbursement of Community funds under their control;

CONSIDERING that people of different nationalities, employed by different public agencies or bodies, may be involved in such corruption and that, in the interests of effective action against such corruption with international ramifications, it is important for their reprehensible nature to be perceived in a similar manner under Member States' criminal laws;

NOTING that several Member States' criminal law on crime linked to the exercise of public duties in general and concerning corruption in particular covers only acts committed by or against their national officials and does not cover, or covers only in exceptional cases, conduct involving Community officials or officials of other Member States;

CONVINCED of the need for national law to be adapted where it does not penalize acts of corruption that damage or are likely to damage the financial interests of the European Communities involving Community officials or officials of other Member States;

CONVINCED also that such adaptation of national law should not be confined, in respect of Community officials, to acts of active or passive corruption, but should be extended to other crimes affecting or likely to affect the revenue or expenditure of the European Communities, including crimes committed by or against persons in whom the highest responsibilities are vested;

CONSIDERING that appropriate rules should also be laid down on jurisdiction and mutual cooperation, without prejudice to the legal conditions under which they are to apply in specific cases, including waiver of immunity where appropriate;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to the criminal acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

Definitions

For the purposes of this Protocol:

1. (a) 'official' shall mean any 'Community' or 'national' official, including any national official of another Member State;

(b) the term 'Community official' shall mean:

— any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,

— any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

(c) the term 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State the latter shall not be bound to apply the definition of 'national official' except in so far as that definition is compatible with its national law;

2. 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, of 26 July 1995 ⁽¹⁾;

Article 2

Passive corruption

1. For the purposes of this Protocol, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Article 3

Active corruption

1. For the purposes of this Protocol, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Article 4

Assimilation

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences constituting conduct of the type referred to in Article 1 of the Convention committed by its national officials in the exercise of their functions apply similarly in cases where such offences are committed by Community officials in the exercise of their duties.

2. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in paragraph 1 of this Article and in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 49.

European Communities respectively in the exercise of their duties.

3. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 2 of this Article may not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Community are covered by the criminal legislation implementing Articles 2 and 3 and paragraph 1 of this Article.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

5. This Protocol shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

Article 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

Article 6

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with Articles 2, 3 and 4 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its officials;

(c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the institutions referred to in Article 4 (2) who is one of its nationals;

(d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State concerned.

2. Each Member State may declare when giving the notification provided for in Article 9 (2) that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c), and (d).

Article 7

Relation to the Convention

1. Articles 3, 5 (1), (2) and (4) and Article 6 of the Convention shall apply as if there were a reference to the conduct referred to in Articles 2, 3 and 4 of this Protocol.

2. The following provisions of the Convention shall also apply to this Protocol:

- Article 7, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 9 (2) of this Protocol, any declaration within the meaning of Article 7 (2) of the Convention shall also apply to this Protocol,
- Article 9,
- Article 10.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point 1 (c), or Articles 2, 3 and 4, or the third indent of Article 7 (2) of this Protocol which it has proved impossible to settle

through negotiation may be submitted to the Court of Justice of the European Communities.

Article 9

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures required under their respective constitutional rules for adopting this Protocol.

3. This Protocol shall enter into force 90 days after the notification provided for in paragraph 2 has been given by the State which, being a Member of the European Union at the time of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

Article 10

Accession of new Member States

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of 90 days.

Article 11

Reservations

1. No reservation shall be authorized with the exception of those provided for in Article 6 (2).

2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

Article 12

Depositary

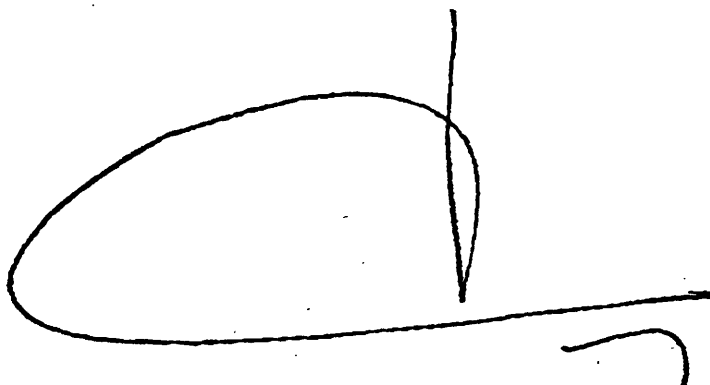
1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

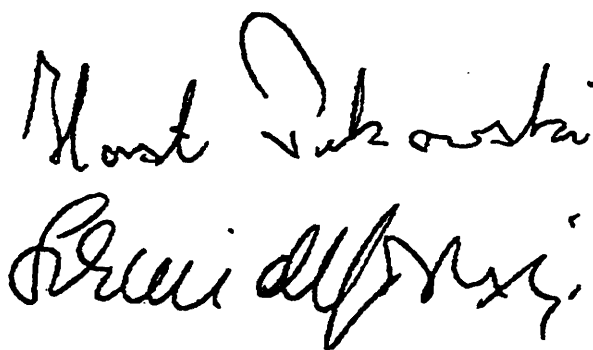
Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



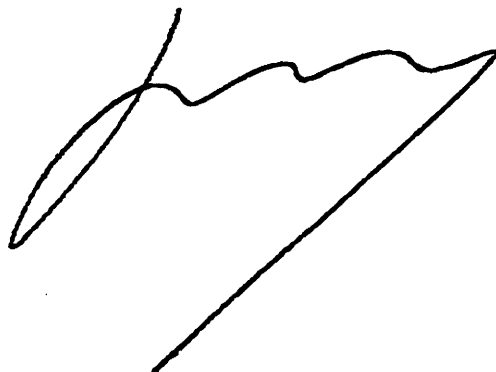
For regeringen for Kongeriget Danmark



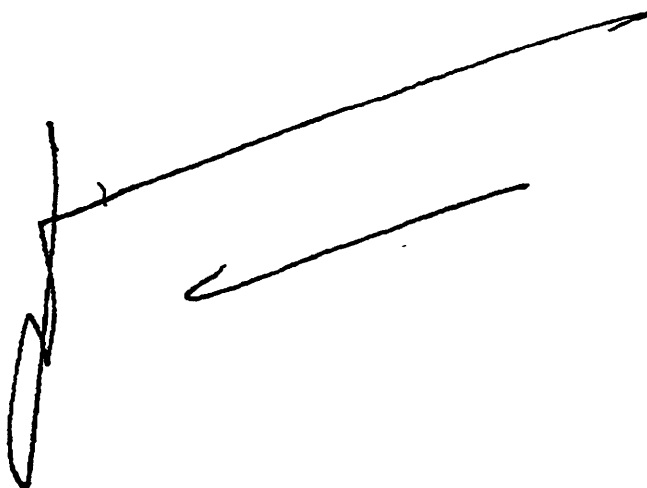
Für die Regierung der Bundesrepublik Deutschland



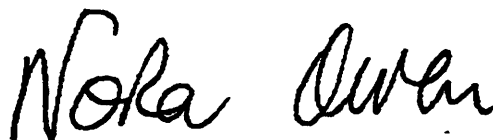
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Pour le gouvernement de la République française



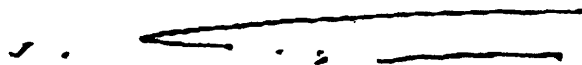
Thar ceann Rialtas na hÉireann
For the Government of Ireland



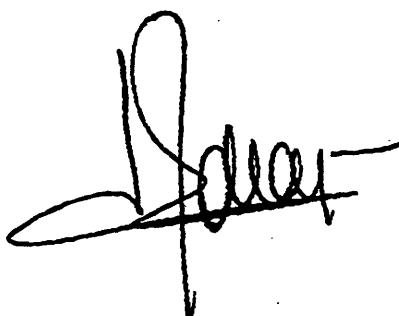
Per il Governo della Repubblica italiana



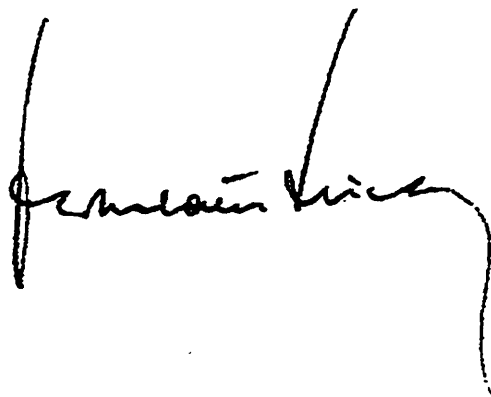
Pour le gouvernement du Grand-Duché de Luxembourg



Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



Suomen hallituksen puolesta
På finska regeringens vägnar



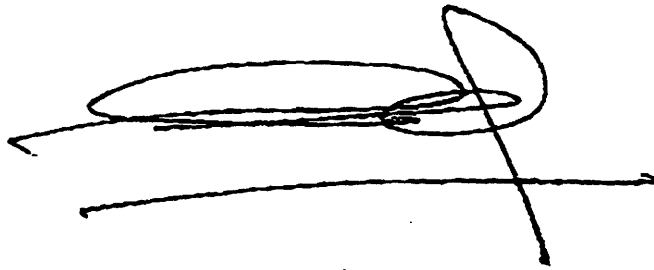
På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



Por el Gobierno del Reino de España

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

ANNEX

Statements made by Member States on the adoption of the Act drawing up the Protocol

1. *Statement by the German delegation:*

'The Government of the Federal Republic of Germany states its intention, as regards the Protocol to the Convention on the protection of the European Communities' financial interests (officials), of reaching, through negotiation, an agreement on the competence of the Court of Justice of the European Communities to give preliminary rulings that is the same as that sought for the Convention on the protection of the European Communities' financial interests and by the same date.'

2. *Joint statement by the Belgian, Luxembourg and Netherlands delegations:*

'The Governments of the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg take the view that, for this Protocol to enter into force, a satisfactory solution to the question of the competence to be conferred on the Court of Justice of the European Communities for the interpretation of the Protocol must be found by the end of November 1996, preferably within the framework of the current discussions on the conferral of competence on the Court of Justice to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests.'

3. *Statement by the Austrian delegation:*

'Austria assumes that the question of the competence of the Court of Justice of the European Communities to give preliminary rulings will be settled favourably in the near future, and it will continue to work to that end.'

I

(Information)

COUNCIL

COUNCIL ACT

of 26 July 1995

drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

(95/C 316/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) and Article K.1 (9) thereof,

Whereas for the purposes of achieving the objectives of the Union the Member States regard the establishment of a European Police Office as a matter of common interest;

Has decided on the drawing up of the Convention, the text of which is annexed, which has been signed today by the Representatives of the Governments of the Member States of the Union;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 July 1995.

For the Council

The President

J. A. BELLOCH JULBE

ANNEX

CONVENTION

based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

THE HIGH CONTRACTING PARTIES to the present Convention, Member States of the European Union,

REFERRING to the Council Act of 26 July 1995;

AWARE of the urgent problems arising from terrorism, unlawful drug trafficking and other serious forms of international crime;

WHEREAS there is a need for progress in solidarity and cooperation between the Member States of the European Union, particularly through an improvement in police cooperation between the Member States;

WHEREAS such progress should enable the protection of security and public order to be further improved;

WHEREAS the establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992;

IN VIEW of the decision of the European Council of 29 October 1993 that Europol should be established in the Netherlands and have its seat in The Hague;

MINDFUL of the common objective of improving police cooperation in the field of terrorism, unlawful drug trafficking and other serious forms of international crime through a constant, confidential and intensive exchange of information between Europol and Member States' national units;

ON THE UNDERSTANDING that the forms of cooperation laid down in this Convention should not affect other forms of bilateral or multilateral cooperation;

CONVINCED that in the field of police cooperation, particular attention must be paid to the protection of the rights of individuals, and in particular to the protection of their personal data;

WHEREAS the activities of Europol under this Convention are without prejudice to the powers of the European Communities; whereas Europol and the Communities have a mutual interest, in the framework of the European Union, in establishing types of cooperation enabling each of them to perform their respective tasks as effectively as possible,

HAVE AGREED AS FOLLOWS:

CONTENTS

	Page
TITLE I ESTABLISHMENT AND TASKS	5
Article 1 Establishment	5
Article 2 Objective	5
Article 3 Tasks	5
Article 4 National units	6
Article 5 Liaison officers	6
Article 6 Computerized system of collected information	7
TITLE II INFORMATION SYSTEM	7
Article 7 Establishment of the information system	7
Article 8 Content of the information system	8
Article 9 Right of access to the information system	8
TITLE III WORK FILES FOR THE PURPOSES OF ANALYSIS	9
Article 10 Collection, processing and utilization of personal data	9
Article 11 Index system	10
Article 12 Order opening a data file	11
TITLE IV COMMON PROVISIONS ON INFORMATION PROCESSING	11
Article 13 Duty to notify	11
Article 14 Standard of data protection	11
Article 15 Responsibility in data protection matters	12
Article 16 Provisions on drawing up reports	12
Article 17 Rules on the use of data	12
Article 18 Communication of data to third States and third bodies	12
Article 19 Right of access	13
Article 20 Correction and deletion of data	14
Article 21 Time limits for the storage and deletion of data files	15
Article 22 Correction and storage of data in paper files	15
Article 23 National supervisory body	15
Article 24 Joint supervisory body	15
Article 25 Data security	16
TITLE V LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS	17
Article 26 Legal capacity	17
Article 27 Organs of Europol	17
Article 28 Management Board	17
Article 29 Director	18
Article 30 Staff	19
Article 31 Confidentiality	19
Article 32 Obligation of discretion and confidentiality	19
Article 33 Languages	20

	Page
Article 34	Informing the European Parliament 20
Article 35	Budget 20
Article 36	Auditing 21
Article 37	Headquarters agreement 21
TITLE VI	LIABILITY AND LEGAL PROTECTION 22
Article 38	Liability for unauthorized or incorrect data processing 22
Article 39	Other liability 22
Article 40	Settlement of disputes 22
Article 41	Privileges and immunities 22
TITLE VII	FINAL PROVISIONS 23
Article 42	Relations with third States and third bodies 23
Article 43	Amendment of the Convention 23
Article 44	Reservations 23
Article 45	Entry into force of the Convention 23
Article 46	Accession by new Member States 24
Article 47	Depositary 24
Annex referred to in Article 2 30
Declaration 32

TITLE I

ESTABLISHMENT AND TASKS

Article 1

Establishment

1. The Member States of the European Union, hereinafter referred to as 'Member States', hereby establish a European Police Office, hereinafter referred to as 'Europol'.

2. Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article 4.

Article 2

Objective

1. The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article K.1 (9) of the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned.

2. In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.

3. Within two years at the latest following the entry into force of this Convention, Europol shall also deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with such terrorist activities before that period has expired.

The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof. Before

acting, the Council shall instruct the Management Board to prepare its decision and in particular to set out the budgetary and staffing implications for Europol.

3. Europol's competence as regards a form of crime or specific manifestations thereof shall cover both:

(1) illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof;

(2) related criminal offences.

The following shall be regarded as related and shall be taken into account in accordance with the procedures set out in Articles 8 and 10:

— criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol,

— criminal offences committed in order to facilitate or carry out acts within the sphere of competence of Europol,

— criminal offences committed to ensure the impunity of acts within the sphere of competence of Europol.

4. For the purposes of this Convention, 'competent authorities' means all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

5. For the purposes of paragraphs 1 and 2, 'unlawful drug trafficking' means the criminal offences listed in Article 3 (1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

Article 3

Tasks

1. In the framework of its objective pursuant to Article 2 (1), Europol shall have the following principal tasks:

(1) to facilitate the exchange of information between the Member States;

(2) to obtain, collate and analyse information and intelligence;

- (3) to notify the competent authorities of the Member States without delay via the national units referred to in Article 4 of information concerning them and of any connections identified between criminal offences;
- (4) to aid investigations in the Member States by forwarding all relevant information to the national units;
- (5) to maintain a computerized system of collected information containing data in accordance with Articles 8, 10 and 11.

2. In order to improve the cooperation and effectiveness of the competent authorities in the Member States through the national units with a view to fulfilling the objective set out in Article 2 (1), Europol shall furthermore have the following additional tasks:

- (1) to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations;
- (2) to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national level for operational activities;
- (3) to prepare general situation reports.

3. In the context of its objective under Article 2 (1) Europol may, in addition, in accordance with its staffing and the budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through advice and research in the following areas:

- (1) training of members of their competent authorities;
- (2) organization and equipment of those authorities;
- (3) crime prevention methods;
- (4) technical and forensic police methods and investigative procedures.

Article 4

National units

1. Each Member State shall establish or designate a national unit to carry out the tasks listed in this Article.
2. The national unit shall be the only liaison body between Europol and the competent national authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and, in particular the relevant national constitutional requirements.

3. Member States shall take the necessary measures to ensure that the national units are able to fulfil their tasks and, in particular, have access to relevant national data.

4. It shall be the task of the national units to:

- (1) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
- (2) respond to Europol's requests for information, intelligence and advice;
- (3) keep information and intelligence up to date;
- (4) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
- (5) issue requests for advice, information, intelligence and analysis to Europol;
- (6) supply Europol with information for storage in the computerized system;
- (7) ensure compliance with the law in every exchange of information between themselves and Europol.

5. Without prejudice to the exercise of the responsibilities incumbent upon Member States as set out in Article K.2 (2) of the Treaty on European Union, a national unit shall not be obliged in a particular case to supply the information and intelligence provided for in paragraph 4, points 1, 2 and 6 and in Articles 7 and 10 if this would mean:

- (1) harming essential national security interests; or
- (2) jeopardizing the success of a current investigation or the safety of individuals;
- (3) involving information pertaining to organizations or specific intelligence activities in the field of State security.

6. The costs incurred by the national units for communications with Europol shall be borne by the Member States and, apart from the costs of connection, shall not be charged to Europol.

7. The Heads of national units shall meet as necessary to assist Europol by giving advice.

Article 5

Liaison officers

1. Each national unit shall second at least one liaison officer to Europol. The number of liaison officers who may be sent by Member States to Europol shall be laid down by unanimous decision of the Management Board; the decision may be altered at any time by unanimous decision of the Management Board. Except as otherwise stipulated in specific provisions of this Convention, liaison officers shall be subject to the national law of the seconding Member State.

2. The liaison officers shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and in compliance with the provisions applicable to the administration of Europol.

3. Without prejudice to Article 4 (4) and (5), the liaison officers shall, within the framework of the objective laid down in Article 2 (1), assist in the exchange of information between the national units which have seconded them and Europol, in particular by:

- (1) providing Europol with information from the seconding national unit;
- (2) forwarding information from Europol to the seconding national unit; and
- (3) cooperating with the officials of Europol by providing information and giving advice as regards analysis of the information concerning the seconding Member State.

4. At the same time, the liaison officers shall assist in the exchange of information from their national units and the coordination of the resulting measures in accordance with their national law and within the framework of the objective laid down in Article 2 (1).

5. To the extent necessary for the performance of the tasks under paragraph 3 above, the liaison officers shall have the right to consult the various files in accordance with the appropriate provisions specified in the relevant Articles.

6. Article 25 shall apply *mutatis mutandis* to the activity of the liaison officers.

7. Without prejudice to the other provisions of this Convention, the rights and obligations of liaison officers in relation to Europol shall be determined unanimously by the Management Board.

8. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 41 (2).

9. Europol shall provide Member States free of charge with the necessary premises in the Europol building for the activity of their liaison officers. All other costs which arise in connection with seconding liaison officers shall be borne by the seconding Member State; this shall also apply to the costs of equipment for liaison officers, to the extent that the Management Board does not unanimously recommend otherwise in a specific case when drawing up the budget of Europol.

Article 6

Computerized system of collected information

1. Europol shall maintain a computerized system of collected information consisting of the following components:

- (1) an information system as referred to in Article 7 with a restricted and precisely defined content which allows rapid reference to the information available to the Member States and Europol;
- (2) work files as referred to in Article 10 established for variable periods of time for the purposes of analysis and containing comprehensive information; and
- (3) an index system containing certain particulars from the analysis files referred to in point 2, in accordance with the arrangements laid down in Article 11.

2. The computerized system of collected information operated by Europol must under no circumstances be linked to other automated processing systems, except for the automated processing systems of the national units.

TITLE II

INFORMATION SYSTEM

Article 7

Establishment of the information system

1. In order to perform its tasks, Europol shall establish and maintain a computerized information system. The information system, into which Member States, represented by their national units and liaison officers, may directly input data in compliance with their national procedures, and into which Europol may directly input data supplied by third States and third bodies and analysis data, shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials.

Direct access by the national units to the information system in respect of the persons referred to in Article 8 (1), point 2 shall be restricted solely to the details of identity listed in Article 8 (2). If needed for a specific enquiry, the full range of data shall be accessible to them via the liaison officers.

2. Europol shall:

- (1) have the task of ensuring compliance with the provisions governing cooperation on and operation of the information system, and
- (2) be responsible for the proper working of the information system in technical and operational

respects. Europol shall in particular take all necessary measures to ensure that the measures referred to in Articles 21 and 25 regarding the information system are properly implemented.

3. The national unit in each Member State shall be responsible for communication with the information system. It shall, in particular, be responsible for the security measures referred to in Article 25 in respect of the data-processing equipment used within the territory of the Member State in question, for the review in accordance with Article 21 and, in so far as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Convention in other respects.

Article 8

Content of the information system

1. The information system may be used to store, modify and utilize only the data necessary for the performance of Europol's tasks, with the exception of data concerning related criminal offences as referred to in the second subparagraph of Article 2 (3). Data entered shall relate to:

- (1) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence for which Europol is competent under Article 2 or who have been convicted of such an offence;
- (2) persons who there are serious grounds under national law for believing will commit criminal offences for which Europol is competent under Article 2.

2. Personal data as referred to in paragraph 1 may include only the following details:

- (1) surname, maiden name, given names and any alias or assumed name;
- (2) date and place of birth;
- (3) nationality;
- (4) sex; and
- (5) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change.

3. In addition to the data referred to in paragraph 2 and data on Europol or the inputting national unit, the information system may also be used to store, modify and utilize the following details concerning the persons referred to in paragraph 1:

- (1) criminal offences, alleged crimes and when and where they were committed;

(2) means which were or may be used to commit the crimes;

(3) departments handling the case and their filing references;

(4) suspected membership of a criminal organization;

(5) convictions, where they relate to criminal offences for which Europol is competent under Article 2.

These data may also be input when they do not yet contain any references to persons. Where Europol inputs the data itself, as well as giving its filing reference it shall also indicate whether the data were provided by a third party or are the result of its own analyses.

4. Additional information held by Europol or national units concerning the groups of persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

Where the additional information concerns one or more related criminal offences as defined in the second subparagraph of Article 2 (3), the data stored in the information system shall be marked accordingly to enable national units and Europol to exchange information on the related criminal offences.

5. If proceedings against the person concerned are dropped or if that person is acquitted, the data relating to either decision shall be deleted.

Article 9

Right of access to the information system

1. Only national units, liaison officers, and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve it therefrom. Data may be retrieved where this is necessary for the performance of Europol's tasks in a particular case; retrieval shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the retrieving unit, subject to any additional provisions contained in this Convention.

2. Only the unit which entered the data may modify, correct or delete such data. Where a unit has reason to believe that data as referred to in Article 8 (2) are incorrect or wishes to supplement them, it shall immediately inform the inputting unit; the latter shall examine such notification without delay and if necessary modify, supplement, correct or delete the data

immediately. Where the system contains data as referred to in Article 8 (3) concerning a person, any unit may enter additional data as referred to in Article 8 (3). Where there is an obvious contradiction between the data input, the units concerned shall consult each other and reach agreement. Where a unit intends to delete altogether data as referred to in Article 8 (2) which has input on a person and where data as referred to in Article 8 (3) are held on the same person but input by other units, responsibility in terms of data protection legislation pursuant to Article 15 (1) and the right to modify, supplement, correct and delete such data pursuant to Article 8 (2) shall be transferred to the next unit to have entered data as referred to in Article 8 (3) on that person.

The unit intending to delete shall inform the unit to which responsibility in terms of data protection is transferred of its intention.

3. Responsibility for the permissibility of retrieval from, input into and modifications within the information system shall lie with the retrieving, inputting or modifying unit; it must be possible to identify that unit. The communication of information between national units and the competent authorities in the Member States shall be governed by national law.

TITLE III

WORK FILES FOR THE PURPOSES OF ANALYSIS

Article 10

Collection, processing and utilization of personal data

1. Where this is necessary to achieve the objective laid down in Article 2 (1), Europol, in addition to data of a non-personal nature, may store, modify, and utilize in other files data on criminal offences for which Europol is competent under Article 2 (2), including data on the related criminal offences provided for in the second subparagraph of Article 2 (3) which are intended for specific analyses, and concerning:

- (1) persons as referred to in Article 8 (1);
- (2) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;
- (3) persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason for believing that they could be the victims of such an offence;
- (4) contacts and associates, and
- (5) persons who can provide information on the criminal offences under consideration.

The collection, storage and processing of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 with regard to Automatic Processing of Personal Data shall not be permitted unless strictly necessary for the purposes of the file concerned and unless such data supplement other personal data already entered in that file. It shall be prohibited to select a particular group of persons solely on the basis of the data listed in the first sentence of

Article 6 of the Council of Europe Convention of 28 January 1981 in breach of the aforementioned rules with regard to purpose.

The Council, acting unanimously, in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall adopt implementing rules for data files prepared by the Management Board containing additional details, in particular with regard to the categories of personal data referred to in this Article and the provisions concerning the security of the data concerned and the internal supervision of their use.

2. Such files shall be opened for the purposes of analysis defined as the assembly, processing or utilization of data with the aim of helping a criminal investigation. Each analysis project shall entail the establishment of an analysis group closely associating the following participants in accordance with the tasks defined in Article 3 (1) and (2) and Article 5 (3):

- (1) analysts and other Europol officials designated by the Europol Directorate: only analysts shall be authorized to enter data into and retrieve data from the file concerned;
- (2) the liaison officers and/or experts of the Member States supplying the information or concerned by the analysis within the meaning of paragraph 6.

3. At the request of Europol or on their own initiative, national units shall, subject to Article 4 (5), communicate to Europol all the information which it may require for the performance of its tasks under Article 3 (1), point 2. The Member States shall communicate such data only where processing thereof for the purposes of preventing, analysing or combating offences is also authorized by their national law.

Depending on their degree of sensitivity, data from national units may be routed directly and by whatever means may be appropriate to the analysis groups, whether via the liaison officers concerned or not.

4. If, in addition to the data referred to in paragraph 3, it would seem justified for Europol to have other information for the performance of tasks under Article 3 (1), point 2, Europol may request that:

- (1) the European Communities and bodies governed by public law established under the Treaties establishing those Communities;
- (2) other bodies governed by public law established in the framework of the European Union;
- (3) bodies which are based on an agreement between two or more Member States of the European Union;
- (4) third States;
- (5) international organizations and their subordinate bodies governed by public law;
- (6) other bodies governed by public law which are based on an agreement between two or more States; and
- (7) the International Criminal Police Organization,

forward the relevant information to it by whatever means may be appropriate. It may also, under the same conditions and by the same means, accept information provided by those various bodies on their own initiative. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall draw up the rules to be observed by Europol in this respect.

5. In so far as Europol is entitled under other Conventions to gain computerized access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to Article 3 (1), point 2.

6. If an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof, in particular through the communication of reports drawn up by Europol.

If the analysis bears on specific cases not concerning all Member States and has a direct operational aim, representatives of the following Member States shall participate therein:

- (1) Member States which were the source of the information giving rise to the decision to open the analysis file, or those which are directly concerned by that information and Member States subsequently invited by the analysis group to take part in the analysis because they are also becoming concerned;

- (2) Member States which learn from consulting the index system that they need to be informed and assert that need to know under the conditions laid down in paragraph 7.

7. The need to be informed may be claimed by authorized liaison officers. Each Member State shall nominate and authorize a limited number of such liaison officers. It shall forward the list thereof to the Management Board.

A liaison officer shall claim the need to be informed as defined in paragraph 6 by means of a written reasoned statement approved by the authority to which he is subordinate in his Member State and forwarded to all the participants in the analysis. He shall then be automatically associated in the analysis in progress.

If an objection is raised in the analysis group, automatic association shall be deferred until completion of a conciliation procedure, which may comprise three stages as follows:

- (1) the participants in the analysis shall endeavour to reach agreement with the liaison officer claiming the need to be informed; they shall have no more than eight days for that purpose;
- (2) if no agreement is reached, the heads of the national units concerned and the Directorate of Europol shall meet within three days;
- (3) if the disagreement persists, the representatives of the parties concerned on the Management Board shall meet within eight days. If the Member State concerned does not waive its need to be informed, automatic association of that Member State shall be decided by consensus.

8. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof. Any dissemination or operational use of analysis data shall be decided on in consultation with the participants in the analysis. A Member State joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.

Article 11

Index System

1. An index system shall be created by Europol for the data stored on the files referred to in Article 10 (1).
2. The Director, Deputy Directors and duly empowered officials of Europol and liaison officers shall have the

right to consult the index system. The index system shall be such that it is clear to the liaison officer consulting it, from the data being consulted, that the files referred to in Article 6 (1), point 2 and Article 10 (1) contain data concerning the seconding Member State.

Access by liaison officers shall be defined in such a way that it is possible to determine whether or not an item of information is stored, but that it is not possible to establish connections or further conclusions regarding the content of the files.

3. The detailed procedures for the design of the index system shall be defined by the Management Board acting unanimously.

Article 12

Order opening a data file

1. For every computerized data file containing personal data operated by Europol for the purpose of performing its tasks referred to in Article 10, Europol shall specify in an order opening the file, which shall require the approval of the Management Board:

- (1) the file name;
- (2) the purpose of the file;
- (3) the groups of persons on whom data are stored;

(4) the nature of the data to be stored, and any of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 which are strictly necessary;

(5) the type of personal data used to open the file;

(6) the supply or input of the data to be stored;

(7) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;

(8) the time limits for examination and duration of storage;

(9) the method of establishing the audit log.

The joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the plan to order the opening of such a data file and shall receive the dossier so that it may address any comments it deems necessary to the Management Board.

2. If the urgency of the matter is such as to preclude obtaining the approval of the Management Board as required under paragraph 1, the Director, on his own initiative or at the request of the Member States concerned, may be a reasoned decision, order the opening of a data file. At the same time he shall inform the members of the Management Board of his decision. The procedure pursuant to paragraph 1 shall then be set in motion without delay and completed as soon as possible.

TITLE IV

COMMON PROVISIONS ON INFORMATION PROCESSING

Article 13

Duty to notify

Europol shall promptly notify the national units and also their liaison officers if the national units so request, of any information concerning their Member State and of connections identified between criminal offences for which Europol is competent under Article 2. Information and intelligence concerning other serious criminal offences, of which Europol becomes aware in the course of its duties, may also be communicated.

of this Convention to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981, and, in doing so, shall take account of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

2. The communication of personal data provided for in this Convention may not begin until the data protection rules laid down in paragraph 1 above have entered into force on the territory of each of the Member States involved in such communication.

Article 14

Standard of data protection

1. By the time of the entry into force of this Convention at the latest, each Member State shall, under its national legislation, take the necessary measures in relation to the processing of personal data in data files in the framework

3. In the collection, processing and utilization of personal data Europol shall take account of the principles of the Council of Europe Convention of 28 January 1981 and of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

Europol shall also observe the principles in respect of non-automated data held in the form of data files, i. e. any structured set of personal data accessible in accordance with specific criteria.

Article 15

Responsibility in data protection matters

1. Subject to other provisions in this Convention, the responsibility for data stored at Europol, in particular as regards the legality of the collection, the transmission to Europol and the input of data, as well as their accuracy, their up-to-date nature and verification of the storage timelimits, shall lie with:

- (1) the Member State which input or otherwise communicated the data;
- (2) Europol in respect of data communicated to Europol by third parties or which result from analyses conducted by Europol.

2. In addition, subject to other provisions in this Convention, Europol shall be responsible for all data received by Europol and processed by it, whether such data be in the information system referred to in Article 8, in the data files opened for the purposes of analysis referred to in Article 10, or in the index system referred to in Article 11, or in the data files referred to in Article 14 (3).

3. Europol shall store data in such a way that it can be established by which Member State or third party the data were transmitted or whether they are the result of an analysis by Europol.

Article 16

Provisions on the drawing up of reports

On average, Europol shall draw up reports for at least one in ten retrievals of personal data — and for each retrieval made within the information system referred to in Article 7 — in order to check whether they are permissible under law. The data contained in the reports shall only be used for that purpose by Europol and the supervisory bodies referred to in Articles 23 and 24 and shall be deleted after six months, unless the data are further required for ongoing control. The details shall be decided upon by the Management Board following consultation with the joint supervisory body.

Article 17

Rules on the use of data

1. Personal data retrieved from the information system, the index system or data files opened for the purposes of analysis and data communicated by any other

appropriate means, may be transmitted or utilized only by the competent authorities of the Member States in order to prevent and combat crimes falling within the competence of Europol and to combat other serious forms of crime.

The data referred to in the first paragraph shall be utilized in compliance with the law of the Member State responsible for the authorities which utilized the data.

Europol may utilize the data referred to in paragraph 1 only for the performance of its tasks as referred to in Article 3.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body as referred to in Article 10 (4) stipulates particular restrictions on use to which such data is subject in that Member State or by third parties, such restrictions shall also be complied with by the user of the data except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the national competent authorities within the meaning of Article 2 (4). In such cases, the data may only be used after prior consultation of the communicating Member State whose interests and opinions must be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than those referred to in Article 2 of this Convention shall be possible only after prior consultation of the Member State which transmitted the data in so far as the national law of that Member State permits.

Article 18

Communication of data to third States and third bodies

1. Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to third states and third bodies within the meaning of Article 10 (4), where:

- (1) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Europol is competent under Article 2;
- (2) an adequate level of data protection is ensured in that State or that body; and
- (3) this is permissible under the general rules within the meaning of paragraph 2.

2. In accordance with the procedure in Title VI of the Treaty on European Union, and taking into account the circumstances referred to in paragraph 3, the Council, acting unanimously, shall determine the general rules for

the communication of personal data by Europol to the third States and third bodies within the meaning of Article 10 (4). The Management Board shall prepare the Council decision and consult the joint supervisory body referred to in Article 24.

3. The adequacy of the level of data protection afforded by third States and third bodies within the meaning of Article 10 (4) shall be assessed taking into account all the circumstances which play a part in the communication of personal data; in particular, the following shall be taken into account:

- (1) the nature of the data;
- (2) the purpose for which the data is intended;
- (3) the duration of the intended processing; and
- (4) the general or specific provisions applying to the third States and third bodies within the meaning of Article 10 (4).

4. If the data referred to have been communicated to Europol by a Member State, Europol may communicate them to third States and third bodies only with the Member State's consent. The Member State may give its prior consent, in general or other terms, to such communication; that consent may be withdrawn at any time.

If the data have not been communicated by a Member State, Europol shall satisfy itself that communication of those data is not liable to:

- (1) obstruct the proper performance of the tasks falling within a Member State's sphere of competence;
- (2) jeopardize the security and public order of a Member State or otherwise prejudice its general welfare.

5. Europol shall be responsible for the legality of the authorizing communication. Europol shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorized only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated. This shall not apply to the communication of personal data required for a Europol inquiry.

6. Where the communication provided for in paragraph 1 concerns information subject to the requirement of confidentiality, it shall be permissible only in so far as an agreement on confidentiality exists between Europol and the recipient.

Article 19

Right of access

1. Any individual wishing to exercise his right of access to data relating to him which have been stored within Europol or to have such data checked may make a request to that effect free of charge to the national competent authority in any Member State he wishes, and

that authority shall refer it to Europol without delay and inform the enquirer that Europol will reply to him directly.

2. The request must be fully dealt with by Europol within three months following its receipt by the national competent authority of the Member State concerned.

3. The right of any individual to have access to data relating to him or to have such data checked shall be exercised in accordance with the law of the Member State where the right is claimed, taking into account the following provisions:

Where the law of the Member State applied to provides for a communication concerning data, such communication shall be refused if such refusal is necessary to:

- (1) enable Europol to fulfil its duties properly;
- (2) protect security and public order in the Member States or to prevent crime;
- (3) protect the rights and freedoms of third parties,

considerations which it follows cannot be overridden by the interests of the person concerned by the communication of the information.

4. The right to communication of information in accordance with paragraph 3 shall be exercised according to the following procedures:

- (1) as regards data entered within the information system defined in Article 8, a decision to communicate such data cannot be taken unless the Member State which entered the data and the Member States directly concerned by communication of such data have first had the opportunity of stating their position, which may extend to a refusal to communicate the data. The data which may be communicated and the arrangements for communicating such data shall be indicated by the Member State which entered the data;
- (2) as regards data entered within the information system by Europol, the Member States directly concerned by communication of such data must first have had the opportunity of stating their position, which may extend to a refusal to communicate the data;
- (3) as regards data entered within the work files for the purposes of analysis as defined in Article 10, the communication of such data shall be conditional upon the consensus of Europol and the Member States participating in the analysis, within the meaning of Article 10 (2), and the consensus of the Member State(s) directly concerned by the communication of such data.

Should one or more Member State or Europol have objected to a communication concerning data, Europol shall notify the person concerned that it has carried out

the checks, without giving any information which might reveal to him whether or not he is known.

5. The right to the checking of information shall be exercised in accordance with the following procedures:

Where the national law applicable makes no provision for a communication concerning data or in the case of a simple request for a check, Europol, in close cooperation with the national authorities concerned, shall carry out the checks and notify the enquirer that it has done so without giving any information which might reveal to him whether or not he is known.

6. In its reply to a request for a check or for access to data, Europol shall inform the enquirer that he may appeal to the joint supervisory body if he is not satisfied with the decision. The latter may also refer the matter to the joint supervisory body if there has been no response to his request within the timelimits laid down in its Article.

7. If the enquirer lodges and appeal to the joint supervisory body provided for in Article 24, the appeal shall be examined by that body.

Where the appeal relates to a communication concerning data entered by a Member State in the information system, the joint supervisory body shall take its decision in accordance with the national law of the Member State in which the application was made. The joint supervisory body shall first consult the national supervisory body or the competent judicial body in the Member State which was the source of the data. Either national body shall make the necessary checks, in particular to establish whether the decision to refuse was taken in accordance with paragraphs 3 and 4 (1) of this Article. On confirmation of that, the decision, which may extend to a refusal to communicate any information, shall be taken by the joint supervisory body in close cooperation with the national supervisory body or competent judicial body.

Where the appeal relates to a communication concerning data entered by Europol in the information system or data stored in the work files for the purposes of analysis, the joint supervisory body, in the event of persistent objections from Europol or a Member State, may not overrule such objections unless by a majority of two-thirds of its members after having heard Europol or the Member State concerned. If there is no such majority, the joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by a Member State in the information system, the joint

supervisory body shall ensure that the necessary checks have been carried out correctly in close cooperation with the national supervisory body of the Member State which entered the data. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by Europol in the information system or of data stored in the work files for the purposes of analysis, the joint supervisory body shall ensure that the necessary checks have been carried out by Europol. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

8. The above provisions shall apply *mutatis mutandis* to non-automated data held by Europol in the form of data files, i. e. any structured set of personal data accessible in accordance with specific criteria.

Article 20

Correction and deletion of data

1. If it emerges that data held by Europol which have been communicated to it by third States or third bodies or which are the result of its own analyses are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data.

2. If data that are incorrect or that contravene this Convention have been passed directly to Europol by Member States, they shall be obliged to correct or delete them in collaboration with Europol. If incorrect data are transmitted by another appropriate means or if the errors in the data supplied by Member States are due to faulty transmission or have been transmitted in breach of the provisions of this Convention or if they result from their being entered, taken over or stored in an incorrect manner or in breach of the provisions of this Convention by Europol, Europol shall be obliged to correct them or delete them in collaboration with the Member States concerned.

3. In the cases referred to in paragraphs 1 and 2, the Member States which are recipients of the data shall be notified forthwith. The recipient Member States shall also correct or delete those data.

4. Any person shall have the right to ask Europol to correct or delete incorrect data concerning him.

Europol shall inform the enquirer that data concerning him have been corrected or deleted. If the enquirer is not satisfied with Europol's reply or if he has received no

reply within three months, he may refer the matter to the joint supervisory body.

Article 21

Time limits for the storage and deletion of data files

1. Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

2. During the review, the units referred to in the third and fourth sentences of paragraph 1 above may decide on continued storage of data until the next review if this is still necessary for the performance of Europol's tasks. If no decision is taken on the continued storage of data, those data shall automatically be deleted.

3. Storage of personal data relating to individuals as referred to in point 1 of the first subparagraph of Article 10 (1) may not exceed a total of three years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs. The need for continued storage shall be reviewed annually and the review documented.

4. Where a Member State deletes from its national data files data communicated to Europol which are stored in other Europol data files, it shall inform Europol accordingly. In such cases, Europol shall delete the data unless it has further interest in them, based on intelligence that is more extensive than that possessed by the communicating Member State. Europol shall inform the Member State concerned of the continued storage of such data.

5. Deletion shall not occur if it would damage the interests of the data subject which require protection. In such cases, the data may be used only with the consent of the data subject.

Article 22

Correction and storage of data in paper files

1. If it emerges that an entire paper file or data included in that file held by Europol are no longer necessary for the performance of Europol's tasks, or if the information concerned is overall in contravention of this Convention, the paper file or data concerned shall be destroyed. The

paper file or data concerned must be marked as not for use until they have been effectively destroyed.

Destruction may not take place if there are grounds for assuming that the legitimate interests of the data subject would otherwise be prejudiced. In such cases, the paper file must bear the same note prohibiting all use.

2. If it emerges that data contained in the Europol paper files are incorrect, Europol shall be obliged to correct them.

3. Any person covered by a Europol paper file may claim the right *vis-à-vis* Europol to correction or destruction of paper files or the inclusion of a note. Article 20 (4) and Article 24 (2) and (7) shall be applicable.

Article 23

National supervisory body

1. Each Member State shall designate a national supervisory body, the task of which shall be to monitor independently, in accordance with its respective national law, the permissibility of the input, the retrieval and any communication to Europol of personal data by the Member State concerned and to examine whether this violates the rights of the data subject. For this purpose, the supervisory body shall have access at the national unit or at the liaison officers' premises to the data entered by the Member State in the information system and in the index system in accordance with the relevant national procedures.

For their supervisory purposes, national supervisory bodies shall have access to the offices and documents of their respective liaison officers at Europol.

In addition, in accordance with the relevant national procedures, the national supervisory bodies shall supervise the activities of national units under Article 4 (4) and the activities of liaison officers under Article 5 (3), points 1 and 3 and Article 5 (4) and (5), in so far as such activities are of relevance to the protection of personal data.

2. Each individual shall have the right to request the national supervisory body to ensure that the entry or communication of data concerning him to Europol in any form and the consultation of the data by the Member State concerned are lawful.

This right shall be exercised in accordance with the national law of the Member State to the national supervisory body of which the request is made.

Article 24

Joint supervisory body

1. An independent joint supervisory body shall be set up, which shall have the task of reviewing, in accordance

with this convention, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. In addition, the joint supervisory body shall monitor the permissibility of the transmission of data originating from Europol. The joint supervisory body shall be composed of not more than two members or representatives (where appropriate assisted by alternates) of each of the national supervisory bodies guaranteed to be independent and having the necessary abilities, and appointed for five years by each Member State. Each delegation shall be entitled to one vote.

The joint supervisory body shall appoint a chairman from among its members.

In the performance of their duties, the members of the joint supervisory body shall not receive instructions from any other body.

2. Europol must assist the joint supervisory body in the performance of the latter's tasks. In doing so, it shall in particular:

- (1) supply the information it requests, give it access to all documents and paper files as well as access to the data stored in the system; and
- (2) allow it free access at any time to all its premises;
- (3) carry out the joint supervisory body's decisions on appeals in accordance with the provisions of Articles 19 (7) and 20 (4).

3. The joint supervisory body shall also be competent for the examination of questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and utilization of personal data, for the examination of questions relating to checks carried out independently by the national supervisory bodies of the Member States or relating to the exercise of the right to information, as well as for drawing up harmonized proposals for common solutions to existing problems.

4. Each individual shall have the right to request the joint supervisory body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate.

5. If the joint supervisory body notes any violations of the provisions of this Convention in the storage, processing or utilization of personal data, it shall make any complaints it deems necessary to the Director of Europol and shall request him to reply within a time limit to be determined by it. The Director shall keep the

Management Board informed of the entire procedure. In the event of any difficulty, the joint supervisory body shall refer the matter to the Management Board.

6. The joint supervisory body shall draw up activity reports at regular intervals. In accordance with the procedure laid down in Title VI of the Treaty on European Union, these shall be forwarded to the Council; the Management Board shall first have the opportunity to deliver an opinion, which shall be attached to the reports.

The joint supervisory body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

7. The joint supervisory body shall unanimously adopt its rules of procedure, which shall be submitted for the unanimous approval of the Council. It shall set up internally a committee comprising one qualified representative from each Member State with entitlement to a vote. The committee shall have the task of examining the appeals provided for in Articles 19 (7) and 20 (4) by all appropriate means. Should they so request the parties, assisted by their advisers if they so wish, shall be heard by the committee. The decisions taken in this context shall be final as regards all the parties concerned.

8. It may also set up one or more other committees.

9. It shall be consulted on that part of the budget which concerns it. Its opinion shall be annexed to the draft budget in question.

10. It shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedures.

Article 25

Data security

1. Europol shall take the necessary technical and organizational measures to ensure the implementation of this Convention. Measures shall only be necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection.

2. In respect of automated data processing at Europol each Member State and Europol shall implement measures designed to:

- (1) deny unauthorized persons access to data processing equipment used for processing personal data (equipment access control);

- (2) prevent the unauthorized reading, copying, modification or removal of data media (data media control);
- (3) prevent the unauthorized input of data and the unauthorized inspection, modification or deletion of stored personal data (storage control);
- (4) prevent the use of automated data processing systems by unauthorized persons using data communication equipment (user control);
- (5) ensure that persons authorized to use an automated data processing system only have access to the data covered by their access authorization (data access control);
- (6) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (7) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data or processing systems and when and by whom the data were input (input control);
- (8) prevent unauthorized reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (9) ensure that installed systems may, in case of interruption, be immediately restored (recovery);
- (10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

TITLE V

LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS

*Article 26***Legal capacity**

1. Europol shall have legal personality.
2. Europol shall enjoy in each Member State the most extensive legal and contractual capacity available to legal persons under that State's law. Europol may in particular acquire and dispose of movable or immovable property and be a party to legal proceedings.
3. Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands and to conclude with third States and third bodies within the meaning of Article 10 (4) the necessary confidentiality agreements pursuant to Article 18 (6) as well as other arrangements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.

*Article 27***Organs of Europol**

The organs of Europol shall be:

- (1) the Management Board;
- (2) the Director;
- (3) the Financial Controller;
- (4) the Financial Committee.

*Article 28***Management Board**

1. Europol shall have a Management Board. The Management Board:
 - (1) shall take part in the extension of Europol's objective (Article 2 (2));
 - (2) shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);
 - (3) shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);
 - (4) shall prepare the implementing rules governing data files (Article 10);
 - (5) shall take part in the adoption of rules governing Europol's relations with third States and third bodies with the meaning of Article 10 (4) (Articles 10, 18 and 42)
 - (6) shall unanimously decide on details concerning the design of the index system (Article 11);
 - (7) shall approve by a two-thirds majority orders opening data files (Article 12);
 - (8) may deliver opinions on the comments and reports of the joint supervisory body (Article 24);

- (9) shall examine problems which the joint supervisory body brings to its attention (Article 24 (5));
- (10) shall decide on the details of the procedure for checking the legal character of retrievals in the information system (Article 16);
- (11) shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);
- (12) shall oversee the proper performance of the Director's duties (Articles 7 and 29);
- (13) shall take part in the adoption of staff regulations (Article 30);
- (14) shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);
- (15) shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);
- (16) shall adopt unanimously the five-year financing plan (Article 35);
- (17) shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);
- (18) shall take part in the adoption of the financial regulation (Article 35);
- (19) shall unanimously approve the conclusion of the headquarters agreement (Article 37);
- (20) shall adopt unanimously the rules for the security clearance of Europol officials;
- (21) shall act by a two-thirds majority in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorized or incorrect processing of data (Article 38);
- (22) shall take part in any amendment of this Convention (Article 43);
- (23) shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention.
2. The Management Board shall be composed of one representative of each Member State. Each member of the Management Board shall have one vote.
3. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.
4. The Commission of the European Communities shall be invited to attend meetings of the Management Board with non-voting status. However, the Management Board may decide to meet without the Commission representative.
5. The members or alternate members shall be entitled to be accompanied and advised by experts from their respective Member States at meetings of the Management Board.
6. The Management Board shall be chaired by the representative of the Member State holding the Presidency of the Council.
7. The Management Board shall unanimously adopt its rules of procedure.
8. Abstentions shall not prevent the Management Board from adopting decisions which must be taken unanimously.
9. The Management Board shall meet at least twice a year.
10. The Management Board shall adopt unanimously each year:
- (1) a general report on Europol's activities during the previous year;
 - (2) a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol.
- These reports shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 29

Director

1. Europol shall be headed by a Director appointed by the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union after obtaining the opinion of the Management Board, for a four-year period renewable once.

2. The Director shall be assisted by a number of Deputy Directors as determined by the Council and appointed for a four-year period renewable once, in accordance with the procedure laid down in paragraph 1. Their tasks shall be defined in greater detail by the Director.

3. The Director shall be responsible for:

- (1) performance of the tasks assigned to Europol;
- (2) day-to-day administration;
- (3) personnel management;
- (4) proper preparation and implementation of the Management Board's decisions;

- (5) preparing the draft budget, draft establishment plan and draft five-year financing plan and implementing Europol's budget;
- (6) all other tasks assigned to him in this Convention or by the Management Board.
4. The Director shall be accountable to the Management Board in respect of the performance of his duties. He shall attend its meetings.
5. The Director shall be Europol's legal representative.
6. The Director and the Deputy Directors may be dismissed by a decision of the Council, to be taken in accordance with the procedure laid down in Title VI of the Treaty on European Union by a two-thirds majority of the Member States, after obtaining the opinion of the Management Board.
7. Notwithstanding paragraphs 1 and 2, the first term of office after entry into force of this Convention shall be five years for the Director, four years for his immediate Deputy and three years for the second Deputy Director.

Article 30

Staff

1. The Director, Deputy Directors and the employees of Europol shall be guided in their actions by the objectives and tasks of Europol and shall not take or seek orders from any government, authority, organization or person outside Europol, save as otherwise provided in this Convention and without prejudice to Title VI of the Treaty on European Union.
2. The Director shall be in charge of the Deputy Directors and employees of Europol. He shall engage and dismiss employees. In selecting employees, in addition to having regard to personal suitability and professional qualifications, he shall take into account the need to ensure the adequate representation of nationals of all Member States and of the official languages of the European Union.
3. Detailed arrangements shall be laid down in staff regulations which the Council shall, after obtaining the opinion of the Management Board, adopt unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 31

Confidentiality

1. Europol and the Member States shall take appropriate measures to protect information subject to

the requirement of confidentiality which is obtained by or exchanged with Europol on the basis of this Convention. To this end the Council shall unanimously adopt appropriate rules on confidentiality prepared by the Management Board and submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

2. Where Europol has entrusted persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director of Europol, for security screening of their own nationals to be carried out in accordance with their national provisions and to provide each other with mutual assistance for the purpose. The relevant authority under national provisions shall inform Europol only of the results of the security screening, which shall be binding on Europol.

3. Each Member State and Europol may entrust with the processing of data at Europol, only those persons who have had special training and undergone security screening.

Article 32

Obligation of discretion and confidentiality

1. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers shall refrain from any action and any expression of opinion which might be harmful to Europol or prejudice its activities.

2. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as any other person under a particular obligation of discretion or confidentiality, shall be bound not to disclose any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities to any unauthorized person or to the public. This shall not apply to facts or information too insignificant to require confidentiality. The obligation of discretion and confidentiality shall apply even after leaving office or employment, or after termination of activities. The particular obligation laid down in the first sentence shall be notified by Europol, and a warning given of the legal consequences of any infringement; a written record shall be drawn up of such notification.

3. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as persons under the obligation provided for in paragraph 2, may not give evidence in or outside court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities, without reference to the Director or, in the case of the Director himself, to the Management Board.

The Director or Management Board, depending on the case, shall approach the judicial body or any other competent body with a view to taking the necessary measures under the national law applicable to the body approached; such measures may either be to adjust the procedures for giving evidence in order to ensure the confidentiality of the information, or provided that the national law concerned so permits, to refuse to make any communication concerning data in so far as is vital for the protection of the interests of Europol or of a Member State.

Where a Member State's legislation provides for the right to refuse to give evidence, persons asked to give evidence must obtain permission to do so. Permission shall be granted by the Director and, as regards evidence to be given by the Director, by the Management Board. Where a liaison officer is asked to give evidence concerning information he receives from Europol, such permission shall be given after the agreement of the Member State responsible for the officer concerned has been obtained.

Furthermore, if the possibility exists that the evidence may extend to information and knowledge which a Member State has communicated to Europol or which clearly involve a Member State, the position of that Member State concerning the evidence must be sought before permission is given.

Permission to give evidence may be refused only in so far as this is necessary to protect overriding interests of Europol or of a Member State or States that need protection.

This obligation shall apply even after leaving office or employment or after termination of activities.

4. Each Member State shall treat any infringement of the obligation of discretion or confidentiality laid down in paragraphs 2 and 3 as a breach of the obligations imposed by its law on official or professional secrets or its provisions for the protection of confidential material.

Where appropriate, each Member State shall introduce, no later than the date of entry into force of this Convention, the rules under national law or the provisions required to proceed against breaches of the obligations of discretion or confidentiality referred to in paragraphs 2 and 3. It shall ensure that the rules and provisions concerned apply also to its own employees who have contact with Europol in the course of their work.

Article 33

Languages

1. Reports and all other papers and documentation placed before the Management Board shall be submitted in all official languages of the European Union; the

working languages of the Management Board shall be the official languages of the European Union.

2. The translations required for Europol's work shall be provided by the translation centre of the European Union institutions.

Article 34

Informing the European Parliament

1. The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol. The European Parliament shall be consulted should this Convention be amended in any way.

2. The Council Presidency or its representative appointed by the Presidency shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments, to Article K.6 of the Treaty on European Union and to the general principles applicable to relations with the European Parliament pursuant to Title VI of the Treaty on European Union.

Article 35

Budget

1. Estimates shall be drawn up of all of Europol's income and expenditure including all costs of the joint supervisory body and of the secretariat set up by it under Article 22 for each financial year and these items entered in the budget; an establishment plan shall be appended to the budget. The financial year shall begin on 1 January and end on 31 December.

The income and expenditure shown in the budget shall be in balance.

A five-year financing plan shall be drawn up together with the budget.

2. The budget shall be financed from Member States' contributions and by other incidental income. Each Member State's financial contribution shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the budget is drawn up. For the purposes of this paragraph, 'gross national product' shall mean gross national product as determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices.

3. By 31 March each year at the latest, the Director shall draw up the draft budget and draft establishment

plan for the following financial year and shall submit them, after examination by the Financial Committee, to the Management Board together with the draft five-year financing plan.

4. The Management Board shall take a decision on the five-year financing plan. It shall act unanimously.

5. After obtaining the opinion of the Management Board, the Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, adopt Europol's budget by 30 June of the year preceding the financial year at the latest. It shall act unanimously. The adoption of the budget by the Council shall entail the obligation for each Member State to make available promptly the financial contribution due from it.

6. The Director shall implement the budget in accordance with the financial regulation provided for in paragraph 9.

7. Monitoring of the commitment and disbursement of expenditure and of the establishment and collection of income shall be carried out by a financial controller from an official audit body of one of the Member States who shall be appointed by the Management Board, acting unanimously, and shall be accountable to it. The financial regulation may make provision for *ex-post* monitoring by the financial controller in the case of certain items of income or expenditure.

8. The Financial Committee shall be composed of one budgetary representative from each Member State. Its task shall be to prepare for discussions on budgetary and financial matters.

9. The Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, unanimously adopt the financial regulation, specifying in particular the detailed rules for drawing up, amending and implementing the budget and for monitoring its implementation as well as for the manner of payment of financial contributions by the Member States.

Article 36

Auditing

1. The accounts in respect of all income and expenditure entered in the budget together with the balance sheet showing Europol's assets and liabilities shall be subject to an annual audit in accordance with the financial regulation. For this purpose the Director shall submit a report on the annual accounts by 31 May of the following year at the latest.

2. The audit shall be carried out by a joint audit committee composed of three members, appointed by the Court of Auditors of the European Communities on a proposal from its President. The term of office of the members shall be three years; these shall alternate in such a way that each year the member who has been on the audit committee for three years shall be replaced. Notwithstanding the provisions of the second sentence, the term of office of the member that, after drawing lots:

- is first, shall be two years,
- is second, shall be three years,
- is third, shall be four years,

in the initial composition of the joint audit committee after Europol has begun to operate.

Any costs arising from the audit shall be charged to the budget provided for in Article 35.

3. The joint audit committee shall in accordance with the procedure laid down in Title VI of the Treaty on European Union submit to the Council an audit report on the annual accounts; prior thereto the Director and Financial Controller shall be given an opportunity to express an opinion on the audit report and the report shall be discussed by the Management Board.

4. The Europol Director shall provide the members of the joint audit committee with all information and every assistance which they require in order to perform their task.

5. A decision on the discharge to be given to the Director in respect of budget implementation for the financial year in question shall be taken by the Council, after examination of the report on the annual accounts.

6. The detailed rules for performing audits shall be laid down in the Financial Regulation.

Article 37

Headquarters agreement

The necessary arrangements concerning the accommodation to be provided for Europol in the headquarters State and the facilities to be made available by that State as well as the particular rules applicable in the Europol headquarters State to members of Europol's organs, its Deputy Directors, employees and members of their families shall be laid down in a headquarters agreement between Europol and the Kingdom of the Netherlands to be concluded after obtaining the unanimous approval of the Management Board.

TITLE VI

LIABILITY AND LEGAL PROTECTION

Article 38

Liability for unauthorized or incorrect data processing

1. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data stored or processed at Europol. Only the Member State in which the event which gave rise to the damage occurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under the national law of the Member State involved. A Member State may not plead that another Member State had transmitted inaccurate data in order to avoid its liability under its national legislation *vis-à-vis* an injured party.

2. If these legal or factual errors occurred as a result of data erroneously communicated or of failure to comply with the obligations laid down in this Convention on the part of one or more Member States or as a result of unauthorized or incorrect storage or processing by Europol, Europol or the other Member State in question shall be bound to repay, on request, the amounts paid as compensation unless the data were used by the Member State in the territory of which the damage was caused in breach of this Convention.

3. Any dispute between that Member State and Europol or another Member State over the principle or amount of the repayment must be referred to the Management Board, which shall settle the matter by a two-thirds majority.

Article 39

Other liability

1. Europol's contractual liability shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, Europol shall be obliged, independently of any liability under Article 38, to make good any damage caused through the fault of its organs, of its Deputy Directors or of its employees in the performance of their duties, in so far as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.

3. The injured party shall have the right to demand that Europol refrain from or drop any action.

4. The national courts of the Member States competent to deal with disputes involving Europol's liability as referred to in this Article shall be determined by reference to the relevant provisions of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, as later amended by Accession Agreements.

Article 40

Settlement of disputes

1. Disputes between Member States on the interpretation or application of this Convention shall in an initial stage be discussed by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with the aim of finding a settlement.

2. When such disputes are not so settled within six months, the Member States who are parties to the dispute shall decide, by agreement among themselves, the modalities according to which they shall be settled.

3. The provisions on appeals referred to in the rules relating to the conditions of employment applicable to temporary and auxiliary staff of the European Communities shall apply, *mutatis mutandis*, to Europol staff.

Article 41

Privileges and immunities

1. Europol, the members of its organs and the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their task in accordance with a Protocol setting out the rules to be applied in all Member States.

2. The Kingdom of the Netherlands and the other Member States shall agree in the same terms that liaison officers seconded from the other Member States as well as members of their families shall enjoy those privileges and immunities necessary for the proper performance of the tasks of the liaison officers at Europol.

3. The Protocol referred to in paragraph 1 shall be adopted by the Council acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and approved by the Member States in accordance with their respective constitutional requirements.

TITLE VII

FINAL PROVISIONS

Article 42

Relations with third States and third bodies

1. In so far as is relevant for the performance of the tasks described in Article 3, Europol shall establish and maintain cooperative relations with third bodies within the meaning of Article 10 (4), points 1 to 3. The Management Board shall unanimously draw up rules governing such relations. This provision shall be without prejudice to Article 10 (4) and (5) and Article 18 (2); exchanges of personal data shall take place only in accordance with the provisions of Titles II to IV of this Convention.

2. In so far as is required for the performance of the tasks described in Article 3, Europol may also establish and maintain relations with third States and third bodies within the meaning of Article 10 (4), points 4, 5, 6 and 7. Having obtained the opinion of the Management Board, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall draw up rules governing the relations referred to in the first sentence. The third sentence of paragraph 1 shall apply *mutatis mutandis*.

Article 43

Amendment of the Convention

1. In accordance with the procedure laid down in Title VI of the Treaty on European Union, the Council, acting on a proposal from a Member State and, after consulting the Management Board, shall unanimously decide, within the framework of Article K.1 (9) of the Treaty on European Union, on any amendments to this Convention which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

2. The amendments shall enter into force in accordance with Article 45 (2) of this Convention.

3. However, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide, on the initiative of a Member State and after the Management Board has discussed the matter, to amplify, amend or supplement the definitions of forms of crime contained in the Annex. It may in addition decide to introduce new definitions of the forms of crime listed in the Annex.

4. The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

Article 44

Reservations

Reservations shall not be permissible in respect of this Convention.

Article 45

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force on the first day of the month following the expiry of a three-month period after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Convention, is the last to fulfil that formality.

4. Without prejudice to paragraph 2, Europol shall not take up its activities under this Convention until the last of the acts provided for in Articles 5 (7), 10 (1), 24 (7), 30 (3), 31 (1), 35 (9), 37 and 41 (1) and (2) enters into force.

5. When Europol takes up its activities, the activities of the Europol Drugs Unit under the joint action concerning the Europol Drugs Unit of 10 March 1995 shall come to an end. At the same time, all equipment financed from the Europol Drugs Unit joint budget, developed or produced by the Europol Drugs Unit or placed at its disposal free of charge by the headquarters State for its permanent use, together with that Unit's entire archives and independently administered data files shall become the property of Europol.

6. Once the Council has adopted the act drawing up this Convention, Member States, acting either individually or in common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities.

*Article 46***Accession by new Member States**

1. This Convention shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State that accedes to it on the first day of the month

following expiry of a three-month period following the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period.

*Article 47***Depositary**

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Convention.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-síniú a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Til bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el veintiseis de julio de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, gaélica, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles den seksogtyvende juli nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechszwanzigsten Juli neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Ιουλίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil, an séú lá is fiche de Iúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zesentwintigste juli negentienhonderd vijfennegentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

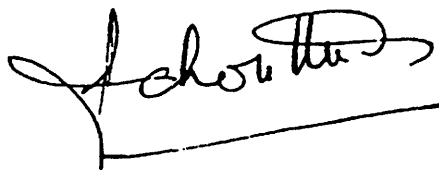
Tehty Brysselissä kahdentenkymmenentenäkuudentena päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Utfärdad i Bryssel den tjugosjätte juli nittonhundra nitto fem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

Für die Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark



Für die Regierung der Bundesrepublik Deutschland

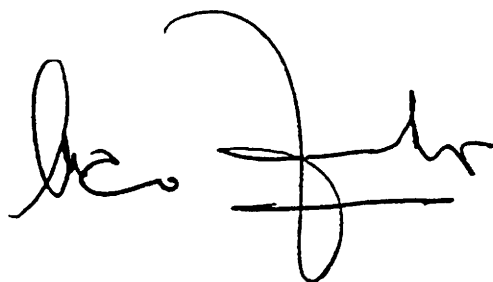
Για την κυβέρνηση της Ελληνικής Δημοκρατίας

Por el Gobierno del Reino de España

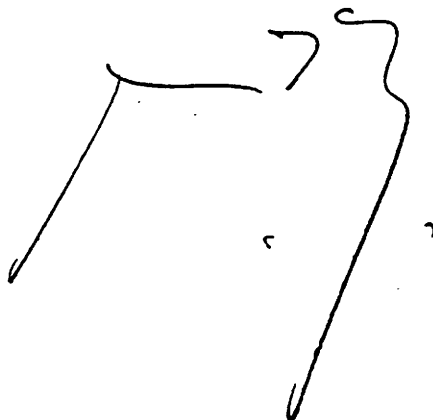
Pour le gouvernement de la République française

Thar ceann Rialtas na hÉireann
For the Government of Ireland

Per il governo della Repubblica italiana



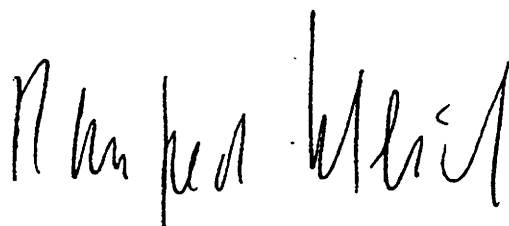
Pour le gouvernement du grand-duché de Luxembourg



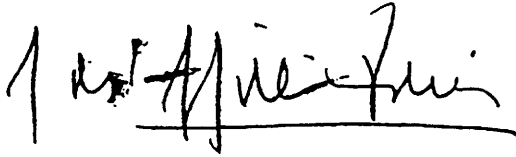
Voor de Regering van het Koninkrijk der Nederlanden



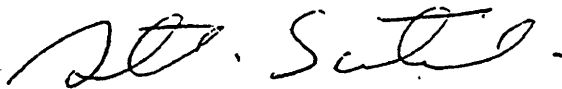
Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



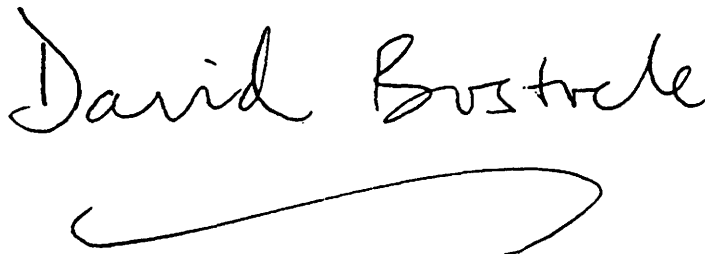
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



ANNEX

Referred to in Article 2

List of other serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2 (2) in compliance with Europol's objective as set out in Article 2 (1).

Against life, limb or personal freedom:

- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia

Against property or public goods including fraud:

- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art
- swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- forgery of money and means of payment
- computer crime
- corruption

Illegal trading and harm to the environment:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters

In addition, in accordance with Article 2 (2), the act of instructing Europol to deal with one of the forms of crime listed above implies that it is also competent to deal with the related money-laundering activities and the related criminal offences.

With regard to the forms of crime listed in Article 2 (2) for the purposes of this Convention:

- 'crime connected with nuclear and radioactive substances' means the criminal offences listed in Article 7 (1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980,
- 'illegal immigrant smuggling' means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States,
- 'traffic in human beings' means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children,

- 'motor vehicle crime' means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects,
- 'illegal money-laundering activities' means the criminal offences listed in Article 6 (1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.

The forms of crime referred to in Article 2 and in this Annex shall be assessed by the competent national authorities in accordance with the national law of the Member States to which they belong.

Declaration

Article 40 (2)

The following Member States agree that in such cases they will systematically submit the dispute in question to the Court of Justice of the European Communities:

- Kingdom of Belgium,
 - Kingdom of Denmark,
 - Federal Republic of Germany,
 - Hellenic Republic,
 - Kingdom of Spain,
 - French Republic,
 - Ireland,
 - Italian Republic,
 - Grand Duchy of Luxembourg,
 - Kingdom of the Netherlands,
 - Republic of Austria,
 - Portuguese Republic,
 - Republic of Finland,
 - Kingdom of Sweden.
-

(Joint actions adopted by the Council of the European Union)

JOINT ACTION

of 10 March 1995

adopted by the Council on the basis of Article K.3 of the Treaty on European Union
concerning the Europol Drugs Unit

(95/73/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative of the Federal Republic of Germany,

Whereas the Member States consider as a matter of common interest the creation of the Europol Drugs Unit in accordance with Article K.1 (9) of the Treaty;

Whereas, at its meeting held in Luxembourg on 28 and 29 June 1991, the European Council noted proposals for the setting up of a European Police Office (Europol), agreed on the objectives defined in these proposals and recommended that these proposals be examined further;

Whereas, in the report they submitted to the European Council on 4 December 1991, the Ministers unanimously agreed on the setting up of Europol, beginning with a drugs intelligence unit which would then be developed in the near future;

Whereas, at its meeting held in Maastricht on 9 and 10 December 1991, the European Council agreed on the creation of Europol, the initial function of which would be to organize the exchange of information on narcotic drugs between the Member States, and instructed the Ministers to take, at an early date, such measures as were needed for this purpose;

Whereas, at its meeting held in Lisbon on 26 and 27 June 1992, the European Council recommended that a Convention on the establishment of Europol be drawn up;

Whereas Member States need to cooperate in an appropriate structure before the entry into force of such a Convention;

Whereas, in view of the urgent need to deal with the problems posed by international illicit drug trafficking, associated money laundering and organized crime,

the Ministers recommended at their special meeting on 18 September 1992 that Europol's first phase, the Europol Drugs Unit, be in place by 1 January 1993 at the latest;

Whereas the Representatives of the Governments of the Member States, meeting at Head of State and Government level, decided on the location of the seats of certain bodies and departments of the European Communities and of Europol, according to which Europol and the Europol Drugs Unit were to have their seat in The Hague;

Whereas the Member States already have a provisional framework for cooperation in the form of the Europol Drugs Unit, established by ministerial agreement of 2 June 1993 concerning the setting up of the said Unit which has been operational since January 1994;

Whereas, at its meeting held on 9 and 10 December 1994 in Essen, the European Council decided to extend the mandate of the Europol Drugs Unit to the fight against illegal trade in radioactive and nuclear materials, crimes involving clandestine immigration networks, illegal vehicle trafficking and associated money-laundering operations;

Whereas, in the conclusions of the European Council of 9 and 10 December 1994, it was decided that the Convention on the establishment of Europol should be concluded at the latest by the European Council in Cannes and whereas there is the will to take all the steps necessary to achieve this aim,

HAS DECIDED AS FOLLOWS:

Article 1

The following rules shall apply to the Europol Drugs Unit initially set up by the ministerial agreement of 2 June 1993, hereinafter referred to as 'the Unit'.

*Article 2***Objectives and scope**

1. Each Member State shall send one or more liaison officers to The Hague in order to constitute, with the liaison officers of the other Member States, a team which will cooperate within the Unit.

2. The Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States, in relation to:

- (a) illicit drug trafficking;
- (b) illicit trafficking in radioactive and nuclear substances;
- (c) crimes involving clandestine immigration networks;
- (d) illicit vehicle trafficking;

together with the criminal organizations involved and associated money-laundering activities.

3. The objective of the Unit is to help the police and other competent agencies within and between Member States to combat the criminal activities referred to in paragraph 2 more effectively.

For this purpose, members of the Unit, acting in accordance with their national laws, other relevant legal rules and any instructions given by their respective Member States, shall perform the following tasks:

- (a) exchange, between Member States, of information (including personal information) in furtherance of specific criminal investigations concerning the criminal activities referred to in paragraph 2;
- (b) preparation of general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States or from other sources.

The activities of the Unit shall be without prejudice to other forms of bilateral or multilateral cooperation in combating the criminal activities referred to in paragraph 2, or to the competences of the European Communities.

*Article 3***Data processing**

1. With regard to the criminal activities referred to in Article 2 (2), the liaison officers shall communicate, in accordance with their national laws, other relevant legal rules and any instructions given by their respective Member States, information in furtherance of specific criminal investigations concerning the criminal activities referred to in Article 2 (2), the development of intelligence as well as strategic analysis.

In order to fulfil their tasks, the liaison officers shall have access to all criminal information and intelligence of their respective Member States.

The protection of all information from unauthorized access and against destruction, including ensuring the physical protection of data-processing systems and links, must be ensured.

2. Requests for information made to the Unit by the police or any other competent service shall be channelled through one national central authority. The latter shall also be responsible for the receipt and the passing on of any replies supplied by the Unit.

*Article 4***Data protection**

1. Personal information shall be communicated on the basis of exchanges between the liaison officers, each of them acting in accordance with his national laws, with any other relevant legal rules and with instructions given by his Member State concerning the processing of personal information, in compliance with all the conditions imposed by the delivering State in respect of the use of such information.

Any exchange of information between the requesting and the delivering State shall take place solely on a bilateral basis via the liaison officers of these States.

Should the delivering State, in the course of dealing with a request, discover any information in connection with a criminal activity referred to in Article 2 (2) which is of interest to another Member State, this information may be made available to that Member State via the liaison officers of the States involved in accordance with their respective national legislation.

2. The liaison officers shall not transmit any personal information to States other than Member States or to any international organization.

To the extent required by their national legislation on data protection, the liaison officers shall keep a record, exclusively for the purposes of data protection, of the personal information they have transmitted in accordance with paragraph 1. Furthermore, no personal information shall be stored centrally by the Unit, whether automatically or otherwise.

3. Member States shall recommend to their data-protection authorities that they ensure that the activities of their liaison officers comply with their national legislation on the protection of personal data and that the Unit's common database, if any, contains only non-personal data.

In order to enable these recommendations to be met, Member States shall undertake to see that their liaison officers cooperate fully with their competent national data-protection authorities.

Article 5

Staffing

1. The Unit shall be headed by a Coordinator. In addition to the Coordinator, the management team shall consist of two Assistant Coordinators and of two other members who have a direct hierarchical link to the Coordinator and whose scope of activities is specifically defined.

The Coordinator, the two Assistant Coordinators and the other two members of the management team shall be appointed by the Council in accordance with the procedures provided for in Title VI of the Treaty.

The management team shall be responsible for the day-to-day operation of the Unit. The Member States shall instruct their liaison officers to follow the instructions of the Coordinator, in accordance with their national legislation, any other relevant legal rules and the instructions they give them.

2. Apart from the liaison officers sent directly by Member States, other staff shall be posted to the Unit in such numbers as may be agreed by the Council in accordance with the procedures provided for in Title VI of the Treaty. The Coordinator of the Unit shall be involved in the appointment of such staff.

Article 6

Responsibility

Without prejudice to the responsibility of each Member State for controlling its national liaison officers, the Council shall exercise general oversight over the activities of the Unit. For this purpose, the Coordinator shall

submit a six-monthly written report on his management and the activities of the Unit. The Coordinator shall also provide any other report or information for which the Council may ask.

Article 7

Finance

The Member States shall bear the cost of sending their liaison officers as well as of the necessary equipment for the Unit to the Unit. Other costs of establishing and maintaining the Unit, initially met by the host country, shall be defrayed jointly by the Member States. To this end, each Member State's annual contribution shall be determined, in compliance with its budget rules and procedures, on the basis of its gross national product (GNP), according to the scale used for determining the GNP element of the own resources financing the general budget of the European Communities.

Each year the GNP of each Member State for the previous year shall be the reference basis used.

Article 8

Entry into force

This Joint Action shall enter into force on the day of its publication in the Official Journal. It shall replace the Ministerial Agreement of 2 June 1993 on the establishment of the Europol Drugs Unit.

Done at Brussels, 10 March 1995. †

For the Council

The President

P. MÉHAIGNERIE

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

JOINT ACTION

of 29 November 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on cooperation between customs authorities and business organizations in combating drug trafficking

(96/698/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article K.3 (2) (b) thereof,

Having regard to the initiative of Ireland,

Having regard to the report of the Expert Group on Drugs, as approved by the European Council in Madrid in 1995,

Recognizing that facilities and services of legitimate business organizations can be surreptitiously used by illegal drug traffickers,

Whereas the highest degree of cooperation is essential between customs authorities and business organizations in combating drug trafficking;

Whereas support for the strengthening of cooperation between customs authorities and business organizations in the fight against drug trafficking was expressed by the Group of Seven (G7) at its summit meetings in London (1991) and Munich (1992);

Whereas UN Economic and Social Council Resolutions 1993/41 of 27 July 1993 and 1995/18 of 24 July 1995 endorsed the use of Memoranda of Understanding as a practical means of obtaining tangible results in drug enforcement, whilst maintaining the momentum of trade facilitation;

Whereas an action plan to develop systematically Memoranda of Understanding in the customs field was adopted by the Council of the World Customs Organization (WCO),

Noting that the Memoranda of Understanding programme initiated by the WCO has been successful worldwide in consolidating cooperation between customs authorities and business organizations;

Further noting that some Member States of the European Union have already embarked on national Memoranda of Understanding programmes with business organizations in relation to both drug trafficking and other customs offences;

Aware that the expansion of these programmes to all Member States and to a greater number of business organizations can bring further enforcement advantages,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

In order to consolidate the already cooperative relationship between the customs authorities of the Member States and business organizations operating in the European Union in combating drug trafficking, Member States shall establish or further develop Memoranda of Understanding programmes at national level under the guidelines laid down in this joint action and shall invite participation in such programmes.

Article 2

Memoranda of Understanding between customs authorities and business organizations may contain, but need not be confined to, provisions in respect of the following:

— the exchange of contact names in customs and in the signatory organization,

- the provision to customs, by the signatory, of advance cargo or passenger data as appropriate,
- access by customs to the signatory's information systems,
- assessment by customs of the signatory's security procedures,
- development and implementation of plans to improve such security,
- checking of newly recruited staff by the signatory,
- provision by customs of training for the signatory's staff.

Article 3

Customs authorities shall periodically review the operation of national Memoranda of Understanding programmes and shall also review the implementation of individual Memoranda of Understanding and, in agreement with signatories, adapt them as necessary to ensure maximum effectiveness.

Article 4

Member States shall notify the Council Secretariat of the measures they have taken to implement the provisions of

this joint action one year after its entry into force and thereafter as requested by the Presidency.

Article 5

Member States may at their discretion extend the scope of Memoranda of Understanding established under the programmes referred to in Article 1 to cover other offences for which the customs authorities are competent in addition to drug trafficking.

Article 6

This joint action shall be published in the Official Journal.

It shall enter into force on the day of its publication.

Done at Brussels, 29 November 1996.

For the Council

The President

N. OWEN

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

JOINT ACTION

of 29 November 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement cooperation between the Member States of the European Union

(96/747/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) thereof,

Having regard to the initiative of the Presidency and of Belgium,

Having regard to the Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit⁽¹⁾ and the Joint Action of 16 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union extending the mandate given to the Europol Drugs Unit⁽²⁾,

Recalling that pursuant to Articles K.1 (8) and K.1 (9) of the Treaty, customs and police cooperation for the purposes of preventing and combating international crime are regarded as matters of common interest to the Member States;

Whereas the Council considers that the seriousness and development of certain forms of international crime require a strengthening of the cooperation between Member States' law enforcement agencies, particularly in scientific and technical areas;

Whereas in order to respond to the various threats with which Member States are confronted, national law enforcement authorities fighting organized crime have developed areas of specialized competences, skills and expertise, which should in principle be made available to appropriate authorities in all other Member States, on request, according to their needs and at the appropriate time;

Whereas the creation and maintenance of a directory of these areas of specialized competences, skills and expertise would make the latter more widely and easily available to authorities in Member States, thus enhancing the means at the disposal of Member States in the fight against crime;

Whereas the directory envisaged by this Joint Action is not intended to replace or affect any existing bilateral or multilateral arrangements in the area of scientific and technical law enforcement cooperation, nor to serve as a vehicle for the exchange of operational intelligence, nor to require the setting up of any new structures within the Council;

Considering that the Europol Drugs Unit shall as a first step establish the directory covering the areas of illicit drug trafficking and trafficking in human beings,

HAS ADOPTED THIS JOINT ACTION:

Article 1

The Europol Drugs Unit shall have the task of establishing, maintaining and disseminating a directory of specialized competences, skills and expertise for the fight against crime, which are within the competence of the Europol Drugs Unit (EDU), pursuant to the Joint Actions of 10 March 1995 and of 16 December 1996.

Article 2

1. Member States shall submit their contributions to be entered in the directory to the EDU.

2. The EDU shall compile the directory on the basis of the contributions from the Member States.

⁽¹⁾ OJ No L 62, 20. 3. 1995, p. 1.

⁽²⁾ See page 4 of this Official Journal.

3. When making their contributions to the directory, Member States shall take full account of the security classification and protection established by each Member State.

4. Subsequently, the EDU shall be responsible for the accurate incorporation of any amendments and additions to the directory on the basis of further contributions from Member States, and for drawing these amendments and additions to the attention of Member States.

Article 3

1. Each Member State shall contribute to the directory an indication of any specialized competences, skills or expertise it has developed in the fight against organized crime and which it considers useful to make available to all Member States.

2. The contributions from the Member States, which might conveniently be made on proformas to be agreed within the Council, shall as a minimum give a sufficient description of each particular competence, skill or expertise to enable the appropriate authorities in Member States to make a reasoned judgment as to its likely relevance in the performance of their duties. The contributions shall also indicate precisely how contact should be made, directly and speedily, either with the authorities offering this competence, skill or expertise or with a central contact point within the Member State concerned.

3. Member States shall be responsible for updating these contact details as necessary.

4. Member States may at any time contribute additional entries to, or ask for entries to be withdrawn from, the directory.

5. No personal data, other than the names and contact details required for the operation of the scheme, shall be held in the directory.

Article 4

1. Each Member State shall hold a copy of the directory. Any relevant authorities in a Member State which wishes to avail itself of a particular competence mentioned in the directory shall approach the relevant contact point in the Member State which entered that information. The question of any reimbursement of expenses shall also be settled bilaterally.

2. A Member State which has contributed a competence, skill or expertise to the directory may decline to make it available in a particular case if circumstances so require.

3. Member States agree that, if they make a contact through the directory, they will notify basic details relevant thereto, to be determined by the Council acting unanimously, to the EDU, to allow effective monitoring of the usefulness of the directory.

4. Article 5 (2) and Article 7 of the Joint Action of 10 March 1995 shall apply.

Article 5

This Joint Action shall be published in the Official Journal.

It shall enter into force on the date of its publication.

Done at Brussels, 29 November 1996.

For the Council
The President
N. OWEN

JOINT ACTION

of 17 December 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking

(96/750/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.1 (4) and K.3 (2) (b) thereof,

Having regard to the French initiative,

Recalling that the Cannes European Council, of 26 and 27 June 1995, approved the work relating to the European action plan to combat drugs (1996 to 1999) and recognized the need for an integrated approach in this area;

Recalling that the Madrid European Council, of 15 and 16 December 1995, approved the report from the group of experts on 'Drugs' and that some of its 66 proposals have already been converted into precise, coordinated operational activities within the European Union, in accordance with the European Council's instructions;

Recalling that the European Council also invited the Italian and Irish Presidencies to prepare, after consultation of the Member States, the Commission, the Europol Drugs Unit and the European Monitoring Centre for Drugs and Drug Addiction, a programme of activities which took account of that report, progress with which would be examined at the Dublin European Council on 13 and 14 December 1996;

Considering that the Florence European Council on 21 and 22 June 1996 stressed the vital importance of reinforced cooperation between Member States to fight against drugs;

Considering that the same European Council restated the importance of speedily completing the study on harmonization of Member States' laws and its impact on reducing consumption of and illicit trafficking in drugs;

Taking note of the report on harmonization of national legislation on drugs as requested by the Madrid and Florence European Councils;

Recalling the priority attached by the Irish Presidency to the fight against drugs, and the initiatives taken further to the instructions of the Madrid and Florence European Councils to give it a specific content, and in particular the Council resolution on sentencing for serious drug trafficking;

Considering that Member States fulfil their obligations under the United Nations Conventions of 1961, 1971 and 1988 and that they will examine ways of making strict compliance with those Conventions more effective, in particular by helping third countries to fulfil their obligations;

Considering that Member States reaffirm their common determination to put an end to illegal drug trafficking in order to protect society from its devastating effects and from the other deep-seated causes of the problem of drug abuse, in particular the illegal demand for drugs and the enormous profits from the illegal trade, and that an approximation of laws and practices designed to render cooperation more effective would be a positive contribution to that objective;

Noting the memorandum 'On a European social model' submitted by France at the Turin European Council on 29 March 1996, advocating harmonization of national legislation on combating drugs;

Considering the dangers inherent in the development of synthetic drugs;

Considering that the report on harmonization drawn up by the Council and the Commission in response to the aforementioned instructions recognizes that synthetic drugs might constitute a priority area for putting the report into practice;

Considering that, in the absence of harmonized legislation, mutually compatible practices would reinforce European cooperation in fighting drug addiction and in preventing and combating illegal drug trafficking;

Considering that a high level of European and international cooperation between police, customs services and judicial authorities would help to increase the efficiency of the fight against drug trafficking;

Considering that the fight against drug trafficking must be combined with an active policy of prevention, care and rehabilitation of drug addicts;

Noting the Community action programme on the prevention of drug dependence and in particular the fifteen priority actions which it contains;

Considering that the provisions of this joint action are without prejudice to the general principle that a Member State may maintain or step up its national policy in the fight against drugs in its territory;

Without prejudice to the powers of the Community,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Member States shall undertake to cooperate fully in the fight against drug addiction and shall endeavour to approximate their laws to make them mutually compatible to the extent necessary to prevent and combat illegal drug trafficking in the Union.

Article 2

Member States shall endeavour to make the practices of their police, customs services and judicial authorities more compatible with each other, thus making for closer European cooperation to prevent and combat illegal drug trafficking in the Union.

Article 3

Member States shall undertake to combat illicit movements of narcotic drugs and psychotropic substances within the Community, including 'drug tourism'.

Article 4

Member States shall ensure that under their legal systems the penalties imposed for serious drug trafficking are among the most severe penalties available for crimes of comparable gravity.

Article 5

Member States shall endeavour to draft convergent legislation to the extent necessary to make up legal ground or fill legal vacuums as regards synthetic drugs. In particular they shall promote the establishment of a rapid information system to enable such drugs to be identified as substances liable to be prohibited as soon as they appear anywhere in a Member State.

Article 6

Without prejudice to the powers of the Community, Member States shall undertake to adopt the necessary measures to effect a tangible increase in operational cooperation between police, customs services and judicial authorities in combating drug addiction and preventing and combating illegal drug trafficking.

Article 7

Member States shall ensure that their obligations under the United Nations Conventions on narcotic drugs and psychotropic substances of 1961, 1971, and 1988 are applied strictly and effectively.

Article 8

Member States undertake to take the most appropriate steps to combat the illicit cultivation of plants containing active ingredients with narcotic properties.

Article 9

Member States undertake, subject to their constitutional principles and the basic concepts of their legal systems, to make it an offence publicly and intentionally to incite or induce others, by any means, to commit offences of illicit use or production of narcotic drugs. They shall be especially vigilant as regards the use made of on-line data services and in particular the Internet.

Article 10

Nothing in this joint action shall prevent a Member State, with due regard for its international commitments, from maintaining or introducing in its territory any additional measure it deems appropriate to fight drug addiction and to prevent and combat illicit drug trafficking.

Article 11

The Governments of the Member States shall undertake to take all appropriate steps to implement this joint action as soon as it is adopted.

The Presidency shall report to the Council each year on the implementation of this joint action.

Article 12

This joint action shall come into force on the day of its adoption.

Article 13

This joint action shall be published in the Official Journal.

Done at Brussels, 17 December 1996.

For the Council
The President
I. YATES

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

COUNCIL RESOLUTION

of 20 December 1996

on individuals who cooperate with the judicial process in the fight against international organized crime

(97/C 10/01)

THE COUNCIL OF THE EUROPEAN UNION,

Believing that individuals should therefore be encouraged to cooperate with the judicial process,

Having regard to the Treaty on European Union,

A. calls on Member States to adopt appropriate measures to encourage individuals who participate or have participated in an association of criminals or other criminal organization of any kind, or in organized crime offences, to cooperate with the judicial process.

Having regard to the recommendations adopted by the Ministers for Justice and Home Affairs at their meeting in Kolding (Denmark) on 6 and 7 May 1993, calling for greater and more efficient cooperation in the European Union context in combating international organized crime,

For the purposes of this resolution, cooperating with the judicial process includes:

Having regard to the recommendations given in the report of the *ad hoc* Working Group on International Organized Crime and approved by the Council on 29 and 30 November 1993,

(a) supplying information useful to the competent authorities for investigative and evidential purposes on:

- (i) the composition, structure or activities of criminal organizations,
- (ii) links, including international links, with other criminal groups,
- (iii) offences which these organizations or groups have committed or might commit,

Whereas the Madrid European Council on 15 and 16 December 1995 called for the necessary operational measures to be adopted to combat the threat posed by international organized crime;

(b) providing practical, concrete help to competent authorities which may contribute to depriving criminal organizations of illicit resources or of the proceeds of crime;

Having regard to the Council resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime ⁽¹⁾,

B. calls on Member States to assess, in the context of the objectives set out in paragraph A, the possibility of granting, in accordance with the general principles of their national law, benefits to individuals who break away from a criminal organization and do their best to prevent the criminal activity being carried further, or provide specific help to the police or judicial authorities to collect evidence which proves decisive in reconstructing the facts and identifying the perpetrators of the crimes or leading to their arrest;

Believing that knowledge of criminal organizations may be significantly improved and their activities more effectively curbed by using the statements made to the competent authorities by members of such organizations who agree to cooperate with the judicial process,

C. calls on Member States to provide appropriate protection measures for any individual and, where

⁽¹⁾ OJ No C 327, 7. 12. 1995, p 5.

necessary, for his parents, children and other persons close to him, who, by virtue of the individual's willingness to cooperate with the judicial process, is or are likely to be exposed to serious and immediate danger; in considering such measures, Member States should have regard to the resolution of 23 November 1995;

D. calls on Member States to facilitate judicial assistance in the fight against international organized crime in cases involving individuals cooperating with the judicial process, and in particular:

1. to observe the formalities and the procedural requirements of the requesting State when statements from individuals who cooperate with

the judicial process are to be taken, even in the absence of any such provisions in the legislation of the State to which the request is addressed, save where compliance with the request for assistance would be contrary to the general principles of that State's law;

2. to take account of the guidelines laid down by the resolution of 23 November 1995;

3. to apply the provisions of paragraph C where individuals cooperate with the judicial process in another State;

E. shall assess the implementation of this resolution on the basis of a report to be submitted to it through the Council Secretariat at the latest by the end of 1997.

RESOLUTION OF THE COUNCIL

of 23 November 1995

on the protection of witnesses in the fight against international organized crime

(95/C 327/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the recommendations to step up judicial cooperation adopted by the Ministers for Justice and Home Affairs at their meeting in Kolding (Denmark) on 6 and 7 May 1993,

Having regard to the priorities set by the Justice and Home Affairs Council on 29 and 30 November 1993 and the work programme for 1994 drawn up by the Council,

Having regard to the conclusions of the Justice and Home Affairs Council meeting on 30 November and 1 December 1994,

Whereas the fight against international organized crime requires that in the Member States the safety of witnesses be effectively ensured in practice while complying with the Convention for the Protection of Human Rights and Fundamental Freedoms,

A. Calls on the Member States to guarantee proper protection of witnesses taking account of the following guidelines:

1. for the purposes of this Resolution, 'witness' means any person, whatever his legal status, who possesses intelligence or information regarded by the competent authority as being material to criminal proceedings and liable to endanger that person if divulged;
2. such witnesses should be protected against all forms of direct or indirect threat, pressure or intimidation;
3. Member States must ensure proper and effective protection of witnesses before, during and after trials, where the competent authorities deem this necessary;
4. such protection must also be extended to the parents, children and other close relatives of witnesses if necessary in order to avoid any form of indirect pressure;
5. when this protection is instituted, each case will have to be examined individually to determine whether the agreement of the witness and his relatives should be sought;

6. the competent authorities should be able to decide, of their own accord or at a witness's request, that the address and identifying particulars⁽¹⁾ of the witness should be known only to those authorities;
7. if the threat is extremely serious, a change of identity for the witness and, if necessary, for members of his immediate family, may be allowed;
8. one of the forms of protection to be envisaged is the possibility of giving evidence in a place other than that in which the person being prosecuted is situated through the use, if necessary, of audio-visual methods, subject to observance of the adversary principle as interpreted in the case law of the European Court of Human Rights;

B. Calls on Member States to facilitate judicial assistance in this field, even in the absence of any such provisions in the legislation of the State to which the request is addressed, save where compliance with the request for assistance would be contrary to the general principles of that State's law. In order to facilitate the use of audiovisual methods, the following points, in particular, should be taken into consideration:

1. In principle, it should be envisaged that the hearing may be conducted under the legal and practical conditions of the requesting State only;
2. If the legislation of either State allows for the witness to be assisted by an adviser during the hearing, it should be possible for such assistance to be arranged in the territory of the State in which the witness is situated;
3. Translation costs and the cost of using audiovisual methods should be borne by the requesting State, unless otherwise arranged with the State to which the request is addressed.

C. Calls on Member States to carry out an assessment of the implementation of this Resolution in practice and instructs the appropriate bodies to report to it by the end of 1996 at the latest.

⁽¹⁾ Some delegations said that, according to their reading of the text, the identity of the person was not covered by point A.6.

COUNCIL ACT

of 26 July 1995

drawing up the Convention on the use of information technology for customs purposes

(95/C 316/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas for the purposes of achieving the objectives of the Union the Member States regard customs cooperation as a matter of common interest, coming under the cooperation provided for in Title VI of the Treaty;

HAVING DECIDED that the Convention, the text of which is given in the Annex and which has been signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 July 1995.

*For the Council**The President*

J. A. BELLOCH JULBE

ANNEX

CONVENTION

Drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 23 July 1995;

RECALLING the commitments contained in the Convention on Mutual Assistance between Customs Administrations, signed in Rome on 7 September 1967;

CONSIDERING that customs administrations are responsible, together with other competent authorities, at the external frontiers of the Community and within the territorial limit thereof, for the prevention, investigation and suppression of offences against not only Community rules, but also against national laws, in particular those laws covered by Articles 36 and 223 of the Treaty establishing the European Community;

CONSIDERING that a serious threat to public health, morality and security is constituted by the developing trend towards illicit trafficking of all kinds;

CONVINCED that it is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities, using new technology for the management and transmission of such information, subject to the provisions of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981;

BEARING IN MIND that the customs administrations in their day-to-day work have to implement both Community and non-Community provisions, and that there is consequently an obvious need to ensure that the provisions of mutual assistance and administrative cooperation in both sectors evolve as far as possible in parallel,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

CHAPTER I

DEFINITIONS

Article 1

For the purposes of this Convention,

1. The term 'national laws' means laws or regulations of a Member State, in the application of which the customs administration of that Member State has total or partial competence, concerning:
 - the movement of goods subject to measures of prohibition, restriction or control, in particular those measures covered by Articles 36 and 223 of the Treaty establishing the European Community,
 - the transfer, conversion, concealment, or disguise of property or proceeds derived from, obtained directly or indirectly through or used in, illicit international drug trafficking.
2. The term 'personal data' means any information relating to an identified or identifiable individual.

3. The term 'supplying Member State' means a State which includes an item of data in the Customs Information System.

CHAPTER II

ESTABLISHMENT OF A CUSTOMS INFORMATION SYSTEM

Article 2

1. The customs administrations of the Member States shall set up and maintain a joint automated information system for customs purposes, hereinafter referred to as the 'Customs Information System'.

2. The aim of the Customs Information System, in accordance with the provisions of this Convention, shall be to assist in preventing, investigating and prosecuting serious contraventions of national laws by increasing, through the rapid dissemination of information, the effectiveness of the cooperation and control procedures of the customs administrations of the Member States.

CHAPTER III

OPERATION AND USE OF THE CUSTOMS INFORMATION

Article 3

1. The Customs Information System shall consist of a central data-base facility and it shall be accessible via terminals in each Member State. It shall comprise exclusively data necessary to achieve its aim as stated in Article 2 (2), including personal data, in the following categories:

- (i) commodities;
- (ii) means of transport;
- (iii) businesses;
- (iv) persons;
- (v) fraud trends;
- (vi) availability of expertise.

2. The Commission shall ensure the technical management of the infrastructure of the Customs Information System in accordance with the rules provided for by the implementing measures adopted within the Council.

The Commission shall report on the management to the committee referred to in Article 16.

3. The Commission shall communicate to that committee the practical arrangements adopted for the technical management.

Article 4

The Member States shall determine the items to be included in the Customs Information System relating to each of the categories (i) to (vi) in Article 3 to the extent that this is necessary to achieve the aim of the system. No

items of personal data shall be included in any event within categories (v) and (vi) of Article 3. The items of information included in respect of persons shall comprise no more than:

- (i) name, maiden name, forenames and aliases;
- (ii) date and place of birth;
- (iii) nationality;
- (iv) sex;
- (v) any particular objective and permanent physical characteristics;
- (vi) reason for inclusion of data;
- (vii) suggested action;
- (viii) a warning code indicating any history of being armed, violent or escaping.

In any case personal data listed in Article 6, first sentence of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, hereinafter referred to as the '1981 Strasbourg Convention', shall not be included.

Article 5

1. Data in categories (i) to (iv) of Article 3 shall be included in the Customs Information System only for the purpose of sighting and reporting, discreet surveillance or specific checks.

2. For the purpose of the suggested actions referred to in paragraph 1, personal data within any of the categories (i) to (iv) of Article 3 may be included in the Customs Information System only if, especially on the basis of prior illegal activities, there are real indications to suggest that the person concerned has committed, is in the act of committing, or will commit serious contraventions of national laws.

Article 6

1. If the suggested actions referred to in Article 5 (1) are carried out, the following information may in whole, or in part, be collected and transmitted to the supplying Member State:

- (i) the fact that the commodity, means of transport, business or person reported has been found;
- (ii) the place, time and reason for the check;
- (iii) the route and destination of the journey;
- (iv) persons accompanying the person concerned or occupants of the means of transport;
- (v) the means of transport used;
- (vi) objects carried;
- (vii) the circumstances under which the commodity, means of transport, business or person was found.

When such information is collected in the course of discreet surveillance steps must be taken to ensure that the discreet nature of the surveillance is not jeopardized.

2. In the context of a specific check referred to in Article 5 (1) persons, means of transport and objects may be searched to the extent permissible and in accordance with the laws, regulations, and procedures of the Member State in which the search takes place. If the specific check is not permitted by the law of a Member State, it shall automatically be converted by that Member State into sighting and reporting.

Article 7

1. Direct access to data included in the Customs Information System shall be reserved exclusively for the national authorities designated by each Member State. These national authorities shall be customs

administrations, but may also include other authorities competent, according to the laws, regulations and procedures of the Member State in question, to act in order to achieve the aim stated in Article 2 (2).

2. Each Member State shall send the other Member States and the committee referred to in Article 16 a list of its competent authorities which have been designated in accordance with paragraph 1 to have direct access to the Customs Information System stating, for each authority which data it may have access to and for what purposes.

3. Notwithstanding the provisions of paragraphs 1 and 2, Member State may, by unanimous agreement, permit access to the Customs Information System by international or regional organizations. Such agreement shall take the form of a protocol to this Convention. In reaching their decision the Member States shall take account of any reciprocal arrangements and any opinion of the Joint Supervisory Authority referred to in Article 18 on the adequacy of data protection measures.

Article 8

1. The Member States may only use data obtained from the Customs Information System in order to achieve the aim stated in Article 2 (2); however they may use it for administrative or other purposes with the prior authorization of and subject to any conditions imposed by the Member State which included it in the system. Such other use shall be in accordance with the laws, regulations and procedures of the Member State which seeks to use it and should take into account Principle 5.5 of the Recommendation R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe.

2. Without prejudice to paragraphs 1 and 4 of this Article and Article 7 (3), data obtained from the Customs Information System shall only be used by national authorities in each Member State designated by the Member State in question, which are competent, in accordance with the laws, regulations and procedures of that Member State, to act in order to achieve the aim stated in Article 2 (2).

3. Each Member State shall send the other Member States and the committee referred to in Article 16 a list of the competent authorities it has designated in accordance with paragraph 2.

4. Data obtained from the Customs Information System may, with the prior authorization of, and subject to any conditions imposed by, the Member State which included it in the System, be communicated for use by national authorities other than those designated under paragraph 2, non-Member States, and international or regional organizations wishing to make use of them. Each Member State shall take special measures to ensure the security of such data when it is being transmitted or supplied to services located outside its territory. Details of such measures must be communicated to the Joint Supervisory Authority referred to in Article 18.

Article 9

1. The inclusion of data in the Customs Information System shall be governed by the laws, regulations and procedures of the supplying Member State unless this Convention lays down more stringent provisions.

2. The use of data obtained from the Customs Information System, including performance of any action under Article 5 suggested by the supplying Member State, shall be governed by the laws, regulations and procedures of the Member State using such data, unless this Convention lays down more stringent provisions.

Article 10

1. Each of the Member States shall designate a competent customs administration which shall have national responsibility for the Customs Information System.

2. This administration shall be responsible for the correct operation of the Customs Information System within the Member State and shall take the measures necessary to ensure compliance with the provisions of this Convention.

3. The Member States shall inform one another of the competent administration referred to in paragraph 1.

CHAPTER IV

AMENDMENT OF DATA

Article 11

1. Only the supplying Member State shall have the right to amend, supplement, correct, or delete data which it has included in the Customs Information System.

2. Should a supplying Member State note, or have drawn to its attention, that the data it included are factually inaccurate or were included, or are stored contrary to this Convention, it shall amend, supplement, correct or delete the data, as appropriate, and shall advise the other Member States accordingly.

3. If one of the Member States has evidence to suggest that an item of data is factually inaccurate, or was included or is stored on the Customs Information System, contrary to this Convention, it shall advise the supplying Member State as soon as possible. The latter shall check the data concerned and, if necessary, correct or delete the item without delay. The supplying Member State shall advise the other Member States of any correction or deletion effected.

4. If, when including data in the Customs Information System, a Member State notes that its report conflicts with a previous report as to content or suggested action, it shall immediately advise the Member State which made the previous report. The two Member States shall then attempt to resolve the matter. In the event of disagreement, the first report shall stand, but those parts of the new report which do not conflict shall be included in the System.

5. Subject to the provisions of this Convention, where in any Member State a court, or other competent authority within that Member State, makes a final decision as to amendment, supplementation, correction, or deletion, of data in the Customs Information System, the Member States undertake mutually to enforce such a decision. In the event of conflict between such decisions of courts or other competent authorities in different Member States, including those referred to in Article 15 (4) concerning correction or deletion, the Member State which included the data in question shall delete it from the System.

CHAPTER V

RETENTION OF DATA

Article 12

1. Data included in the Customs Information System shall be kept only for the time necessary to achieve the purpose for which it was included. The need for its retention shall be reviewed at least annually by the supplying Member State.

2. The supplying Member State may, within the review period, decide to retain data until the next review if its retention is necessary for the purposes for which it was included. Without prejudice to Article 15, if there is no decision to retain data it shall automatically be transferred to that part of the Customs Information System to which access shall be limited in accordance with paragraph 4.

3. The Customs Information System shall automatically inform the supplying Member State of a scheduled transfer of data from the Customs Information System under paragraph 2, giving one month's notice.

4. Data transferred under paragraph 2 shall continue to be retained for one year within the Customs Information System, but, without prejudice to Article 15, shall be accessible only to a representative of the committee referred to in Article 16 or to the supervisory authorities referred to in Articles 17 (1) and 18 (1). During that period they may consult the data only for the purposes of checking its accuracy and lawfulness, after which it must be deleted.

CHAPTER VI

PERSONAL DATA PROTECTION

Article 13

1. Each Member State intending to receive personal data from, or include it in, the Customs Information System shall, no later than the time of entry into force of this Convention, adopt the national legislation sufficient to achieve a level of protection of personal data at least equal to that resulting from the principles of the 1981 Strasbourg Convention.

2. A Member State shall receive personal data from, or include it in, the Customs Information System only where the arrangements for the protection of such data provided for in paragraph 1 have entered into force in the territory of that Member State. The Member State shall also have previously designated a national supervisory authority or authorities in accordance with Article 17.

3. In order to ensure the proper application of the data protection provisions in this Convention, the Customs Information System shall be regarded in every Member State as a national data file subject to the national provisions referred to in paragraph 1 and any more stringent provisions contained in this Convention.

Article 14

1. Subject to Article 8 (1), each Member State shall ensure that it shall be unlawful under its laws, regulations

and procedures for personal data from the Customs Information System to be used other than for the purpose of the aim stated in Article 2 (2).

2. Data may be duplicated only for technical purposes, provided that such duplication is necessary for direct searching by the authorities referred to in Article 7. Subject to Article 8 (1), personal data included by other Member States may not be copied from the Customs Information System into other national data files.

Article 15

1. The rights of persons with regard to personal data in the Customs Information System, in particular their right of access, shall be put into effect in accordance with the laws, regulations and procedures of the Member State in which such rights are invoked.

If laid down in the laws, regulations and procedures of the Member State concerned, the national supervisory authority provided for in Article 17 shall decide whether information is to be communicated and the procedures for so doing.

A Member State which has not supplied the data concerned may only communicate data if it has first given the supplying Member State an opportunity to adopt its position.

2. A Member State, to which an application for access to personal data is made, shall refuse access if access may undermine the performance of the legal task specified in the report pursuant to Article 5 (1), or in order to protect the rights and freedoms of others. Access shall be refused in any event during the period of discreet surveillance or sighting and reporting.

3. In each Member State, a person may, according to the laws, regulations and procedures of the Member State concerned, have personal data relating to himself corrected or deleted if that data is factually inaccurate, or was included or is stored in the Customs Information System contrary to the aim stated in Article 2 (2) of this Convention or to the provisions of Article 5 of the 1981 Strasbourg Convention.

4. In the territory of each Member State, any person may, in accordance with the laws, regulations and procedures of the Member State in question, bring an action or, if appropriate, a complaint before the courts or the authority competent under the laws, regulations and procedures of that Member State concerning personal

data relating to himself on the Customs Information System, in order to:

- (i) correct or delete factually inaccurate personal data;
- (ii) correct or delete personal data included or stored in the Customs Information System contrary to this Convention;
- (iii) obtain access to personal data;
- (iv) obtain compensation pursuant to Article 21 (2).

The Member States concerned undertake mutually to enforce the final decisions taken by a court, or other competent authority, pursuant to (i), (ii) and (iii).

5. The references in this Article and in Article 11 (5) to a 'final decision' do not imply any obligation on the part of any Member State to appeal against a decision taken by a court or other competent authority.

CHAPTER VII

INSTITUTIONAL FRAMEWORK

Article 16

1. A Committee consisting of representatives from the Customs Administrations of the Member States shall be set up. The Committee shall take its decisions unanimously where the provisions of the first indent of paragraph 2 are concerned and by a two-thirds majority where the provisions of the second indent of paragraph 2 are concerned. It shall adopt its rules of procedure unanimously.

2. The Committee shall be responsible:

- for the implementation and correct application of the provisions of this Convention, without prejudice to the powers of the authorities referred to in Articles 17 (1) and 18 (1);

— for the proper functioning of the Customs Information System with regard to technical and operational aspects. The Committee shall take all necessary steps to ensure that the measures set out in Articles 12 and 19 are properly implemented with regard to the Customs Information System. For the purpose of applying this paragraph, the Committee may have direct access to, and use of, data from the Customs Information System.

3. The Committee shall report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary.

4. The Commission shall be party to the Committee's proceedings.

CHAPTER VIII

PERSONAL DATA PROTECTION SUPERVISION

Article 17

1. Each Member State shall designate a national supervisory authority or authorities responsible for personal data protection to carry out independent supervision of such data included in the Customs Information System.

The supervisory authorities, in accordance with their respective national laws shall carry out independent supervision and checks, to ensure that the processing and use of data held in the Customs Information System do not violate the rights of the person concerned. For this purpose the supervisory authorities shall have access to the Customs Information System.

2. Any person may ask any national supervisory authority to check personal data relating to himself on the Customs Information System and the use which has been or is being made of that data. That right shall be governed by the laws, regulations and procedures of the Member State in which the request is made. If the data has been included by another Member State, the check shall be carried out in close coordination with that Member State's national supervisory authority.

Article 18

1. A Joint Supervisory Authority shall be set up, consisting of two representatives from each Member State drawn from the respective independent national supervisory authority or authorities.

2. The Joint Supervisory Authority shall perform its task in accordance with the provisions of this Convention and of the 1981 Strasbourg Convention taking into account

Recommendation R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe.

3. The Joint Supervisory Authority shall be competent to supervise operation of the Customs Information System, to examine any difficulties of application or interpretation which may arise during its operation, to study problems which may arise with regard to the exercise of independent supervision by the national supervisory authorities of the Member States, or in the exercise of rights of access by individuals to the System, and to draw up proposals for the purpose of finding joint solutions to problems.

4. For the purpose of fulfilling its responsibilities, the Joint Supervisory Authority shall have access to the Customs Information System.

5. Reports drawn up by the Joint Supervisory Authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports.

CHAPTER IX

SECURITY OF THE CUSTOMS INFORMATION SYSTEM

Article 19

1. All necessary administrative measures to maintain security shall be taken:

- (i) by the competent authorities of the Member States in respect of the terminals of the Customs Information System in their respective States;
- (ii) by the Committee referred to in Article 16 in respect of the Customs Information System and the terminals located on the same premises as the System and used for technical purposes and the checks required by paragraph 3.

2. In particular the competent authorities and the committee referred to in Article 16 shall take measures:

- (i) to prevent any unauthorized person from having access to installations used for the processing of data;
- (ii) to prevent data and data media from being read, copied, modified or removed by unauthorized persons;

- (iii) to prevent the unauthorized entry of data and any unauthorized consultation, modification, or deletion of data;
- (iv) to prevent data in the Customs Information System from being accessed by unauthorized persons by means of data transmission equipment;
- (v) to guarantee that, with respect to the use of the Customs Information System, authorized persons have right of access only to data for which they have competence;
- (vi) to guarantee that it is possible to check and establish to which authorities data may be transmitted by data transmission equipment;
- (vii) to guarantee that it is possible to check and establish *a posteriori* what data has been introduced into the Customs Information System, when and by whom, and to monitor interrogation;
- (viii) to prevent the unauthorized reading, copying, modification or deletion of data during the transmission of data and the transport of data media.

3. The committee referred to in Article 16 shall monitor interrogation of the Customs Information System for the purpose of checking that searches made were admissible and were made by authorized users. At least 1 % of all searches made shall be checked. A record of such searches and checks shall be maintained in the System, shall be used only for the abovementioned purpose by the said committee and the supervisory authorities referred to in Articles 17 and 18, and shall be deleted after six months.

Article 20

The competent customs administration referred to in Article 10 (1) of this Convention shall be responsible for the security measures set out in Article 19, in relation to the terminals located in the territory of the Member State concerned, the review functions set out in Article 12 (1) and (2), and otherwise for the proper implementation of this Convention so far as is necessary under the laws, regulations and procedures of that Member State.

CHAPTER X

RESPONSIBILITIES AND LIABILITIES

Article 21

1. Each Member State shall be responsible for the accuracy, currency and lawfulness of data it has included in the Customs Information System. Each Member State shall also be responsible for complying with the provisions of Article 5 of the 1981 Strasbourg Convention.

2. Each Member State shall be liable, in accordance with its own laws, regulations and procedures for injury caused to a person through the use of the Customs Information System in the Member State concerned.

This shall also be the case where the injury was caused by the supplying Member State entering inaccurate data or entering data contrary to this Convention.

3. If the Member State against which an action in respect of inaccurate data is brought is not the Member State which supplied it, the Member States concerned shall seek agreement as to what proportion, if any, of the sums paid out in compensation shall be reimbursed by the supplying Member State to the other Member State. Any such sums agreed shall be reimbursed on request.

Article 22

1. The costs incurred in connection with the operation and use of the Customs Information System by the Member States on their territories shall be borne by each of them.

2. Other expenditure incurred in the implementation of this Convention, except for that which cannot be kept separate from the operation of the Customs Information System for the purpose of applying the customs and agricultural rules of the Community, shall be borne by the Member States. Each Member State's share shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the costs are incurred.

For the purpose of applying this paragraph, the expression 'gross national product' means the gross national product determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices⁽¹⁾ or any amending or replacing Community instrument.

⁽¹⁾ OJ No L 49, 21. 2. 1989, p. 26.

CHAPTER XI

IMPLEMENTATION AND FINAL PROVISIONS

Article 23

The information provided for under this Convention shall be exchanged directly between the authorities of the Member States.

Article 24

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force 90 days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

Article 25

1. This Convention shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of ninety days.

Article 26

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

Article 27

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-síneadh a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Til bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el veintiseis de julio de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, gaélica, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles den seksogtyvende juli nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechsundzwanzigsten Juli neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Ιουλίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil, an séú lá is fiche de Iúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zesentwintigste juli negentienhonderd vijftiennegtig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

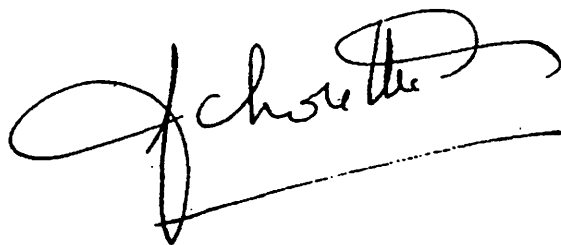
Tehty Brysselissä kahdentenkymmenentenäkuudentena päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Urfärdad i Bryssel den tjugosjätte juli nittonhundranittiofem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

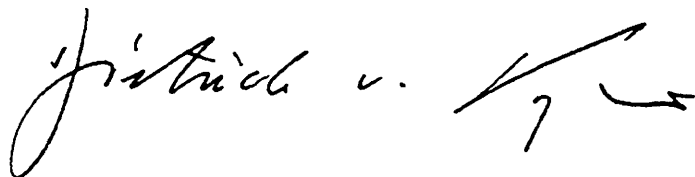
Für die Regierung des Königreichs Belgien



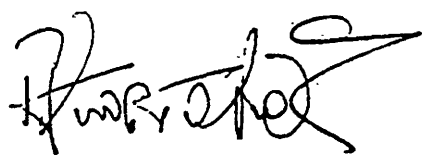
For regeringen for Kongeriget Danmark



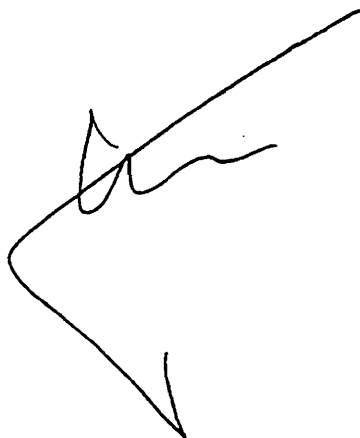
Für die Regierung der Bundesrepublik Deutschland



Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España

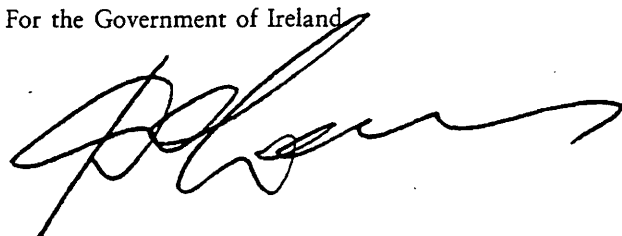


Pour le gouvernement de la République française

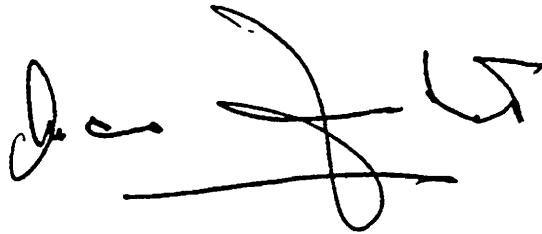


Thar ceann Rialtas na hÉireann

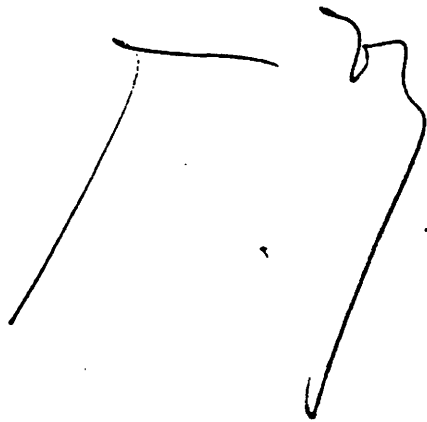
For the Government of Ireland



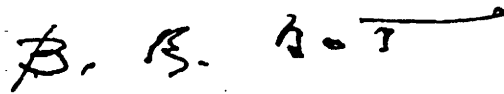
Per il governo della Repubblica italiana

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

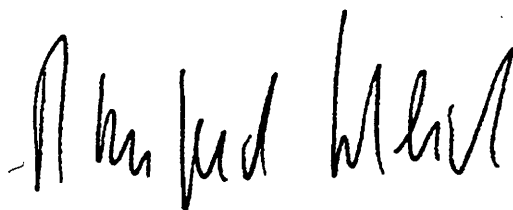
Pour le gouvernement du grand-duché de Luxembourg

A handwritten signature in black ink, featuring a large loop on the left and a vertical stroke on the right.

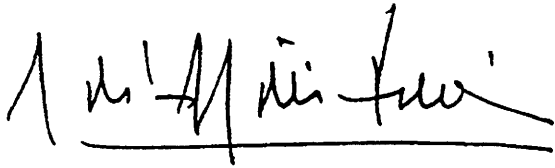
Voor de Regering van het Koninkrijk der Nederlanden

A handwritten signature in black ink, appearing to be 'B. B. J. T.' with a horizontal line extending from the end.

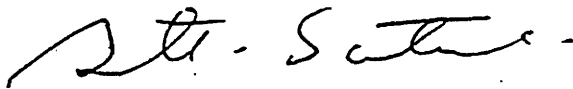
Für die Regierung der Republik Österreich

A handwritten signature in black ink, written in a cursive style that appears to be 'Alfred Mahr'.


Pelo Governo da República Portuguesa



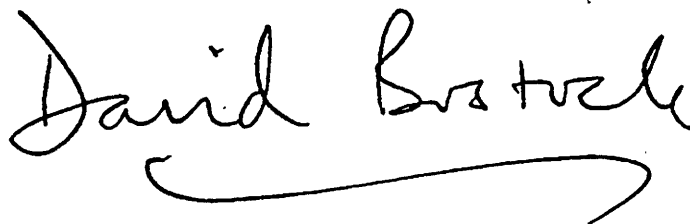
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



I

(Information)

COUNCIL**COUNCIL ACT**

of 10 March 1995

drawing up the Convention on simplified extradition procedure between the Member States of the European Union

(95/C 78/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the rules governing simplified extradition procedures between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

HAVING DECIDED that the Convention, the text of which is given in the Annex and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, 10 March 1995.

For the Council

The President

P. MÉHAIGNERIE

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act of 9 March 1995,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation in order to achieve these objectives,

CONVINCED of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

NOTING that, in a large number of extradition proceedings, the person claimed consents to his surrender,

NOTING that it is desirable to reduce to a minimum, in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

CONSIDERING that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

CONSIDERING that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.
2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

Article 2

Obligation to surrender persons

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

Article 3

Conditions for surrender

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12 (1) of the present Convention.
2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

Article 4

Information to be provided

1. The following information from the requesting State shall be regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5 (2):

(a) the identity of the person sought;

- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- (d) the nature and legal description of the offence;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (f) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

Article 5

Consent and agreement

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.
2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

Article 6

Information to be given to the person

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

Article 7

Establishing consent

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the arrested person shall have the right to legal counsel.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16 (4) of the European Convention on Extradition.

Article 8

Notification of consent

1. The requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.
2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

Article 9

Renunciation of entitlement to the speciality rule

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

- (a) consents to extradition; or
- (b) consents to extradition and expressly renounces his entitlement to the speciality rule.

Article 10

Notification of the extradition decision

1. Notwithstanding the rules laid down in Article 18 (1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

Article 11

Deadline for surrender

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10 (2).
2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.
3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10 (1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.
4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.

Article 12

Consent given after expiry of the deadline laid down in Article 8 or in other circumstances

1. Where an arrested person has given his consent after expiry of the deadline of 10 days laid down in Article 8, the requested State:
 - shall implement the simplified procedure as provided for in this Convention if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by it,
 - may use this simplified procedure if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has reached it in the meantime.
2. Where no request for provisional arrest has been made, and where consent has been given after receipt of a request for extradition, the requested State may avail itself of the simplified procedure as provided for in this Convention.
3. Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall state whether it intends to apply paragraph 1, second indent, and paragraph 2 and, if so, under what conditions.

Article 13

Re-extradition to another Member State

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration of the Member State provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to the re-extradition of this person to another Member State, unless the aforementioned declaration provides otherwise.

Article 14

Transit

In the event of transit under the conditions laid down in Article 21 of the European Convention on Extradition, where extradition under the simplified procedure is concerned, the following provisions shall apply:

- (a) in an emergency, an application containing the information required in Article 4 may be made to the State of transit by any method which leaves a written record. The State of transit may make its decision known using the same method;
- (b) the information referred to in Article 4 must be sufficient to enable the competent authority of the State of transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit *vis-à-vis* the extradited person.

Article 15

Determining the competent authorities

Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall indicate in a statement which authorities are competent within the meaning of Articles 4 to 8, 10 and 14.

Article 16

Entry into force

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union. The Secretary-General of the Council shall notify all Member States of such deposit.
2. This Convention shall enter into force 90 days after the date of deposit of the instrument of ratification, acceptance or approval by the last Member State to carry out this formality.

3. Until this Convention enters into force, any Member State may, when depositing its instrument of ratification, acceptance or approval, or at any other date, declare that the Convention shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit of its declaration.

4. Any declaration made pursuant to Article 9 shall take effect 30 days after deposit thereof, but no earlier than the date of the entry into force of this Convention or of the application thereof of the Member State concerned.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied between the requested State and the requesting State.

Article 17

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the General Secretariat of the Council of the European Union and approved by all the Member States, shall be equally authentic with the other authentic texts. The Secretary-General shall transmit a certified true copy of the text to each Member State.

3. The instruments of accession shall be deposited with the General Secretariat of the Council of the European Union.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 16 (3) shall apply to acceding Member States.

En fe de lo cual los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έδωσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-síniú a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo-assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Till bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el diez de marzo de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finlandesa, francesa, griega, irlandesa, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea. El Secretario General remitirá a cada Estado miembro una copia autenticada de dicho texto.

Udfærdiget i Bruxelles, den tiende marts nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og er deponeret i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union. Generalsekretæren fremsender en bekræftet genpart til hver medlemsstat.

Geschehen zu Brüssel am zehnten März neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt. Der Generalsekretär übermittelt jedem Mitgliedstaat eine beglaubigte Abschrift dieser Urschrift.

Έγινε στις Βρυξέλλες, στις δέκα Μαρτίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνον αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης. Ο Γενικός Γραμματέας διαβιβάζει επικυρωμένο αντίγραφο σε κάθε κράτος μέλος.

Done at Brussels, this tenth day of March in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union, which shall transmit a certified copy to each of the Member States.

Fait à Bruxelles, le dix mars mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne. Le Secrétaire général en transmet une copie certifiée conforme à chaque État membre.

Arna dhéanamh sa Bhruiséil, an deichiú lá de Mhárta míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Olláinnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh. Cuirfidh an tArdrúnal cóip dhilis dheimhnithe chuig gach Ballstát.

Fatto a Bruxelles, il dieci marzo millenovecentonovantacinque, in un unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del Segretariato generale dell'Unione europea, che ne trasmette copia certificata conforme a ciascuno Stato membro.

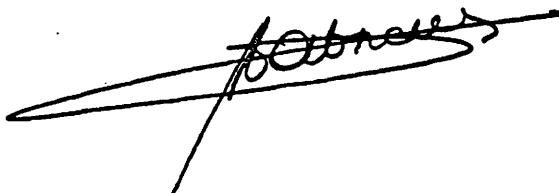
Gedaan te Brussel, de tiende maart negentienhonderdvijfennegentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-Generaal van de Raad van de Europese Unie. De Secretaris-Generaal zendt een voor eensluidend gewaarmerkt afschrift daarvan toe aan elke Lid-Staat.

Feito em Bruxelas, em dez de Março de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia. O Secretário-Geral remeterá uma cópia autenticada a cada Estado-membro.

Tehty Brysselissä kymmenentenä päivänä maaliskuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon. Pääsihteeristö toimittaa oikeaksi todistetun jäljennöksen siitä kaikille jäsenvaltioille.

Utfärdad i Bryssel den tionde mars år nittonhundranittiofem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd. Generalsekreteraren skall vidarebefordra en bestyrkt kopia till varje medlemsstat.

Pour le gouvernement du royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark



JOINT ACTION

of 29 November 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children

(96/700/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

available in some Member States and of the likely savings and cumulative effects of the planned actions;

Having regard to the Treaty on European Union and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

Whereas this joint action does not affect existing procedural rules on international cooperation,

Having regard to the initiative by the Kingdom of Belgium,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Whereas it is considered a matter of common interest to increase cooperation in the fields of justice and home affairs on the combating of trade in human beings and the sexual exploitation of children;

1. For the period 1996 to 2000, a programme shall be established to develop coordinated initiatives on the combating of trade in human beings and the sexual exploitation of children, on disappearances of minors and on the use of telecommunications facilities for the purposes of trade in human beings and the sexual exploitation of children.

Whereas trade in human beings and the sexual exploitation of children are serious breaches of fundamental individual rights and, in particular, human dignity;

2. For the purposes of this joint action, 'persons responsible for combating trade in human beings and the sexual exploitation of children' shall mean the following categories of persons inasmuch as they have responsibilities in the area concerned: judges, public prosecutors, police departments, civil servants, public services concerned with immigration and border controls and with social and tax legislation, the prevention or combating of such phenomena and assisting the victims or dealing with the perpetrators.

Whereas recent developments reveal that trade in human beings and the sexual exploitation of children may constitute a major form of organized crime the proportions of which within the European Union are becoming increasingly worrying;

3. The programme shall provide for measures in the following fields:

Aware of the need for a coordinated multidisciplinary approach to the problem;

- training,
- exchange programmes and training courses,
- organization of multidisciplinary meetings and seminars,
- studies and research,
- dissemination of information.

Whereas to that end the establishment of a framework for training, information, study and exchange actions for persons responsible for combating trade in human beings and the sexual exploitation of children in all its forms will step up and facilitate the fight against trade in human beings and the sexual exploitation of children as well as improve mutual understanding of Member States' legal systems, identify common ground between them, and thereby reduce whatever obstacles exist to increased cooperation between Member States in this area;

Article 2

Whereas these objectives may be more efficiently pursued at European Union level than by the Member States acting individually in view of the specific experience

The financial reference amount for implementation of the programme for the period 1996 to 2000 shall be ECU 6,5 million.

The annual appropriations shall be authorized by the budget authority within the limits of the financial perspective.

Article 3

For training, projects having the following aims may be considered:

- knowledge of other Member States' legal systems, in particular of legislation on trade in human beings and the sexual exploitation of children and of the functioning of judicial proceedings and procedures relating to immigration and border controls and social and tax legislation,
- preparation of specific teaching modules for actions involving training, exchanges and training courses, conferences or seminars organized under this programme,
- incentives to acquire operational knowledge of the languages of the countries of origin of victims of trade in human beings and the sexual exploitation of children.

Article 4

For exchange programmes and training courses, projects having the following aims may be considered:

- organization of limited-duration courses in public bodies which have been given particular responsibilities in the area concerned,
- organization of visits to public bodies or persons responsible in several other Member States for specific aspects of the problem.

Article 5

For the organization of meetings, projects having the following aims may be considered:

- organization of bilateral or European conferences on specific aspects of the problem,
- the holding of multidisciplinary conferences.

Article 6

For studies and research, projects having the following aims may be considered:

- scientific, technical or comparative research on specific aspects of the problem or coordination of research on the matter,

— preliminary analysis of topics chosen for organizing projects under the programme, in particular:

- a study of the advisability and feasibility of centralizing, on a structural basis, information concerning not only missing persons and victims of the trade in human beings and the sexual exploitation of children but also the perpetrators of these crimes, including DNA data and the criminal analysis of such data, taking ethical aspects into account,
- a study of measures to be adopted to prevent the use of telecommunications facilities, including the Internet system, for the purposes of trade in human beings and the sexual exploitation of children,
- exploitation of reports on courses or meetings organized under the programme.

Article 7

For dissemination of information, projects having the following aims may be considered:

- circulation in writing or by data transmission, of the originals or translations of information notes on law amendments or planned reform,
- dissemination of information on the measures referred to in Articles 3, 4 and 5, on the outcome of the meetings referred to in Article 5 or on the findings of research carried out under Article 6, and their application,
- creation of databases and/or documentation networks storing lists of articles, publications, studies and legislation concerning trade in human beings and the sexual exploitation of children, and in particular the creation of an updated database on the state of relevant legislation and case-law in the Member States.
- production of manuals, for use primarily by police departments, concerning techniques for combating trade in human beings and the sexual exploitation of children.

Article 8

1. Projects receiving Community financing must be of European interest and involve more than one Member State.

2. Those responsible for the projects may be public or private institutions including, in particular, legal training institutes and institutes for the training of the judiciary as well as bodies whose function is to prevent or combat trade in human beings and the sexual exploitation of children.

3. The projects to be financed shall be subject to a procedure taking into account in particular:

- consistency of topics covered with work undertaken or provided for in Council action programmes coming under judicial cooperation,
- input towards the framing or implementation of instruments provided for in Title VI of the Treaty,
- mutual complementarity between the various projects,
- the range of professions targeted,
- the nature of the institution responsible,
- the operational and practical nature of the measures, in particular regarding the procedures for cooperation in centralizing information on the criminal activities covered by this joint action,
- the degree of preparation of the participants,
- the scope for drawing on results achieved in order to make possible new developments in preventing and combating trade in human beings and the sexual exploitation of children.

4. These projects may involve those responsible in applicant countries with a view to helping them prepare for accession, or in other third countries where it serves the aims of the projects, in particular where they are countries of origin of victims of trade in human beings and the sexual exploitation of children.

5. These projects may also involve the staff of public or private bodies whose function is to prevent or combat trade in human beings and the sexual exploitation of children, to assist the victims or deal with the perpetrators, and academic and scientific staff, where it serves the aims of the projects.

Article 9

Financing decisions and the contracts deriving from them shall provide in particular for follow-up and financial monitoring by the Commission and audit by the Court of Auditors.

Article 10

1. All types of expenditure directly attributable to implementation of a measure and incurred during a contractually set period shall be eligible.

2. The rate of financial support from the Community budget may not exceed 80 % of the cost of the measure.

3. Translation and interpreting expenses, data-processing costs and expenditure on durables or consumables shall be taken into consideration only when they constitute a necessary support for carrying out the measure and may be financed only up to a maximum of 50 % of the subsidy, or 80 % where the very nature of the measure makes it indispensable.

4. Expenditure relating to public premises and equipment and to remuneration of officials of State or public bodies may be taken into consideration only in so far as it concerns uses and tasks not linked with a national purpose or function but specifically connected with implementation of this joint action.

Article 11

1. The Commission shall be responsible for implementing the measures provided for in this joint action and shall adopt the detailed procedures for applying it, including the eligibility criteria for costs.

2. The Commission shall, with the assistance of experts from the professional circles concerned, establish a draft annual programme for implementing this joint action as regards specific priorities and the allocation of the appropriations available amongst fields of action.

3. The Commission shall each year evaluate the measures for implementing the programme during the previous year.

Article 12

1. The Commission shall be assisted by a committee consisting of one representative from each Member State and chaired by a representative of the Commission.

2. The Commission shall submit to the committee the draft annual programme, including a proposal for the distribution of the available appropriations among the fields of action and proposals for implementing rules and for project assessment. The opinion shall be delivered by the committee, acting unanimously, within a period of two months. This period may be reduced by the chairman for reasons of urgency. The chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council, which shall take a decision unanimously within two months.

Article 13

1. From the second financial year onwards, projects for which financing is requested shall be submitted to the Commission for scrutiny by 31 March of the financial year to which they are to be charged.

2. The Commission shall examine the projects submitted to it with the assistance of the experts referred to in Article 11 (2).

3. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the committee referred to in Article 12. The committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on this draft within a time limit which the chairman may lay down according to the urgency of the matter. The chairman shall not vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

4. Where the financial requested exceeds ECU 50 000, the Commission shall submit to the committee referred to in Article 12 a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall take a decision within two months.

Article 14

1. The measures covered by the programme and financed from the general budget of the Communities shall be managed by the Commission in accordance with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾.

2. In the presentation of the proposals for financing referred to in Article 13 and of the evaluations mentioned in Article 11, the Commission shall take into account the principles of sound financial management and in particular of economy and cost-effectiveness referred to in Article 2 of the Financial Regulation.

Article 15

The Commission shall report annually to the European Parliament and the Council on the implementation of the programme. The first report shall be forwarded at the end of the 1996 financial year.

Article 16

This joint action shall enter into force on the day of its adoption.

It shall apply for a period of five years, at the end of which it may be extended.

Article 17

This joint action shall be published in the Official Journal.

Done at Brussels, 29 November 1996.

For the Council

The President

N. OWEN

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1. Financial Regulation as last amended by Regulation (EC, Euratom, ECSC) No 2335/95 (OJ No L 240, 7. 10. 1995, p. 12).

JOINT ACTION

of 29 November 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking

(96/699/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) thereof,

Having regard to the initiative of Ireland,

Recalling the report of the experts on drugs approved by the Madrid European Council on 15 and 16 December 1995 and, specifically, the action proposal therein relating to the chemical profiling of drugs;

Bearing in mind the conclusions of the seminar in Dublin on 30 July 1996 on the chemical profiling of drugs, which involves the qualitative and quantitative determination of most components in a sample of a seized drug;

Whereas it is in the common interest of the Member States to identify the trends of illicit drug production and manufacture and to map the supply lines of controlled drugs;

Whereas it is in the same common interest to improve information and intelligence for law enforcement purposes on the sources and routes of illicit drug trafficking;

Whereas it is in the said common interest to maximize evidential material relating to drug seizures, for judicial services of Member States;

Considering that forensic science laboratories of the Member States have developed specialized competences, skills and expertise in the chemical profiling of drugs, which is of significant benefit to law enforcement agencies in individual Member States in the fight against illicit drug production and trafficking;

Considering that the sharing of this information would be an important contribution to the European Union's efforts in tackling illicit drug production and trafficking;

Considering that the Europol Drugs Unit has developed special competence in ballistic profiling of seized drugs;

Whereas the sharing of information envisaged by this joint action is not intended to replace or affect any bilateral or multilateral arrangements concerning the chemical profiling of drugs, or to require the setting up of any new structures within the Council;

Recognizing the benefits of enhancing cooperation between Member States' forensic science laboratories,

HAS ADOPTED THIS JOINT ACTION:

Article 1

This joint action is intended to establish a more cohesive mechanism for the transmission and dissemination of the results of drug profiling in Member States. It envisages the exchange of information relating to the chemical profiling of cocaine, heroin, LSD, amphetamines and their ecstasy-type derivatives MDA, MDMA and MDEA, and such other drugs or psychotropic substances as Member States see fit.

Article 2

The Europol Drugs Unit is hereby designated as the authority to which information from Member States concerning chemical profiling is to be transmitted.

Article 3

The information supplied to the Europol Drugs Unit shall take the following format:

(i) analysis of drugs in tablet form:

- (a) physical dimensions of the sample — size, weight, colour;
- (b) designs and markings — type and position of logo;
- (c) type and quantity of the main drug found in the sample;
- (d) type and quantity of all other component substances discovered during analysis;
- (e) picture of the sample;
- (f) case registration (identification) number;
- (ii) analysis of drugs not in tablet form:
- (a) type and quantity of the main drug found in the sample;
- (b) type and quantity of all other component substances discovered during analysis;
- (c) case registration (identification) number.
- Article 4*
- The Europol Drugs Unit shall transmit to all Member States the information supplied under Article 3.
- Article 5*
- This joint action shall enter into force on the day of its adoption.
- Article 6*
- This joint action shall be published in the Official Journal.
- Done at Brussels, 29 November 1996.
- For the Council*
The President
N. OWEN

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

JOINT ACTION

of 15 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union

(96/610/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) thereof,

Having regard to the initiative of the United Kingdom,

Recalling that, pursuant to Article K.1 (9) of the Treaty, police cooperation for the purposes of preventing and combating terrorism is considered as a matter of common interest to the Member States;

Whereas in its Declaration on Terrorism adopted on 15 and 16 December 1995, the European Council declared that, in order to prevent and combat terrorist action effectively, there is a need for thorough coordination between Member States;

Whereas the Council considers that, while there is already extensive and effective cooperation between all the agencies of the Member States responsible for countering terrorism, they should always seek to enhance that cooperation;

Whereas national counter-terrorist agencies have, in response to the varying terrorist threats faced by Member States, developed areas of specialized competences, skills and expertise, which should in principle be made available at their request to appropriate agencies in all other Member States as and when they have need of them;

Whereas the creation and maintenance of a Directory of these areas of specialized competences, skills and expertise would make them more widely and readily

available to agencies in all Member States, thus enhancing Member States' counter-terrorist capability;

Whereas the Directory envisaged by this joint action is not intended to replace or affect any existing bilateral or multilateral arrangements for counter-terrorism cooperation, not to be a vehicle for the exchange of operational intelligence, nor to require the setting up of any new structures within the Council,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The Council hereby designates the United Kingdom as responsible during the start-up phase of one year for compiling, maintaining and disseminating a Directory of specialized counter-terrorist competences, skills and expertise hereafter referred to as 'the Directory'. Thereafter, this task shall be the responsibility of the Member State holding the Presidency.

2. The designated Member State shall appoint a particular office to compile, maintain and disseminate the Directory hereafter referred to as the 'the Directory Manager'.

Article 2

1. Member States shall send their contributions to be entered in the Directory of the Directory Manager.

2. The Directory Manager shall compile the Directory on the basis of the contributions from the Member States.

3. When making their contributions to the Directory, Member States shall take full account of the security classification and protection established by each Member State.

4. Subsequently, the Directory Manager shall be responsible for the accurate incorporation of any amendments and additions to the Directory on the basis of further contributions from Member States, and for drawing these amendments and additions to the attention of Member States.

5. The Directory Manager shall be responsible for maintaining statistics on the use of the Directory, and making a twice-yearly report to the Council on the effectiveness of the scheme.

Article 3

1. Each Member State shall contribute to the Directory an indication of any specialized counter-terrorist competences, skill or expertise it has developed and which it considers useful to make available to all Member States.

2. The contributions from the Member States, which might conveniently be made on pro-formas to be agreed within the Council, shall as a minimum give a sufficient description of each particular competence, skill or expertise to allow to allow the appropriate agencies in Member States to make a reasoned judgment as to its likely relevance in the performance of their counter-terrorist duties. The contributions shall also indicate precisely how contact should be made, directly and speedily, either with the location offering this competence, skill or expertise or with a central contact point within the Member State.

3. Member States shall be responsible for updating these contact details when necessary.

4. Member States may at any time contribute additional entries to, or ask for entries to be withdrawn from, the Directory.

5. No personal data, other than the names and contact details required for the operation of the scheme, shall be held in the Directory.

Article 4

1. Each Member State shall hold a copy of the Directory. Any relevant agency in a Member State which wishes to avail itself of a particular competence mentioned in the Directory shall approach the relevant contact point in the Member State which entered that information.

2. A Member State which has contributed a competence, skill or expertise to the Directory may decline to make it available in a particular case if circumstances so require.

3. Member States agree that, if they make a contact through the Directory, they will notify the basic details, to be agreed by the Council, to the Director Manager, to allow effective monitoring of the usefulness of the Directory.

Article 5

Decisions by or within the Council with regard to matters covered by Articles 1, 3 and 4 shall be made on the basis of unanimity.

Article 6

This joint action shall be published in the Official Journal.

It shall enter into force on the date of its publication.

Done at Luxembourg, 15 October 1996.

For the Council

The President

B. HOWLIN

JOINT ACTION

of 16 December 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union
extending the mandate given to the Europol Drugs Unit

(96/748/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union and in particular Article K.3 (2) (b) thereof,

Article 1

Recalling the Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the Europol Drugs Unit⁽¹⁾, which mandated the Europol Drugs Unit to conduct certain activities to assist Member States in combating certain forms of transnational crime;

Article 2 (2) of the Joint Action of 10 March 1995 shall be replaced by the following:

Recalling the Council's Act of 26 July 1995⁽²⁾ drawing up the text of the Europol Convention signed by the representatives of the governments of all Member States of the European Union;

2. The Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States, in relation to:

Recalling that the Convention, on entry into force following adoption by all Member States, will provide Europol with a mandate extending beyond the present mandate of the Europol Drugs Unit, covering other forms of transnational crime, including trafficking in human beings;

- (a) illicit drug trafficking,
- (b) illicit trafficking in radioactive and nuclear substances,
- (c) crimes involving clandestine immigration networks,
- (d) traffic in human beings,
- (e) illicit vehicle trafficking,

together with the criminal organizations involved and associated money-laundering activities.

Bearing in mind the wish expressed by the European Parliament in its resolutions of 19 September 1996 stressing the importance of combating trafficking in human beings and calling for a role to be given to the Europol Drugs Unit in this field;

For the purposes of this Joint Action, traffic in human beings shall be defined in the Europol Convention.

Aware of the conclusions adopted by the Vienna Conference on trafficking in women convened by the European Commission and the Austrian Government in June 1996;

Article 2

This Joint Action shall enter into force on the day of its publication in the Official Journal.

Aware of the conclusions adopted by the Stockholm World Conference on the Commercial Sexual Exploitation of Children held from 26 to 31 August 1996;

Done at Brussels, 16 December 1996.

Having agreed to extend the mandate of the Europol Drugs Unit to include trafficking in human beings,

For the Council
The President
M. D. HIGGINS

⁽¹⁾ OJ No L 62, 20. 3. 1995, p. 1.

⁽²⁾ OJ No C 316, 27. 11. 1995, p. 1.

COUNCIL RESOLUTION

of 29 November 1996

on measures to address the drug tourism problem within the European Union

(96/C 375/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article K.1 thereof,

Whereas combating drug addiction and cooperation for that purpose are matters of common interest to the Member States;

Whereas the comprehensive action plan to combat drugs agreed upon by the Madrid European Council on 15 and 16 December 1995 emphasized the need to address the drug tourism problem in Member States;

Conscious that drug tourism is a continually changing problem within the European Union;

Taking into consideration the causes of drug misuse and the need for prevention;

Recognizing that drug tourism is in evidence in only some Member States and that there is considerable variation in the extent of the problem experienced by those Member States;

Desiring to promote and ensure a high level of liaison between appropriate Member States to facilitate an effective and efficient response to the drug tourism problem;

Desiring to ensure that the most effective organizational response is in place to deal with the problem;

Noting that some Member States already have bilateral or multilateral agreements in place to tackle the problem,

HEREBY ADOPTS THIS RESOLUTION:

1. In order to tackle the drug tourism problem more effectively in the European Union, the Council invites the Member States concerned:

(a) to improve and accelerate exchange of information;

(b) to coordinate operational actions, and

(c) mutually to enhance procedures for the application of national law in regard to drug tourism.

2. Having regard to the variation in the extent of the drug tourism problem experienced by individual Member States and consequently in the need for specific measures to address it, the Council invites each Member State concerned, where appropriate:

(a) to improve and accelerate the exchange of information by using existing channels at central, regional and local levels, or, where necessary, by the creation of such channels. This will include, where necessary, the participation of a central law enforcement focal point to enhance coordination in respect of the drug tourism problem in each such Member State and to maintain contact with the central law enforcement focal points of other Member States. The national law of each Member State should apply in this regard;

(b) to exchange personnel and/or make use of existing liaison officers;

(c) to undertake consultation regarding planned action on each side of the border and, where relevant, also involving transit Member States;

(d) to make the operation of the transfer of criminal proceedings as flexible and efficient as practicable so that, where this procedure is available to a Member State, it can be used effectively to deal with a large number of relatively small offences.

3. The Council invites the Europol Drugs Unit to pay special attention in its annual drugs situation report to the more serious aspects of the drug tourism phenomenon, with a view to enabling the Council, following receipt of that report, to update, when appropriate, the European Union document on drug tourism and the evaluation of measures to combat this problem.

COUNCIL RESOLUTION

of 20 December 1996

on sentencing for serious illicit drug-trafficking

(97/C 10/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Whereas the development of close cooperation on justice and home affairs is a prime objective of the European Union and combating drug addiction and cooperation for the purposes of preventing and combating unlawful drug-trafficking are matters of common interest to the Member States;

Recalling that the European Council in Cannes on 26 and 27 June 1995 approved the work on the European Union's action plan to combat drugs (1995 to 1999) and agreed on the need for a coordinated approach as regards illicit drug-trafficking;

Recalling that the European Council in Madrid on 15 and 16 December 1995 approved the provisions of the comprehensive action plan to combat drugs, and has called on the Council and the Commission to consider the extent to which harmonization of Member States' laws could contribute to a reduction in the consumption of drugs and illicit trafficking in them;

Recalling that the European Council in Florence on 21 and 22 June 1996 stressed the vital importance of reinforced cooperation between Member States to fight drugs and organized crime;

Noting that illicit trafficking in drugs:

- can undermine the lawful functioning of society,
- represents a threat to the health, safety and quality of life of the Union's citizens,
- often has consequences as destructive as those which flow from the most serious of crimes,
- often is criminally organized and operates on a transnational scale,
- if it is to be overcome, requires Member States to respond by taking coordinated and concerted action against those responsible for illicit trafficking in drugs,
- is condemned by all Member States and is punishable by criminal sanctions in their respective national laws;

Affirming that illicit trafficking in drugs comprises the offences set out in Article 3 (1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (hereafter referred to as the 'UN 1988 Convention');

Recalling that a number of instruments have been adopted which facilitate Member States' fight against illicit drug-trafficking notably the United Nations 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol, the United Nations 1971 Convention on Psychotropic Substances, the UN 1988 Convention, the Council of Europe 1990 Convention on laundering, search, seizure and confiscation of the proceeds of crime, Council Directive 91/308/EEC of 10 June 1991 on prevention of use of the financial system for the purpose of money-laundering ⁽¹⁾, the Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) ⁽²⁾ and the Council of Europe 1995 Agreement on illicit traffic by sea implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

Encouraging Member States which have not yet done so, to ratify the Conventions referred to above;

Noting that the UN 1988 Convention requires each Party to make the commission of offences covered by Article 3 (1) thereof liable to sanctions which take into account their grave nature, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation of the instrumentalities used in, and proceeds derived from, such offences;

DECLARES that, in order to more effectively coordinate and improve the European Union's strategy for combating illicit drug-trafficking, and in particular to improve cooperation in criminal matters within this area,

⁽¹⁾ OJ No L 166, 28. 6. 1991, p. 77.

⁽²⁾ OJ No C 316, 27. 11. 1995, p. 1.

Member States will ensure that their national laws provide for the possibility of custodial sentences for serious illicit trafficking in drugs which are within the range of the most severe custodial penalties imposed by their respective criminal law for crimes of comparable gravity;

CONSIDERS that factors which might be taken into account regarding the custodial penalties that might be applicable in relation to serious drug-trafficking could for example, include, among other factors:

- the extent of the trafficking,
- the extent to which the person concerned has profited from the illicit traffic,

— the involvement in the offence of an organized criminal group to which the offender belongs,

— the extent to which the offender has control of the drug-trafficking organization,

— the victimization or use of minors;

RECOMMENDS that Member States ensure that their national laws reflect the principles of this resolution;

INTENDS to carry out an appropriate review of the implementation of this resolution.

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

COUNCIL RESOLUTION

of 29 November 1996

on the drawing up of police/customs agreements in the fight against drugs

(96/C 375/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article K.1 thereof,

Whereas the action plan in the field of justice and home affairs laid down by the Council in November 1993, called, *inter alia*, for the development of all forms of police and customs cooperation in order to attain the common objective of greater security for the European Union's citizens;

Whereas the 1994 priority work programme drawn up by the Justice and Home Affairs Council in November 1993 emphasized, *inter alia*, the necessity for enhanced complementarity of action between police and customs services;

Whereas the report of the group of experts on drugs approved by the Madrid European Council on 15 and 16 December 1995, contained provisions on police, customs and other law enforcement cooperation;

Convinced that a high degree of cooperation between police and customs and, where appropriate, other law enforcement agencies at national level would contribute to increased effectiveness and efficiency in the fight against drug trafficking at European Union level;

Without prejudice to the different legal and administrative provisions or arrangements which exist in Member States relating to the respective roles of police and customs in the fight against drugs;

Recognizing the value of defining and clarifying the respective roles and functions of the law enforcement agencies involved in drug law enforcement;

Conscious of the need to avoid duplication of effort between law enforcement agencies and to make optimum use of their complementary resources;

Desiring to promote and ensure a high level of liaison and cooperation between agencies in order to facilitate effective and efficient drug law enforcement;

Desiring to ensure that the most effective organizational response is in place for dealing with the drug problem;

Noting that some Member States of the Union already have joint agreements or memoranda of understanding in place between police and customs;

Aware of the benefits which these types of agreements or memoranda can bring to law enforcement in the fight against drugs,

HEREBY ADOPTS THIS RESOLUTION:

1. In order to emphasize the need for a close working relationship between police forces and customs services, to define their respective roles in the context of drug law enforcement activities and to enable them to work together more efficiently and effectively, the Council urges Member States to establish, without prejudice to national legislative and administrative provisions, formal agreements or other arrangements at national level which take account of the broad guidelines laid down in this Resolution.
2. Agreements or other arrangements between police and customs services may contain, but need not be limited to, provisions in respect of the following matters:

- precise delineation of, and respect for, the competences of each of the said two services, including responsibility for drug seizure and related evidence, questioning and detention of suspects, investigation and, where applicable, prosecution,
 - exchange and sharing of relevant intelligence information,
 - exchange of descriptions of drug traffickers' modus operandi,
 - exchange of information on the application of risk analysis techniques,
 - exchange of liaison officers at headquarters level of the two services with a view to building up mutual trust and confidence,
 - putting in place close liaison arrangements at local level,
 - joint agreed press statements,
 - joint police-customs task forces, where appropriate, for intelligence and/or investigation purposes,
 - agreed police-customs procedures for operational matters involving both these agencies
- and, where appropriate:
- joint police-customs mobile patrol squads,
 - joint police-customs training programmes,
 - sharing of equipment by police and customs.
3. The agreements or arrangements referred to in this resolution may also be extended to include law enforcement agencies other than police and customs.
 4. Member States are invited to inform the Council through the General Secretariat within a year of the measures they have taken following this resolution.
-

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

COUNCIL RESOLUTION

of 16 December 1996

on measures to combat and dismantle the illicit cultivation and production of drugs within the European Union

(96/C 389/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article K.1 thereof,

Whereas the comprehensive action plan to combat drugs agreed on by the Madrid European Council on 15 and 16 December 1995 emphasized the need to combat and dismantle the illicit cultivation and production of drugs within the European Union;

Conscious of the problem of the illicit cultivation and production of drugs within the European Union;

Aware that persons who engage in the illicit cultivation and production of drugs frequently operate in several Member States for the purposes of the cultivation, production and sale thereof;

Recognizing the practical difficulties encountered in addressing this problem and the need for concerted action;

Desiring to promote a high level of cooperation and exchange of expertise and intelligence between Member States;

Desiring to prevent the use of cannabis seeds for illicit cultivation;

Noting that Member States have already taken a number of measures to combat this problem,

HEREBY ADOPTS THIS RESOLUTION:

The Council invites Member States:

1. to pay special attention to the prevention and detection of the illicit cultivation and production of drugs;

2. to consider, depending on the circumstances in their country, making the sale of cannabis seeds an offence where a person knowingly sells to another who intends to cultivate cannabis illegally;

3. to ensure the banning of the cultivation of cannabis under glass, under polythene tunnels, and indoors, with the exception of such cultivation, for example for the purposes of scientific research, where a special licence has been obtained, the applicant having first satisfied the appropriate licensing authority that the proposed cultivation comes within this exception;

4. to enhance the effectiveness of their operational personnel in tackling the problem of the illicit cultivation and production of drugs, in conjunction with the Europol Drugs Unit (EDU) by:

(a) improved exchange of operational and strategic intelligence;

(b) cooperation with forensic laboratories;

(c) the holding of specialized training courses and seminars;

(d) the exchange of skills, knowledge and expertise;

(e) the assessment of equipment for the detection of illegal laboratories;

(f) the compilation, on the initiative of the Presidency in cooperation with EDU and with the assistance of volunteering Member States, of a manual on the detection of illicit cultivation and production of drugs to include essential advice on safety and health precautions. EDU will be responsible for the regular updating of this manual.

COUNCIL RESOLUTION

of 6 December 1994

on the legal protection of the financial interests of the Communities

(94/C 355/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Council resolution of 13 November 1991 concerning the protection of the financial interests of the Communities^(*), in which the Council and the Representatives of the Governments of the Member States, meeting within the Council, stated that cooperation between the Member States in the prevention and combating of fraudulent practices by which harm is done to the financial interests of the Communities is enhanced by a compatibility of the norms in the legal and administrative provisions of the Member States by which such conduct is sanctioned,

Taking into consideration the study of the relationship between Community law and national criminal law conducted in 1991 by the *ad hoc* Working Party on Community Law and National Criminal Law,

Taking into consideration the comparative study of the laws, regulations and administrative provisions of the Member States applicable to fraud against the Community budget and the report of June 1994 from the Greek Presidency,

Having regard to the study on the systems of administrative and criminal penalties of the Member States and on the general principles applicable to Community penalties conducted by the Commission, and the proposal from the Commission for a Council Regulation (EC, Euratom) on protection of the Communities' financial interests,

Having regard to the Council resolution of 29 November 1993 on the protection of the Community's financial interests, in which the Council stated that considering that, without prejudice to Community competence, the question of protection of the financial interests of the Community must be examined also in the light of the cooperation introduced pursuant to Title VI of the Treaty, and that it considered it appropriate to examine the measures which should be taken to achieve a greater degree of compatibility in the laws, regulations and administrative provisions of the Member States in the effort to combat fraud by which harm is done to the financial interests of the Community,

Having regard to the Presidency conclusions of the European Council at Corfu on 24 and 25 June 1994, in

which it is stated that the European Council asked the Justice and Home Affairs Council to reach agreement on tackling the criminal aspects of fraud and report back to its meeting at Essen in December 1994,

Having regard to the draft Council Decision on joint action on the basis of Article K.3 of the Treaty regarding the protection of the financial interests of the European Communities, presented by the United Kingdom,

Having regard to the draft from the Commission for a Council act establishing a convention for the protection of the Communities' financial interests,

Having regard to the reports of the Court of Auditors, and in particular its annual report concerning the financial year 1993 presented in November 1994,

Recalling that the Council has invited the European Parliament to give its views on the two abovementioned drafts:

1. RECOGNIZES afresh the need to protect the financial interests of the Communities, *inter alia* by criminal sanctions;
2. NOTES, in this connection, that criminal provisions protecting the Communities' financial interests already exist in many areas in the Member States; there are wide variations, however, as to what constitutes an offence and/or in legal consequences; there are also gaps which may affect cooperation between Member States;
3. IS OF THE OPINION THAT, taking into account the existing distribution of responsibility between the Member States and the Communities, the criminal laws of the Member State should be made more compatible in the interest of effectively deterring and combating criminal offences against the financial interest of the Communities, and of improving cooperation on criminal matters between the Member States;
4. CALLS UPON the Member States to ensure that the obligation arising out of Article 209a, first subparagraph, of the Treaty establishing the European Community is fully implemented;
5. WELCOMES efforts to strengthen the legal protection of the financial interests of the Communities by

(*) OJ No C 328, 17. 12. 1991, p. 1.

developing minimum standards of protection in Member States' criminal laws, and in this connection also to improve cooperation in combating fraud;

6. IS OF THE OPINION THAT a legal instrument should be established for the protection under national criminal law of the financial interests of the Communities;

7. REQUESTS the elaboration as soon as possible of such a legal instrument on the basis of the drafts from the United Kingdom for a joint action and from the Commission for a convention between Member States, taking into account, *inter alia*, the following guiding principles:

(a) for the purposes of such an instrument, a definition of fraud should be drawn up. It should refer, subject to conditions and terms to be defined more closely, to intentional⁽¹⁾ acts or omissions, including at least incorrect statements and concealment of facts in violation of duties of disclosure, resulting in damage to the budget of the Communities or to budgets managed by or on behalf of them, and involving, on the one hand, misappropriation, wrongful retention and misapplication of funds, and, on the other hand, the wrongful diminution of revenues;

(b) each Member State should apply to such fraud appropriate sanctions which take into account the seriousness of the conduct concerned. At least serious fraud, for example where more than a certain amount of funds (to be defined) is involved, should be regarded as criminal and imprisonable. So should attempting, assisting in or inducing the commission of such fraud;

(c) every Member State should be competent to prosecute relevant criminal offences committed in

whole or in part within its territory. It should also be possible, in principle, for a Member State to prosecute one of its nationals who has committed a relevant criminal offence wholly outside its territory but who is not extradited solely because of his nationality;

(d) where a relevant offence of fraud against the financial interests of the Communities involves two or more Member States, those States should cooperate effectively in relation to such an offence, for example through mutual assistance, extradition, the transfer of criminal proceedings or the enforcement of foreign criminal sentences. The principle of '*ne bis in idem*' shall apply;

(e) serious cases of fraud should be extradition offences. Mutual assistance and extradition should also be provided for regarding relevant offences as referred to in (a) involving violations of customs provisions and provisions concerning value added tax;

(f) in addition to criminal sanctions against a natural person for a relevant criminal offence, it should also be possible, under conditions to be defined, to impose appropriate criminal or other sanctions on legal persons;

(g) Member States should take the same measures to punish fraud referred to in (a) involving officials of the European Communities as they take in respect of their own officials;

(h) Member States should take effective measures to punish bribery involving officials of the European Communities in relation to the financial interests of the Communities;

(i) Member States' laws concerning money laundering should also be extended to the protection of the Communities' financial interests.

⁽¹⁾ The Commission is of the opinion that the scope of the instrument should in addition include gross negligence as provided by its draft.

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

COUNCIL ACT

of 23 July 1996

drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office

(96/C 299/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas Article K.3 (2) (c) provides that conventions drawn up on the basis of Article K.3 of the Treaty on European Union may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application in accordance with such arrangements as they may lay down,

HAS DECIDED on the drawing up of the Protocol the text of which is annexed, which will be signed on 24 July 1996 by the Representatives of the Governments of the Member States of the European Union,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 23 July 1996.

For the Council

The President

I. YATES

ANNEX

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office

THE HIGH CONTRACTING PARTIES,

HAVE AGREED on the following provisions, which shall be annexed to the Convention:

Article 1

The Court of Justice of the European Communities shall have jurisdiction, under the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the establishment of a European Police Office, hereinafter referred to as 'the Europol Convention'.

Article 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Europol Convention under the conditions specified in either paragraph 2 (a) or (b).

2. A Member State making a declaration under paragraph 1 may specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment;

or

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

Article 3

1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.

2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise under Article 1.

Article 4

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol and communicate to him any declaration made pursuant to Article 2.

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Europol Convention.

Article 5

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

2. Instruments of accession shall be deposited with the depositary.

3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the date of deposit of its instrument of accession, or on the date of

the entry into force of this Protocol if the latter has not yet come into force when the said period of 90 days expires.

Article 6

Any State that becomes a member of the European Union and accedes to the Europol Convention in accordance with Article 46 thereof shall accept the provisions of this Protocol.

Article 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.

2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus established shall enter into force in accordance with the provisions of Article 4.

Article 8

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Protocol.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Protocolo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne protokol.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Protokoll gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από το παρόν πρωτόκολλο.

In witness whereof the undersigned Plenipotentiaries have signed this Protocol.

En foi de quoi, les plénipotentiaires soussignés ont apposé leur signature au bas du présent protocole.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-síithe a lámh leis an bPrótacal seo.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente Protocollo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder dit Protocol hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final do presente protocolo.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän pöytäkirjan.

Till bevis på detta har undertecknade befullmäktigade ombud undertecknat detta fördrag.

Hecho en un único ejemplar, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, siendo cada uno de estos textos igualmente auténtico.

Udfærdiget i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tolv tekster har samme gyldighed.

Abgefaßt in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut.

Έγινε σε ένα μόνο αντίτυπο, στην αγγλική, γερμανική, γαλλική, δανική, ελληνική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα. Όλα τα κείμενα είναι εξίσου αυθεντικά.

Done in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Fait en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, chaque texte faisant également foi.

Arna dhéanamh i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis, agus comhúdarás ag gach ceann de na téacsanna sin.

Fatto in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, ciascun testo facente ugualmente fede.

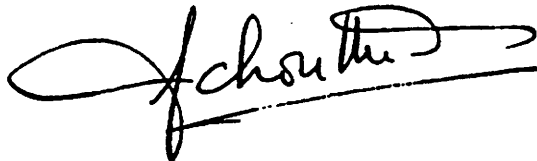
Gedaan in één exemplaar in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde elk der teksten gelijkelijk authentiek.

Feito em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos.

Tehty englannin-, espanjan-, hollannin-, iirin-, italian-, kreikan-, portugalin-, ranskan-, ruotsin-, saksan-, suomen- ja tanskankielisenä, ja jokainen teksti on yhtä todistusvoimainen.

Utfärdat i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, vilka texter är lika giltiga.

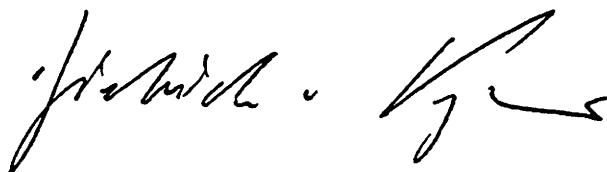
Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



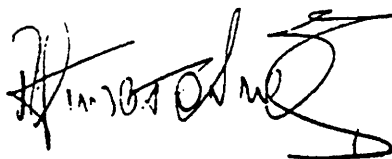
For regeringen for Kongeriget Danmark



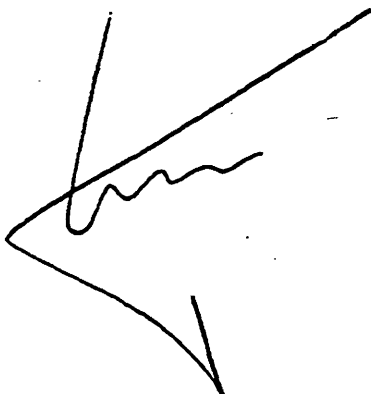
Für die Regierung der Bundesrepublik Deutschland



Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



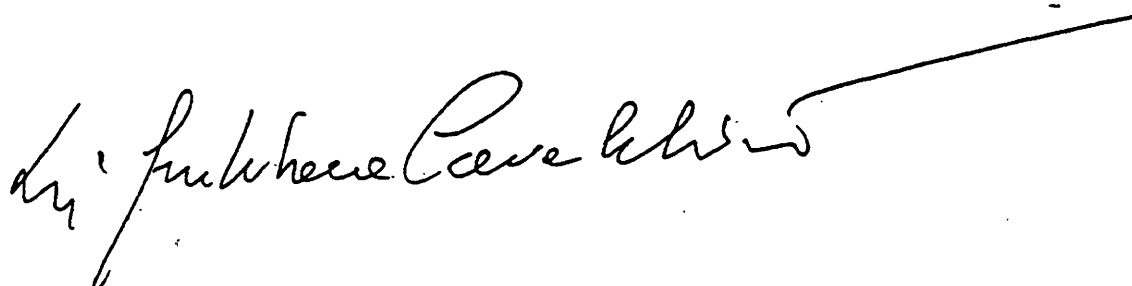
Pour le gouvernement de la République française



Thar ceann Rialtas na hÉireann
For the Government of Ireland



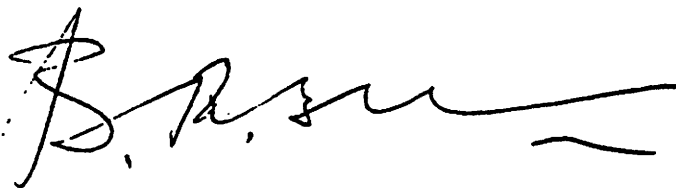
Per il Governo della Repubblica italiana



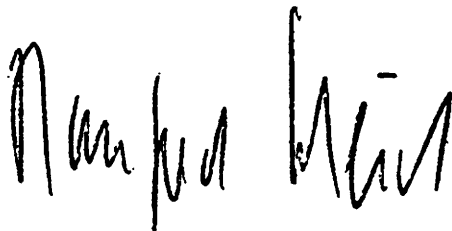
Pour le gouvernement du Grand-Duché de Luxembourg



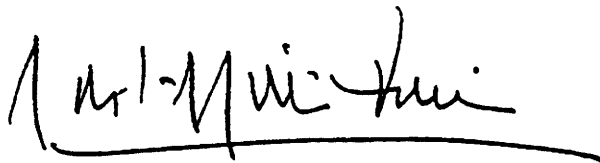
Voor de Regering van het Koninkrijk der Nederlanden



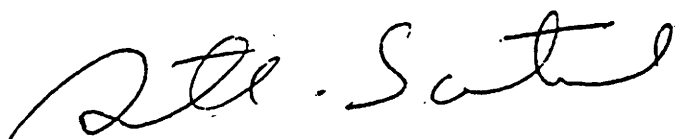
Für die Regierung der Republik Österreich




Pelo Governo da República Portuguesa



Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



DECLARATION

concerning the simultaneous adoption of the Convention on the establishment of a European Police Office and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Communities, of that Convention

The Representatives of the Governments of the Member States of the European Union meeting within the Council,

At the time of the signing of the Council act drawing up the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office,

Wishing to ensure that the said Convention is interpreted as effectively and uniformly as possible as from its entry into force,

Declare themselves willing to take appropriate steps to ensure that the national procedures for adopting the Convention on the establishment of a European Police Office and the Protocol concerning its interpretation are completed simultaneously at the earliest opportunity.

En fe de lo cual, los plenipotenciarios abajo firmantes firman la presente declaración.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne erklæring.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter diese Erklärung gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα δήλωση.

In witness whereof the undersigned Plenipotentiaries have signed this Declaration.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente déclaration.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-síithe a lámh leis an Dearbhú seo.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente dichiarazione.

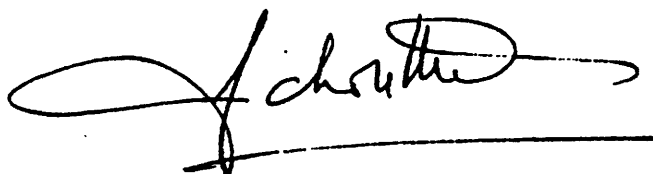
Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Verklaring hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as respectivas assinaturas no final da presente declaração.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän julistuksen.

Till bevis på detta har undertecknade befullmäktigade ombud undertecknat denna förklaring.

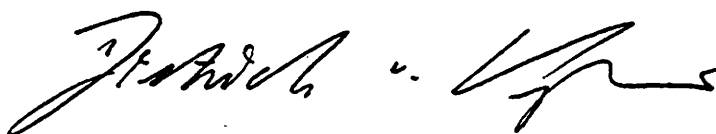
Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



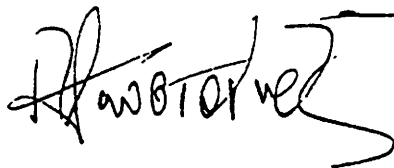
For regeringen for Kongeriget Danmark



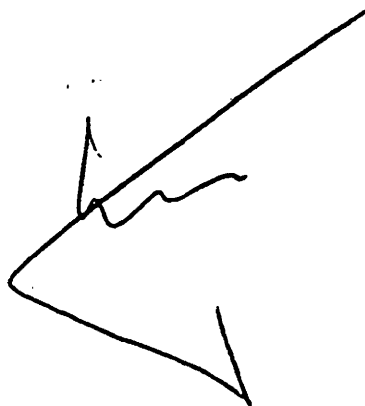
Für die Regierung der Bundesrepublik Deutschland



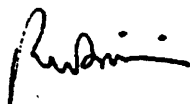
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



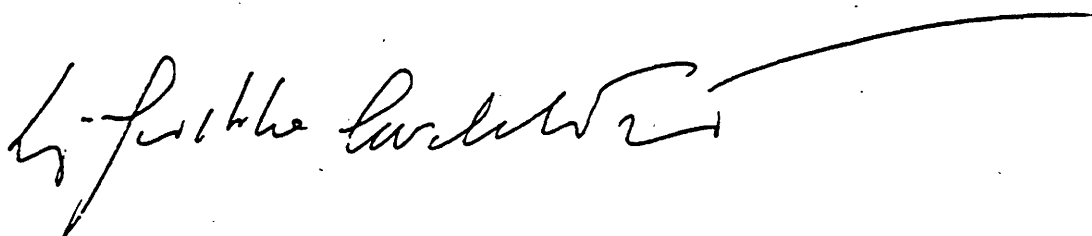
Pour le gouvernement de la République française



Thar ceann Rialtas na hÉireann
For the Government of Ireland



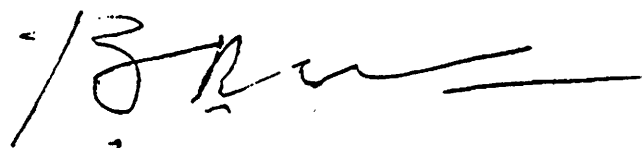
Per il Governo della Repubblica italiana



Pour le gouvernement du Grand-Duché de Luxembourg



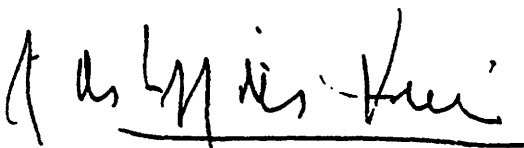
Voor de Regering van het Koninkrijk der Nederlanden



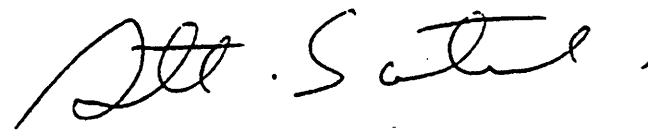
Für die Regierung der Republik Österreich



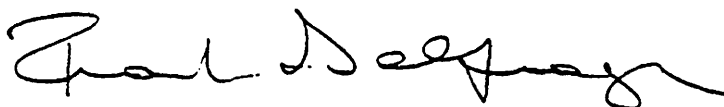
Pelo Governo da República Portuguesa



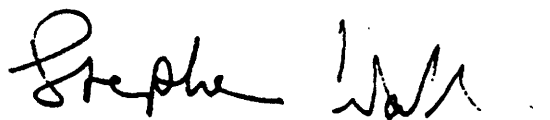
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



Declarations made pursuant to Article 2

At the time of the signing of this Protocol, the following declared that they accepted the jurisdiction of the Court of Justice of the European Communities in accordance with the procedures laid down in Article 2.

The French Republic and Ireland in accordance with the procedures laid down in Article 2 paragraph 2 (a);

The Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic and the Republic of Finland in accordance with the procedures laid down in Article 2 paragraph 2 (b).

DECLARATIONS

The Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Portuguese Republic reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Europol Convention is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

For the Kingdom of Sweden, the declaration(s) will be made in the autumn of 1996; for the Kingdom of Denmark and the Kingdom of Spain, the declaration(s) will be made at the time of adoption.

The Governments of Belgium, the Netherlands and Luxembourg once again draw attention to the need to arrive as soon as possible at a solution similar to that provided for under this Protocol regarding the jurisdiction to be assigned to the Court of Justice of the European Communities for the interpretation of the Convention on the use of information technology for customs purposes and the Convention on the protection of the communities' financial interests.

In accordance with its position on the assignment of jurisdiction to the Court of Justice of the European Communities in acts concluded under Title VI of the Treaty on European Union, the Italian Government considers that a solution similar to that provided for under this Protocol should be adopted for the Convention on the use of information technology for customs purposes and the Convention on the protection of the communities' financial interests.

I 1103

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

AGREEMENT

on provisional application between certain Member States of the European Union of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes

(95/C 316/04)

- THE KINGDOM OF BELGIUM,
- THE KINGDOM OF DENMARK,
- THE FEDERAL REPUBLIC OF GERMANY,
- THE HELLENIC REPUBLIC,
- THE KINGDOM OF SPAIN,
- THE FRENCH REPUBLIC,
- IRELAND,
- THE ITALIAN REPUBLIC,
- THE GRAND DUCHY OF LUXEMBOURG,
- THE KINGDOM OF THE NETHERLANDS,
- THE REPUBLIC OF AUSTRIA,
- THE PORTUGUESE REPUBLIC,
- THE REPUBLIC OF FINLAND,
- THE KINGDOM OF SWEDEN,
- THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Member States of the European Union and signatories of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes, of 26 July 1995, hereinafter referred to as the 'Convention',

HAVING REGARD to the importance of early application of the Convention;

WHEREAS, pursuant to Article K.7 of the Treaty on European Union, the provision of Title VI of that Treaty do not prevent the establishment or development of closer cooperation between two or more Member States in so far as such cooperation does not conflict with, or impede, that provided for in Title VI of the said Treaty;

WHEREAS provisional application between certain Member States of the European Union of the Convention would not conflict with, or impede, the cooperation provided for in Title VI of the Treaty on European Union,

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Agreement:

- 'Convention' means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes,
- 'High Contracting Parties' means the Member States of the European Union, parties to the Convention,
- 'Parties' means the Member States of the European Union, parties to this Agreement.

Article 2

The Convention shall apply provisionally between the High Contracting Parties parties to this Agreement as of from the first day of the third month following the deposit of the instrument of approval, acceptance or ratification of this Agreement by the eighth High Contracting Party to do so.

Article 3

The transitional provisions necessary for provisional application of the Convention shall be adopted by common accord amongst the High Contracting Parties between which the Convention is to apply provisionally and in consultation with the other High Contracting Parties. During this period of provisional application, the functions of the Committee provided for in Article 16 of the Convention shall be exercised by the High Contracting Parties acting by common accord in close association with the Commission of the European Communities. Article 7 (3) and Article 16 of the Convention shall not be implemented during that period.

Article 4

1. This Agreement shall be open for signing by the Member States signatories of the Convention. It shall be subject to approval, acceptance or ratification. It shall enter into force on the first day of the third month following the deposit of the instrument of approval, acceptance or ratification by the eighth High Contracting Party to do so.
2. For any High Contracting Party depositing its instrument of approval, acceptance or ratification at a later date, this Agreement shall enter into force on the first day of the third month following such deposit.
3. Instruments of approval, acceptance or ratification shall be deposited with the Secretary-General of the Council of the European Union, who shall act as depositary.

Article 5

This Agreement, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, shall be deposited with the Secretary-General of the Council of the European Union, who shall transmit a certified copy to each of the parties.

Article 6

This Agreement shall expire upon entry into force of the Convention.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Til bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el veintiseis de julio de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, gaélica, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles den seksogtyvende juli nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechszwanzigsten Juli neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Ιουλίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil, an séú lá is fiche de Iúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zesentwintigste juli negentienhonderd vijfennegentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

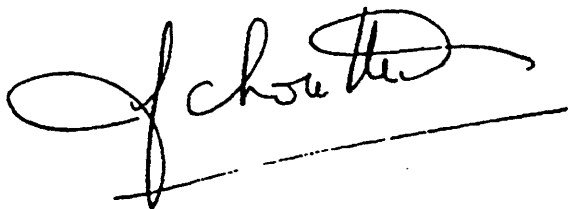
Tehty Brysselissä kahdentenäkymmenentenäkuudentena päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Utfärdad i Bryssel den tjugosjätte juli nittonhundra nitto fem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

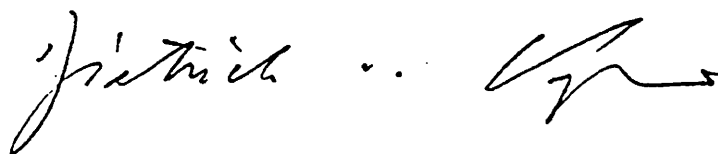
Für die Regierung des Königreichs Belgien



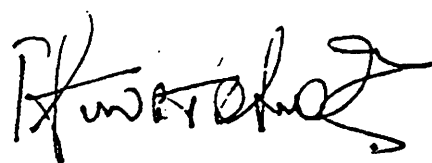
For regeringen for Kongeriget Danmark



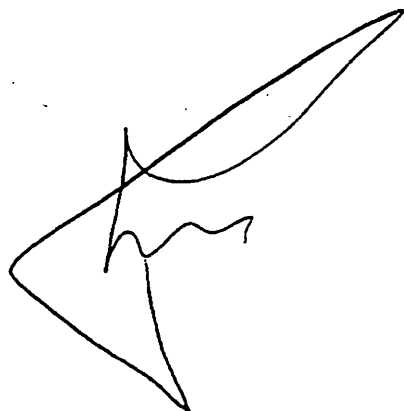
Für die Regierung der Bundesrepublik Deutschland



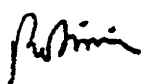
Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



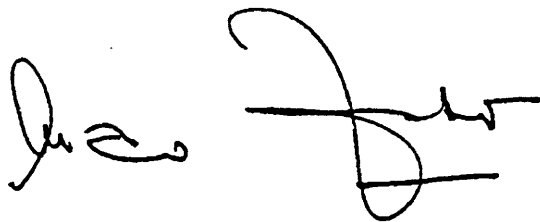
Pour le gouvernement de la République française



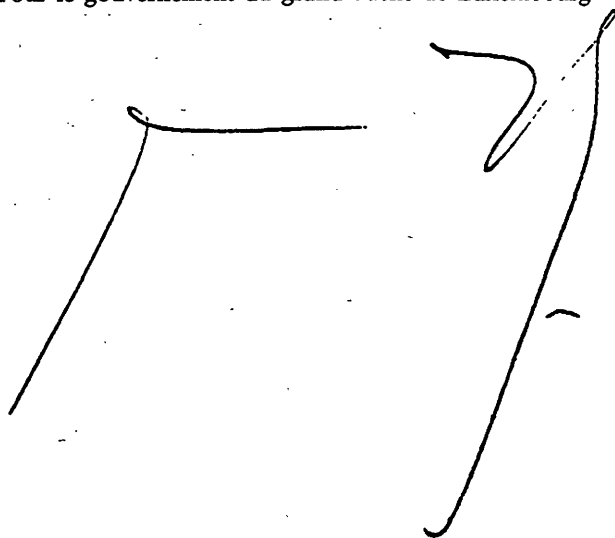
Thar ceann Rialtas na hÉireann
For the Government of Ireland



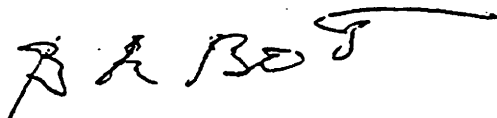
Per il governo della Repubblica italiana



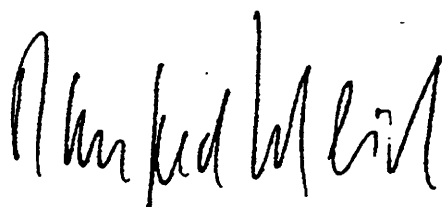
Pour le gouvernement du grand-duché de Luxembourg



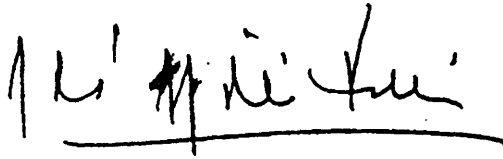
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



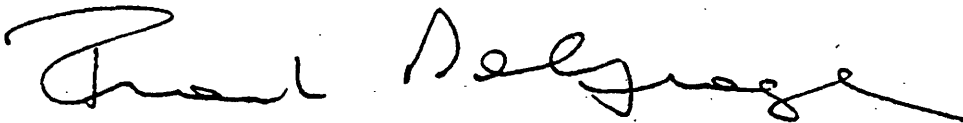
Pelo Governo da República Portuguesa



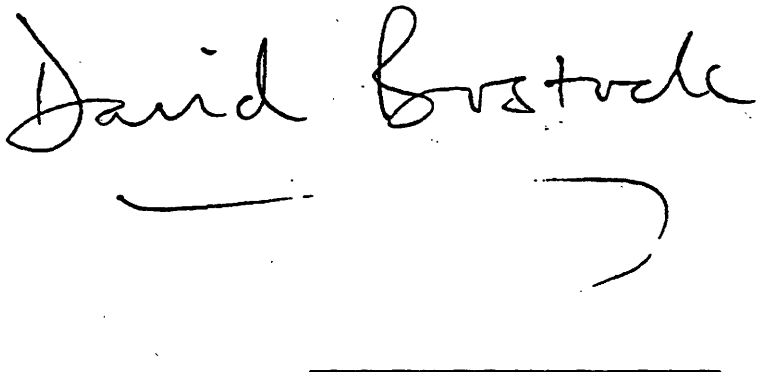
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



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

JOINT ACTION

of 28 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners ('Grotius')

(96/636/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

Whereas the Member States consider the strengthening of judicial cooperation to be a matter of common interest;

Whereas setting up a framework for projects of training, information, studies and exchanges for legal practitioners will contribute to improving the mutual understanding of legal and judicial systems of the Member States, to highlighting their points of convergence and to lowering the barriers to judicial cooperation between Member States;

Whereas these objectives can be more effectively realized at European Union level than at the level of each Member State, because of the expected economies of scale and the cumulative effects of the projects envisaged;

Whereas this joint action is without prejudice to the Community's powers in the field of vocational training and does not therefore adversely affect the Community measures taken to implement its policy in that field, and, in particular, the Leonardo da Vinci Programme;

Whereas this joint action does not affect the existing rules of procedure in the field of judicial cooperation,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

1. A programme for legal practitioners, to be known as 'Grotius', is hereby established for the period 1996—2000, in order to foster mutual knowledge of

legal and judicial systems and to facilitate judicial cooperation between Member States.

2. For the purposes of this joint action, 'legal practitioners' means judges (including examining magistrates), prosecutors, advocates, solicitors, academic and scientific personnel, ministry officials, criminal investigation officers, court officers, bailiffs, court interpreters and other professionals associated with the judiciary.

3. The programme shall comprise the following:

- training,
- exchange and work-experience programmes,
- organization of meetings,
- studies and research,
- distribution of information.

Article 2

The financial reference amount for the implementation of this programme for the period from 1996 to 2000 shall be ECU 8,8 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

Projects with the following objectives may be considered under 'training':

- fostering of foreign language knowledge, in particular a working knowledge of legal language,
- knowledge of the legal institutions and procedures of the other Member States, and how they function,
- exchange of experience between those responsible for the training of legal practitioners, and between institutions responsible for basic training and those responsible for continuing training,

- preparation of teaching modules for training projects, of exchanges and internships, the conferences, or of seminars organized as part of the implementation of the programme.

Article 4

Projects with the following objectives may be considered under 'exchange and placement programmes for training purposes':

- organization of work experience of limited duration in the legal institutions or with legal practitioners in Member States other than that of origin, in the Court of Justice of the European Communities, or in the Court of First Instance as well as in the European Court of Human Rights,
- organization of visits to legal institutions or to legal practitioners in a number of other Member States on specific themes or in the Court of Justice of the European Communities, in the Court of First Instance as well as in the European Court of Human Rights.

Article 5

Projects with the following objectives may be considered under 'organization of meetings':

- organization of bilateral or European conferences on legal topics of general interest,
- organization of multidisciplinary conferences on topical or new legal subjects relating to judicial cooperation,
- organization of seminars based around case studies on sentencing, in the course of which judges from different Member States deliver a verdict on the same court case.

Article 6

Projects with the following objectives may be considered under 'studies and research':

- preparatory analysis of subjects chosen for projects to be implemented within the framework of the programme,
- analysis of reports on work experience or meetings organized within the framework of the programme,
- coordination of research on topics relating to judicial cooperation.

Article 7

Projects with the following objectives may be considered under 'distribution of information':

- hard-copy or on-line distribution of information on legislative amendments or draft reforms, in the original or in translation,
- dissemination of information on projects under Articles 3, 4 and 5, the results of meetings under Article 5 or the findings of research carried out under Article 6 and the application of this research,
- creation of databases and/or documentation networks including lists of articles, publications, studies and legislation in fields relating to judicial cooperation.

Article 8

1. Projects financed by the Community must be of demonstrable European interest and involve more than one Member State.

2. Projects may be managed by national and non-governmental organizations, and in particular legal and judicial training establishments and research centres.

3. The selection process projects for which finance is requested shall have regard, *inter alia*, to:

- the extent to which the subjects covered conform with work that is already in progress or planned for the future under the Council's action programmes in fields relating to judicial cooperation,
- the contribution to the elaboration or implementation of instruments provided for under Title VI of the Treaty,
- the extent to which the different projects complement each other,
- the range of professions to which they are addressed,
- the quality of the institution responsible,
- the operational and practical nature of the projects,
- the degree of preparation of the participants,
- the possibility of using the results of the project to make further progress in judicial cooperation

4. These projects may associate practitioners from the States which have applied for membership where this would contribute to their preparation for accession or other non-member countries where this would be useful.

Article 9

The financing decisions and the contracts arising from them shall provide for monitoring and financial control by the Commission and audits by the Court of Auditors.

Article 10

1. All types of expenditure which are directly chargeable to the implementation of the project and which have been committed within a contractually agreed period shall be eligible.

2. The proportion of financial support from the Community budget shall not exceed 80 % of the cost of the project.

3. Translation and interpreting costs, computing costs, and expenditure on durables or consumables shall not be taken into consideration unless they are essential for the realization of the project, and shall only be financed up to a limit of 50 % of the grant or 80 % in cases where the nature of the project makes them indispensable.

4. Expenditure relating to premises, collective facilities, and the salaries of officials of the State and public bodies shall be eligible only if it corresponds to postings and tasks which have no national purpose or function but are specifically connected with the implementation of the project.

Article 11

1. The Commission shall be responsible for carrying out the measures provided for in this joint action and shall adopt detailed rules for its implementation, including the criteria for the eligibility of costs.

2. It shall draw up each year, with the assistance of experts from the relevant professional circles, the draft annual programme implementing this joint action in terms of the thematic priorities and the distribution of available appropriations between fields of activity.

3. It shall undertake each year an assessment of the measures implementing the programme for the previous year.

Article 12

1. The Commission shall be assisted by a Committee consisting of one representative from each Member State and chaired by the Commission.

2. The Commission shall submit to the Committee the draft annual programme, including a proposal for the distribution of available appropriations between the fields of activity and proposals for implementing rules, and for project assessment. The opinion shall be delivered by the

Committee acting unanimously within a period of two months. This period may be reduced by the Chairman for reasons of urgency. The Chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council which shall take a decision unanimously within two months.

Article 13

1. From the second financial year onwards, projects for which financing is requested shall be submitted to the Commission for scrutiny before 31 March of the financial year to which they are to be charged.

2. The Commission shall examine the projects that are submitted to it with the assistance of the experts referred to in Article 11 (2).

3. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the Committee referred to in Article 12 (1). The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Chairman shall not vote.

The opinion shall be recorded in the minutes; furthermore, each Member State shall have the right to ask that its position be recorded in the minutes.

The Commission shall take full account of the opinion delivered by the Committee. It shall inform the Committee of how it has done so.

4. Where the financing requested exceeds ECU 50 000, the Commission shall submit to the Committee referred to in Article 12 (1) a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The Chairman shall not vote. If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the Committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall take a decision within two months.

Article 14

1. Measures incorporated in the programme and financed by the general budget of the European Communities shall be managed by the Commission in conformity with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾.

2. When presenting the financing proposals referred to in Article 13 and the assessments provided for by Article 11, the Commission shall take account of the principles of sound financial management and in particular of economy and cost-effectiveness as required by Article 2 of the Financial Regulation.

Article 15

Each year the Commission shall report to the European Parliament and the Council on the implementation of the

programme. The first report shall be presented at the end of the 1996 budgetary year.

Article 16

This Joint Action shall enter into force on the day of its adoption.

It shall be applicable for a period of five years, at the end of which it may be extended.

It shall be published in the Official Journal.

Done at Luxembourg, 28 October 1996.

For the Council

The President

D. SPRING

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EC, Euratom, ECSC) No 2335/95 (OJ No L 240, 7. 10. 1995, p. 12).

JOINT ACTION

of 28 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union introducing a programme of training, exchanges and cooperation in the field of identity documents ('Sherlock')

(96/637/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

Whereas the Member States consider identity checks on persons crossing the external borders of the Union and the security of identity documents to be a matter of common interest;

Whereas the establishment of a framework for training, information, study and exchange activities will serve to improve officials' familiarity with the techniques applied in the production and checking of identity documents in other Member States and consequently lend greater effectiveness to the efforts made to combat forgery;

Whereas, thanks to the economies of scale and cumulative effects implicit in the intended measures, these objectives can be achieved more effectively at European Union level than at the level of the individual Member States;

Whereas this joint action will not prejudice the powers of the Community, especially in the field of vocational training, and will therefore not detract from the Community measures taken in implementation of this policy, and in particular the Leonardo da Vinci programme,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

SECTION I

GENERAL

Article 1

Principle and objectives

1. A programme, to be known as 'the Sherlock programme', of training, exchange and cooperation in the field of the security of identity documents within the meaning of the definitions in Article 3, which shall qualify for Community financial support, is hereby established for the period from 1996 to 2000.

2. Without prejudice to the powers of the Community, the general objective of the programme shall be to extend existing cooperation in the matter of identity documents

thanks to its multiannual organization. The definition of clear priorities will serve to rationalize this cooperation in the long term.

Article 2

Total appropriations

The financial reference amount for the implementation of the programme for the period 1996—2000 shall be ECU 5 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

Definitions

The following definitions shall apply for the purposes of the Sherlock programme:

- Identity documents: documents issued by Member States and non-member countries enabling their holders to prove their identity and cross external borders,
- Training: organization of seminars focusing on theoretical and practical understanding of the security of identity documents,
- Exchange: period spent by an official in a Member State other than his own for the purpose of improving his knowledge of control techniques through first-hand experience,
- Studies: design and dissemination of teaching material for combating of forged identity documents.

SECTION II

STRUCTURE OF THE PROGRAMME

Article 4

Objectives

The main component of the Sherlock programme shall be following annual programmes:

- basic training for instructors,

— further training seminar for recognized specialists on the analysis of documents.

Article 5

Exchanges

The Sherlock programme shall also comprise exchanges of officials. Exchanges shall take the form in particular of work placements of limited duration within the national administrative departments responsible for checking identity documents.

Article 6

Study and research

1. The Sherlock programme shall comprise the design, production and dissemination of teaching material.
2. Ways of improving the circulation of information concerning the fraudulent use of forged identity documents may also be a matter for study and research.

SECTION III

FINANCIAL PROVISIONS

Article 7

Financing criteria

To qualify for Community finance, projects must be of demonstrable interest to the European Union and involve at least three Member States.

These projects may associate participants from the states which have applied for membership where this would contribute to their preparation for accession or other non-member countries where this would be useful for the purpose of the projects.

Article 8

Financial control

The financing decisions and the contracts arising therefrom shall provide for monitoring and financial control by the Commission and audits by the Court of Auditors.

Article 9

Level of Community finance

1. All types of expenditure which are directly chargeable to the implementation of this joint action and

have been incurred over a specific, contractually defined period shall be eligible.

2. The proportion of financial support from the Community shall not exceed 60 % of the total cost of the programme save in exceptional cases where, subject to the procedures laid down in Section IV, it shall not exceed 80 %.

3. Translation and interpreting costs, computing costs and expenditure on durables or consumables shall not be considered unless they are essential for the realization of the project and shall be financed only up to a limit of 50 % of the grant, or 80 % in cases where the nature of the project makes them indispensable.

4. Expenditure relating to premises, collective facilities and the salaries of officials of the State and public bodies shall be eligible only if it corresponds to postings and tasks which are not connected with national use or function but are specifically connected with the implementation of this joint action.

Article 10

Rules of procedure

1. Measures incorporated in the programme and financed by the general budget of the European Communities shall be managed by the Commission in conformity with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾.

2. When presenting the financing proposals, the Commission shall take account of the principles of sound financial management and in particular of economy and cost-effectiveness as required by Article 2 of the Financial Regulation.

SECTION IV

MANAGEMENT AND MONITORING

Article 11

Management of programme

1. The Commission shall be responsible for managing and monitoring the programme and shall take such measures as are necessary to this effect.

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EC) No 2335/95 of 18 September 1995 (OJ No L 240, 7. 10. 1995, p. 12).

2. The Commission shall draw up a draft annual programme comprising a breakdown of the appropriations available and based on thematic priorities corresponding to the structure and objectives of the programme.

To this effect, the Commission shall scrutinize the projects submitted to it in the light of the following criteria:

- the innovative character of the proposed measure,
- the urgency of the need for the initiative as a way of improving the security of documents,
- the overall consistency of the programme.

Article 12

Annual implementation of the programme

1. The Commission shall be assisted by a committee consisting of one representative from each Member State and chaired by the Commission.

2. The Commission shall submit to the committee the draft annual programme, including a proposal for the distribution of available appropriations between fields of activity and proposals for implementing rules, and for project assessment. The opinion shall be delivered by the committee acting unanimously within a period of two months. This period may be reduced by the chairman for reasons of urgency. The chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council which shall take a decision unanimously within two months.

Article K.4 (3) of the Treaty, shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Chairman shall not vote.

The opinion shall be recorded in the minutes; furthermore, each Member State shall have the right to ask that its position be recorded in the minutes.

The Commission shall take full account of the opinion delivered by the Committee. It shall inform the Committee of how it has done so.

3. Where the financing requested exceeds ECU 50 000, the Commission shall submit to the committee referred to in Article 12 (1) a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The Chairman shall not vote. If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall take a decision within two months.

Article 14

Evaluation

Each year the Commission shall undertake an assessment of the measures taken during the previous year and shall address a report to the European Parliament and the Council.

SECTION V

FINAL PROVISIONS

Article 13

Devising of programme

1. From the second financial year onwards, projects for which financing is requested shall be submitted to the Commission for scrutiny before 31 March of the financial year to which they are to be charged.

2. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the committee referred to in Article 12 (1). The committee, acting by the majority provided for in the second subparagraph of

Article 15

Entry into force

This Joint Action shall enter into force on the day of its adoption.

It shall be published in the Official Journal.

Done at Luxembourg, 28 October 1996.

For the Council
The President
D. SPRING

(Joint actions adopted by the Council of the European Union)

JOINT ACTION

of 25 September 1995

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on
measures implementing Article K.1 of the Treaty

(95/401/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) thereof,

HAS ADOPTED THIS JOINT ACTION:

Article 1

For the purposes of achieving the objectives referred to in Article K.1 of the Treaty, the Union shall carry out measures relating to training, the gathering and exchange of information and experience, seminars, studies and publications, and also other operational measures in support of its cooperation activities.

Article 2

Decisions on the financing of the measures described in Article 1 shall be taken in accordance with Article K.8 (2) of the Treaty.

Article 3

This Joint Action shall enter into force on the day of its adoption.

Done at Brussels, 25 September 1995.

For the Council
The President
J. A. BELLOCH JULBE

COUNCIL DECISION

of 25 September 1995

concerning the implementation of the Joint Action on measures implementing Article K.1 of the Treaty on European Union

(95/402/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) and Article K.8 (2) thereof,

Having regard to the general budget of the European Communities for 1995, with specific reference to Articles B 5.800, B 5.801 and B 5.802 thereof,

Having regard to the Joint Action adopted on the basis of Article K.3 of the Treaty on European Union, on measures implementing Article K.1 of the Treaty ⁽¹⁾,

HAS DECIDED AS FOLLOWS:

Article 1

The overall allocation for implementing the part of the abovementioned joint action to be covered by the general budget of the European Communities for 1995 shall be ECU 5,2 million.

Article 2

Within the framework of the general budget of the European Communities, the amount referred to in Article 1 shall be allocated to the following areas:

- asylum-immigration and judicial cooperation: ECU 2 500 000,
- police and customs cooperation
(including customs cooperation: ECU 400 000): ECU 2 200 000,
- transparency of activities under
Title VI of the Treaty: ECU 500 000.

In order to be eligible, projects must:

- involve more than one Member State, or a single Member State if they are of common interest, and

⁽¹⁾ See page 1 of this Official Journal.

— precede or follow up the establishment of provisions under Title VI of the Treaty or facilitate any operational cooperation in the abovementioned areas.

Projects may take the form of measures relating to training, the gathering and exchange of information and experience, seminars, studies and publications or other operational measures in support of cooperation activities of the Union.

Representatives of third countries may be associated with projects whose purpose warrants it.

Article 3

Projects for which financing is requested shall be proposed by the Member States or the Commission in the case of areas covered by Article K.1 (1) to (6) of the Treaty, and by the Member States alone in the case of areas covered by Article K.1 (7) to (9) of the Treaty.

Article 4

The Commission shall prepare any such requests for decision. On the basis of those elements, the projects adopted and the financing allocated to them shall be decided on in a Working Party composed of representatives of the Member States.

Article 5

The Commission shall be responsible for implementing financing decisions and shall report regularly to the European Parliament and the Council.

Article 6

Without prejudice to the date of entry into force of this Decision, expenditure shall be considered as eligible for assistance from the budget laid down to the extent that the facts giving rise to the expenditure, subsequent to the request for financing, occur after 31 July 1995.

Article 7

This Decision shall enter into force on the day of its adoption.

It shall apply until 31 December 1995.

Done at Brussels, 25 September 1995.

For the Council

The President

J. A. BELLOCH JULBE

JOINT ACTION

of 14 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing for a common framework for the initiatives of the Member States concerning liaison officers

(96/602/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and, in particular, Article K.3 (2) (b) thereof,

Having regard to the initiative of the Italian Republic,

Recalling the recommendations adopted by the Ministers for Justice and Home Affairs at their meeting in Luxembourg on 13 June 1991;

Recalling the provisions on liaison officers contained in the comprehensive action plan to combat drugs adopted by the Madrid European Council on 15 and 16 December 1995;

Whereas liaison officers, posted by Member States in view of their national strategic needs, play a role of paramount importance in cooperation in preventing and combating all forms of international crime, pursuant to Article K.1 (9) of the Treaty, including organized crime;

Taking into account the outcome of the surveys of the liaison officer networks of the Member States;

Assessing existing cooperation practices between Member States concerning liaison officers as positive;

Whereas it is particularly useful to develop concerted initiatives in this field, with a view to more rapid and effective cooperation between law enforcement agencies in combating organized crime;

Taking into account the need to develop cooperation between Member States and the States which have concluded Association Agreements with the Community and its Member States, and, in particular, the States taking part in the structured dialogue and other third States;

Taking into account the undertakings on the subject of liaison officers agreed on with the Andean Pact countries following the joint declaration of 25 September 1995;

Whereas this joint action does not prejudice the forms of cooperation existing between some Member States and third States;

Whereas it is possible for the financing of initiatives of common interest provided for by the Treaty and relating to liaison offices to be charged to the budget of the European Communities;

Having noted the need to define a helpful and effective framework for coordinating ongoing and future initiatives,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Concertation regarding liaison officers

Member States which make use, or intend to make use, of liaison officers shall establish, by this joint action, a reference framework for the development of concerted initiatives in this field, with a view to making cooperation among themselves and with third States more rapid and effective in preventing and combating all forms of international crime pursuant to Article K.1 (9) of the Treaty, including organized crime.

Article 2

Tasks of liaison officers

1. Liaison officers shall facilitate and expedite the collection and exchange of information through direct contacts with law enforcement agencies and other competent authorities in the host State.

2. Liaison officers shall also contribute to the collection and exchange of information, particularly of a strategic nature, which may be used for the improved adjustment

of measures to combat the forms of crime referred to in Article 1, including information providing a reader knowledge of the legal instruments and operational methods available in the States concerned.

3. Liaison officers shall carry out their tasks within the framework of their responsibilities and in compliance with the provisions, including those on the protection of personal data, laid down in their national laws and in any agreements concluded with host States.

Article 3

Exchange of information

1. Member States shall inform one another, in the framework of the Council, of the steps taken in relation to the posting of liaison officers, and of the duties assigned to them.

2. To this end, Member States shall supply the General Secretariat of the Council each year with information, including information on programming, relating to respective liaison officer networks, in accordance with agreed criteria.

Article 4

Development of liaison officer networks in third States

1. When identifying priorities for the liaison officers to third States, Member States shall take account of the guidelines laid down in the Berlin Declaration of 8 September 1994, of cooperation needs under the structured dialogue established with the States concerned or of needs peculiar to certain strategic areas which border on the European Union and to other regions of increasing strategic interest.

2. Particular attention shall be paid to the regions that are the most sensitive on account of a higher incidence of the most serious forms of transnational crimes.

3. When identifying the duties to be assigned to their liaison officers, Member States may take into account the tasks already being performed in the same regions of geographical areas by liaison officers posted by other Member States.

4. On the basis of specific agreements, each Member State may arrange for its liaison officers posted to third States to be used for the benefit of other Member States, especially in geographical areas not adequately covered.

Article 5

Cooperation through liaison officers in third States

1. Member States shall provide for liaison officers posted to third States to exchange, as required and on a regular basis, the information obtained on significant general issues or issues of common interest and to take common initiatives if the Member States concerned deem this necessary.

2. Liaison officers posted to the same third State shall assist one another in the performance of their respective duties, subject to agreements to this end between the Member States of origin concerned.

3. In accordance with instructions received, liaison officers posted to third States shall provide their national authorities with information relating to criminal threats to other Member States not represented there by their own officers. National authorities shall assess, according to the seriousness of the threat, whether the States concerned should be informed.

4. In compliance with national laws and for extraordinary requests which cannot be dealt with through existing international information channels, a Member State which has no liaison officers in a third State may request information from a Member State that has posted a liaison officer to that third State. The requested State shall examine the request in complete independence and, if it agrees to it, shall forward it to its liaison officer in the third State concerned.

Article 6

Activities of liaison officers in the Member States after the implementation of Europol

With a view to optimizing their liaison officer resources deployed within the European Union, Member States shall endeavour to review their respective policies on the posting and the duties of such officers, where necessary taking into account the tasks carried out by the European Police Office in accordance with the Europol Convention.

Article 7

Joint seminars for liaison officers

1. With a view to enhancing collaboration among liaison officers in certain regions, Member States may promote the organization of joint seminars by reason of specific needs for knowledge and intervention in the

regions in question and regarding crime trends and the most effective methods of law enforcement.

2. Participation in these seminars must not hinder the performance of the duties assigned to liaison officers.

Article 8

Cooperation between liaison officers of the various authorities of the Member States

1. Member States having liaison officers belonging to different authorities shall ensure appropriate forms of cooperation between those officers in the framework of the respective institutional tasks.

2. In this case, Member States shall encourage:

- contacts between the authorities which post and manage liaison officers,
- suitable coordination of information on the posting of those liaison officers,
- contacts between those liaison officers in the States to which they are posted.

Article 9

Financing

1. Costs relating to the training, posting and activity of their liaison officers shall be charged to the Member States.

2. However, operational costs relating to the initiatives referred to in Article 7 may be charged to the budget of the European Communities, in accordance with Article K.8 of the Treaty.

Article 10

Final provisions

1. This joint action shall enter into force on the day of its adoption.

2. This joint action shall be published in the Official Journal.

Done at Luxemburg, 14 October 1996.

For the Council

The President

R. QUINN

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

JOINT ACTION

of 15 July 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union,
concerning action to combat racism and xenophobia

(96/443/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative from the Kingdom of Spain,

Whereas the Member States regard the adoption of rules in connection with action to combat racism and xenophobia as a matter of common interest, in accordance with Article K.1 (7) of the Treaty in particular;

Whereas regard should be had to the conclusions on racism and xenophobia adopted by the European Council in Corfu on 24 and 25 June 1994, in Essen on 9 and 10 December 1994, in Cannes on 26 and 27 June 1995 and in Madrid on 15 and 16 December 1995;

Whereas the Consultative Commission on Racism and Xenophobia, established by the Corfu European Council, adopted recommendations;

Whereas, despite the efforts made over recent years by the Member States, racism and xenophobia offences are still on the increase;

Concerned at the differences between some criminal law systems regarding the punishment of specific types of racist and xenophobic behaviour, which constitute barriers to international judicial cooperation;

Acknowledging that international cooperation by all States, including those which are not affected at domestic level by the problem of racism and xenophobia, is necessary to prevent the perpetrators of such offences from exploiting the fact that racist and xenophobic activities are classified differently in different States by moving from one country to another in order to escape criminal proceedings or avoid serving sentences and thus pursue their activities with impunity;

Emphasizing that the right to freedom of expression implies duties and responsibilities, including respect for the rights of others, as laid down in Article 19 of the United Nations International Covenant on Civil and Political Rights of 19 December 1966;

Determined, in keeping with their common humanitarian tradition, to guarantee that, above all, Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 are complied with;

Wishing to build upon the work begun within the framework of Title VI of the Treaty during 1994 concerning the criminal aspects of the fight against racism and xenophobia,

HAS ADOPTED THIS JOINT ACTION:

TITLE I

- A. In the interests of combating racism and xenophobia, each Member State shall undertake, in accordance with the procedure laid down in Title II, to ensure effective judicial cooperation in respect of offences based on the following types of behaviour, and, if necessary for the purposes of that cooperation, either to take steps to see that such behaviour is punishable as a criminal offence or, failing that, and pending the adoption of any necessary provisions, to derogate from the principle of double criminality for such behaviour:
- (a) public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin;
 - (b) public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations;

- (c) public denial of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 insofar as it includes behaviour which is contemptuous of, or degrading to, a group of persons defined by reference to colour, race, religion or national or ethnic origin;
- (d) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;
- (e) participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.
- B. In the case of investigations into, and/or proceedings against, offences based on the types of behaviour listed in paragraph A, each Member State shall, in accordance with Title II, improve judicial cooperation in the following areas and take appropriate measures for:
- (a) seizure and confiscation of tracts, pictures or other material containing expressions of racism and xenophobia intended for public dissemination, where such material is offered to the public in the territory of a Member State;
- (b) acknowledgement that the types of behaviour listed in paragraph A should not be regarded as political offences justifying refusal to comply with requests for mutual legal assistance;
- (c) providing information to another Member State to enable that Member State to initiate, in accordance with its law, legal proceedings or proceedings for confiscation in cases where it appears that tracts, pictures or other material containing expressions of racism and xenophobia are being stored in a Member State for the purposes of distribution or dissemination in another Member State;
- (d) the establishment of contact points in the Member States which would be responsible for collecting and exchanging any information which might be useful for investigations and proceedings against offences based on the types of behaviour listed in paragraph A.
- C. Nothing in this Joint Action may be interpreted as affecting any obligations which Member States may have under the international instruments listed below. Member States shall implement this Joint
- Action consistently with such obligations and will refer to the definitions and principles contained in such instruments when so doing:
- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,
 - the Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967,
 - the United Nations Convention on Genocide of 9 December 1948,
 - the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966,
 - the Geneva Conventions of 12 August 1949 and Protocols I and II of 12 December 1977 to those Conventions,
 - Resolutions 827(93) and 955(94) of the United Nations Security Council,
 - Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime⁽¹⁾, in cases of criminal proceedings for the types of behaviour listed in paragraph A, if witnesses have been summoned in another Member State.
- TITLE II
- Each Member State shall bring forward appropriate proposals to implement this Joint Action for consideration by the competent authorities with a view to their adoption.
- The Council will assess the fulfilment by Member States of their obligations under this Joint Action, taking into account the declarations annexed to it, by the end of June 1998.
- This Joint Action and the annexed declarations, which are approved by the Council and are without prejudice to the application of this Joint Action by Member States other than those whom these declarations concern, will be published in the Official Journal.
- Done at Brussels, 15 July 1996.
- For the Council*
The President
D. SPRING

⁽¹⁾ OJ No C 327, 7. 12. 1995, p. 5.

ANNEX

DECLARATIONS REFERRED TO IN TITLE II

1. Declaration by the Greek delegation re Title I.B (b):

'Greece interprets Title I.B (b) in the light of those provisions of its Constitution which prohibit any action being taken against persons facing prosecution on political grounds.'

2. Declaration by the French delegation re Title I.C, fifth indent:

'France points out that Additional Protocol I of 8 June 1977 to the Geneva Conventions of 1949 cannot be invoked against it, in that France has neither ratified nor signed that instrument and that it cannot be taken as a translation of international customary law applicable in armed conflicts.'

3. Declaration by the United Kingdom delegation re Title I:

'The United Kingdom delegation declares that for the purposes of the application of the Joint Action by the United Kingdom, and taking into account the provisions and general principles of United Kingdom criminal law, the United Kingdom will apply Title I, paragraph A, points (a) to (e) and references thereto where the relevant behaviour is threatening, abusive or insulting and is carried out with the intention of stirring up racial hatred or is likely to do so.

This would include, in accordance with Title I.B and Title II, enabling the relevant United Kingdom authorities in this context to search for and seize tracts, pictures or other material in the UK which is intended for dissemination in another Member State and which is likely to incite racial hatred there.

If problems arise from the application of this declaration, the UK will consult with the Member State concerned with a view to overcoming the problems raised.'

4. Declaration by the Danish delegation re Title I:

'The Danish delegation declares that for the purposes of the application of the Joint Action by Denmark, and taking into account the provisions and general principles of Danish criminal law, Denmark will apply Title I, paragraph A, points (a) to (e) and references thereto only where the relevant behaviour is threatening, insulting or degrading.'

JOINT ACTION

of 20 December 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing a common programme for the exchange and training of, and cooperation between, law enforcement authorities ('Oisin')

(97/12/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

*Article 1***Establishment of the programme**

Having regard to the initiative of Ireland,

Recalling the provisions of the La Gomera Declaration on Terrorism;

Recalling the provisions of the report of the group of experts on drugs, approved by the European Council of Madrid on 15 and 16 December 1995;

Considering that Member States consider cooperation between their law enforcement authorities as covered by the terms of Article K.1 (8) and (9) of the Treaty as a matter of common interest;

Whereas the development of a programme for improved law enforcement cooperation is likely to contribute to an increase in the mutual knowledge and understanding of the legal systems and law enforcement practices of the Member States and to raise the level of expertise of law enforcement personnel of the Member States;

Whereas these objectives may appropriately be realized at the level of the European Union and their implementation charged to the general budget of the European Communities;

Whereas this Joint Action does not replace or affect the existing cooperation arrangements of Member States;

Taking into account the need to develop cooperation between Member States and the countries associated with the Union, the countries taking part in the structured dialogue and other third countries;

Whereas the present Joint Action does not replace or affect the forms of cooperation existing between some Member States and third countries,

1. A programme for enhancing law enforcement cooperation to be known as Oisin is hereby established for the period 1997 to 2000 in order to stimulate cooperation between law enforcement authorities of Member States and to provide such authorities with a greater insight into the working methods of their counterparts in other Member States and constraints by which they may be bound.

2. For the purpose of this Joint Action, 'law enforcement authorities' means all public bodies existing in Member States which are responsible under national law for preventing, detecting and combating criminal offences.

3. The programme includes the following categories of action:

- provision of training (to include language training),
- exchange of personnel and the provision of operational expertise,
- research, operational feasibility studies and evaluation,
- information exchange.

Actions which promote cooperation between the different law enforcement authorities of several Member States shall be encouraged under this framework.

4. No funding shall be provided under the programme where an alternative programme under Title VI of the Treaty already exists which can comprehend the individual action proposed.

Article 2

The financial reference amount for the implementation of the programme for the period 1997 to 1999 shall be ECU 8 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

Provision of Training

Projects with the following objectives may be considered under training:

- foreign operational language training,
- knowledge of the legislation and operational procedures of other Member States and in particular the application of such legislation and operational procedures to operations between Member States,
- knowledge of operational procedures relating to legislation adopted by the Union under Articles K.1 to K.9 of the Treaty,
- exchange of experience between persons and institutions responsible for training of law enforcement authorities,
- preparation of teaching modules for training projects, or of seminars organized as part of the implementation of this Joint Action.

Article 4

Exchange of Personnel and Provision of Operational Expertise

Projects with the following objectives may be considered under the exchange element of the programme:

- work experience exchanges of limited duration between operational law enforcement authorities of various Member States,
- organization of visits by law enforcement authorities having skill, knowledge or expertise in a particular operational area so as to impart that expertise to law enforcement authorities of other Member States,
- organization of study visits by individuals or groups of law enforcement authorities to law enforcement authorities of other Member States having a particular skill, knowledge or expertise so as to acquire that expertise.

Article 5

Research, Operational Studies and Evaluation and Operational Projects

Projects with the following objectives may be considered under this Article:

- meetings to assess the value of initiatives undertaken under the programme,
- scientific research on topics relating to police cooperation, customs cooperation and to cooperation between police, customs and other law enforcement agencies, by organizations and institutions concerned with matters identified under K.1 (8) and K.1 (9) of the Treaty,
- design, production and dissemination of training materials,
- organization of joint operational projects, having a limited duration, involving the participation of law enforcement authorities.

Article 6

Information Exchange

Projects with the following objectives may be considered under information exchange:

- exchange of information on operational matters of common interest to all Member States,
- organization of multi-disciplinary workshops on operational techniques,
- organization of seminars and conferences,
- preparation of confidential directories of operational areas where Member States have acquired particular knowledge, competence, skill or expertise,
- organization of briefing sessions in connection with pilot joint operations,
- analysis of reports and dissemination of information on initiatives organized within the framework of this Joint Action,
- organization of information dissemination, where appropriate, to non-law enforcement organizations.

Article 7

1. Projects receiving Community financing must be of European interest and involve more than one Member State.

2. Those responsible for the projects may be public or private institutions including, in particular, research institutes as well as institutions responsible for basic training and those responsible for continuing training.

3. The projects to be financed shall be subject to a selection procedure taking into account, in particular:

- consistency of topics covered with work undertaken or provided for in Council action programmes coming under police and customs cooperation,

- input towards the framing or implementation of instruments adopted or to be adopted under Title VI of the Treaty,
- mutual complementarity between the various projects,
- the range of law enforcement authorities which they encompass,
- the quality of the institution responsible,
- the operational and practical nature of the project,
- the degree of preparation of the participants,
- the scope for drawing on results achieved in order to further enhance law enforcement cooperation.

4. These projects may involve those responsible in applicant countries with a view to making them familiar with the achievements of the Union in this area and contributing to their preparation for accession, or in other third countries where it serves the aims of the projects.

Article 8

The financing decisions and contracts arising therefrom shall provide for monitoring and financial control by the Commission and audits by the Court of Auditors.

Article 9

1. All types of expenditure which are directly chargeable to the implementation of the project and which have been committed within a contractually agreed period shall be eligible.

2. The proportion of financial support from the Community budget shall not exceed 80 % of the cost of the project.

3. Translation and interpreting costs, computing costs, and expenditure on durable or consumables shall not be taken into consideration unless they are essential for the realization of the project, and shall only be financed up to a limit of 50 % of the grant, or 80 % in cases where the nature of the project makes them indispensable.

4. Expenditure relating to premises, collective facilities, and the salaries of officials of the State and public bodies shall be eligible only if it corresponds to postings and tasks which have no national purpose or function but are specifically connected with the implementation of the project.

Article 10

1. The Commission shall be responsible for carrying out the actions provided for in this Joint Action and shall adopt detailed rules for its implementation, including the criteria for the eligibility of costs.

2. It shall draw up each year, with the assistance of experts from the relevant professional circles, the draft annual programme implementing this Joint Action in terms of the thematic priorities and the distribution of available appropriations between fields of activity.

3. It shall undertake each year an assessment of the actions carried out in implementing the programme for the previous year.

Article 11

1. The Commission shall be assisted by a Committee consisting of one representative from each Member State and chaired by a representative of the Commission.

2. The Commission shall submit to the Committee the draft annual programme, including a proposal for the distribution of available appropriations between the fields of activity and proposals for implementing rules, and for project assessment. The opinion shall be delivered by the Committee acting unanimously within a period of two months. This period may be reduced by the Chairman for reasons of urgency. The Chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council which shall take a decision unanimously within two months.

Article 12

1. Projects for which financing is requested shall be submitted to the Commission for scrutiny not later than two months after the approval of the annual programme referred to in Article 11 (2).

2. The Commission shall examine the projects that are submitted to it with the assistance of the experts referred to in Article 10 (2).

3. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the Committee referred to in Article 11 (1). The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Chairman shall not vote.

The opinion shall be recorded in the minutes; furthermore, each Member State shall have the right to ask that its position be recorded in the minutes.

The Commission shall take full account of the opinion delivered by the Committee. It shall inform the Committee of how it has done so.

4. Where the financing requested exceeds ECU 50 000, the representative of the Commission shall submit to the Committee referred to in Article 11 (1) a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The Chairman shall not vote. If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the Committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall take a decision within two months.

Article 13

1. Actions incorporated in the programme and financed by the general budget of the European Communities shall be managed by the Commission in conformity with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾.

2. When presenting the financing proposals referred to in Article 12 and the assessments provided for in Article 10, the Commission shall take account of the principles of sound financial management and in particular of economy and cost-effectiveness as required by Article 2 of the Financial Regulation.

Article 14

Each year the Commission shall report to the European Parliament and the Council on the implementation of the programme. The first report shall be presented at the end of the 1997 budgetary year.

Article 15

This Joint Action shall enter into force on the day of its adoption.

It shall be applicable for a period of four years, at the end of which it may be extended.

Article 16

This Joint Action shall be published in the Official Journal.

Done at Brussels, 20 December 1996.

For the Council
The President
S. BARRETT

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EC, Euratom, ECSC) No 2335/95 (OJ No L 240, 7. 10. 1995, p. 12).

I

(Information)

COUNCIL

COUNCIL RECOMMENDATION

of 22 December 1995

on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control

(96/C 5/01)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative submitted by the French Republic on 22 December 1994,

Having regard to the recommendation of the Ministers of the Member States of the European Communities with responsibility for immigration of 1 June 1993 concerning checks on, and expulsion of, third-country nationals residing or working without authorization,

Having regard to the recommendation of the Ministers of the Member States of the European Communities with responsibility for immigration of 30 November 1992 regarding practices followed by Member States on expulsion,

Whereas, pursuant to Article K.1 (2) and (3) of the EC Treaty, policy regarding nationals of third countries and in particular combating unauthorized immigration, residence and work are matters of common interest and therefore fall within the areas for cooperation between Member States referred to in Title VI of the Treaty;

Whereas the Member States, faced with an increase in illegal immigration, have already adopted specific measures to ensure better control of population flows and to avoid the continued unlawful presence in their territories of foreign nationals who have entered or are residing without authorization;

Whereas, however, the efficiency of that action implies the implementation of coordinated and consistent measures;

Whereas, although recommendations laying down guiding principles for practice with regard to expulsion have already been adopted, that effort at alignment needs to be reinforced by recommending Member States to comply with a number of principles designed to

ensure a better check on the situation of foreign nationals present within their territories;

Whereas this recommendation is in keeping with Community legislation, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, and in particular Articles 3 and 14 thereof, and the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

HEREBY RECOMMENDS Member States to harmonize further the means for checking on foreign nationals to verify that they fulfil the conditions laid down by the rules applicable to entry, residence and employment on the basis of the following guidelines:

1. This recommendation does not extend to citizens of the European Union or to nationals of EFTA member countries party to the Agreement on the European Economic Area, or to members of their families entitled under Community law.
2. Where an identity check is carried out on a foreigner in accordance with national law, at least where a person appears to be residing in the country unlawfully, his residence situation should be verified. This may apply in particular in the following cases:
 - identity checks in connection with the investigation or prosecution of offences,
 - identity checks to ward off threats to public order or security,
 - identity checks in order to combat illegal entry or residence in certain areas (e.g. frontier areas and ports, airports and railways stations handling international traffic), without prejudice to border controls.

3. Third-country nationals should be in a position, according to national law, to present to the competent authorities confirmation, for example by way of papers or documents by virtue of which they are so authorized, of their authority to reside within the territory of the Member State where they are.
4. Where national law regards the residence or employment situation as a prerequisite for foreign nationals to qualify for benefits provided by a public service of a Member State in particular in the area of health, retirement, family or work, that condition cannot be met until it has been verified that the residence and employment situation of the person concerned and his or her family does not disqualify them from the benefit. Verification of residence or employment status is not required where intervention by a public authority is necessary on overriding humanitarian grounds.

Such verifications are carried out by the services providing the benefits, with the assistance, if necessary, of the authorities responsible in particular for issuing residence or work permits, in accordance with national law relating, in particular, to data protection.

Member States should inform the central or local authorities responsible for dispensing benefits to foreign nationals of the importance of combating illegal immigration in order to encourage them to report to the competent authorities, in accordance with national law, such cases of breaches of the residence rules as they may detect in the course of their work.

The attention of the authorities responsible for issuing residence permits should also be drawn to the risk of marriages of convenience.

5. Employers wishing to recruit foreign nationals should be encouraged to verify that their residence or employment situations are in order by requiring them to present the document(s) by virtue of which they are authorized to reside and work in the Member State concerned. Member States could stipulate that employers may, if necessary, under the conditions laid down by national law relating, in particular, to data protection, check with the authorities responsible in particular for issuing residence and work permits; the said authorities may

communicate the relevant information under procedures which guarantee confidentiality in the transmission of individual data.

6. Any person who is considered, under the national law of the Member State concerned, to be employing a foreign national who does not have authorization should be made subject to appropriate penalties.
7. The authorities competent to authorize residence should be empowered to take measures to check that persons who have been refused authorization to reside within the territory of the Member State have left that territory of their own accord.
8. Each Member State should consider setting up a central file of foreign nationals containing information on the administrative situation of foreign nationals with regard to residence, including any refusal of authorization to reside and any expulsion measures. Any file thus set up will operate in compliance with the standards laid down in Council of Europe Convention 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.
9. Member States should satisfy themselves that residence documents issued to foreign nationals are adequately secured against forgery and fraudulent use — particularly by colour photocopying — and, should, if necessary, amend them accordingly.
10. Member States should take the measures necessary to reinforce and improve means of identifying foreign nationals who are not in a lawful position and who have no travel documents or other documents by which they can be identified.

Where a foreign national who is not in a lawful position is, or is likely to be, detained under the circumstances provided for in Chapter II of the recommendation of 30 November 1992 of the Ministers of the Member States of the European Communities with responsibility for immigration regarding practices followed by Member States on expulsion, the period of detention should be used in particular to obtain the necessary travel documents for expelling foreign nationals who have no documents. The consular authorities of the country of origin or the country of the nationality of the

foreign national concerned should be encouraged to make additional identification efforts to obtain travel documents.

Foreign nationals who have deliberately brought about their illegal position, particularly by refusing to supply travel documents, should be subject to penalties. In appropriate cases, such penalties may fall under criminal law.

Member States will review the follow-up to Chapter III.2 of the recommendation of 30 November 1992 of the Ministers of the Member States of the European Communities with responsibility for immigration

regarding practices followed by Member States on expulsion.

The Council will review regularly, for example once a year, the progress made on harmonization in the fields covered by this recommendation.

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

COUNCIL RECOMMENDATION

of 22 December 1995

on concerted action and cooperation in carrying out expulsion measures

(96/C 5/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the recommendation of the Ministers of the Member States of the European Communities responsible for immigration of 30 November 1992 concerning transit for the purposes of expulsion and the addendum thereto of 1 and 2 June 1993,

Whereas Article K.1 (3) (c) of the Treaty on European Union stipulates that combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States are matters of common interest;

Whereas the Council has already adopted specific measures to secure better control of migratory flows and to prevent third-country nationals entering Member States' territory unauthorized and remaining there illegally;

Whereas expulsion measures in respect of third-country nationals whose presence is unauthorized cannot be carried out owing to the absence of travel or identity documents;

Whereas, in order to achieve the effective carrying-out of expulsion measures, recommendations addressed to the Member States of the European Union and aimed at better coordination of those measures should be adopted at Council level;

Whereas the provisions of this recommendation are without prejudice to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

HEREBY RECOMMENDS MEMBER STATES' GOVERNMENTS:

to apply the principles set out below:

with a view to cooperation in the procurement of the necessary documentation

1. to implement specific mechanisms to improve the procurement of the necessary documentation from the consular authorities of the third State to which third-country nationals are to be expelled when they lack travel or identity documents;
2. where Member States experience repeated difficulties with certain third States in the matter of procuring documentation:
 - (a) to make a particular effort to arrange for persons to be expelled to be identified by the consular authorities;
 - (b) to issue repeated invitations to consular authorities to visit centres in which third-country nationals are being held, where appropriate, in order to identify them for the purpose of providing documentation;
 - (c) to urge the same authorities to issue travel documents with a period of validity sufficient for expulsion to be carried out;
3. in the first instance to make use of the provisions on presumption of nationality of the standard readmission agreement adopted by the Council on 30 November 1994;
4. to issue, where it is not possible to obtain the necessary travel documents by using the above means,

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

COUNCIL RESOLUTION

of 14 October 1996

laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998

(96/C 319/01)

THE COUNCIL OF THE EUROPEAN UNION,

in response to the request of the European Council that it organize its work on cooperation in the fields of justice and home affairs, provided for in Title VI of the Treaty on European Union, by determining the activities which should be carried out as a matter of priority in pursuit of the objectives fixed at the Madrid Summit on 15 and 16 December 1995,

reiterating its ambition to promote liberty, security and justice in the European Union, in accordance with the principles of the rule of law, by developing close cooperation between the Member States in the fields of justice and home affairs,

HEREBY ADOPTS THIS RESOLUTION:

I. The Council intends to pursue the objectives defined by the European Council concentrating priority on the following topics in the period from 1 July 1996 to 30 June 1998:

1. Combating terrorism:

- (a) strengthening cooperation between the Member States;
- (b) updating the document on the terrorist threat;
- (c) drawing up a list of counter-terrorist centres of excellence;

2. Combating organized crime and drugs:

2.1. police and customs cooperation:

- (a) implementation of the Europol Convention (implementing regulations, computer system) and monitoring of the Europol Drugs Unit (EDU);
- (b) police training, in particular through cooperation between police training schools;
- (c) strengthened technical cooperation, in particular with regard to interception of communications, cooperation between forensic laboratories, cooperation between national criminal intelligence services;
- (d) update of the situation report on organized crime and implementation of its recommendations;
- (e) draft 'Naples II' Convention;
- (f) strategies for external frontier control;
- (g) combating counterfeiting and illegal trade in works of art;

2.2. drug control:

- (a) implementation of the report by the Group of experts on drugs adopted by the European Council in Madrid on 15 and 16 December 1995 at the judicial, police and customs levels, particularly in the field of supply reduction and international cooperation;

- (b) mechanism to combat drug abuse in Latin America, including the Caribbean;
- (c) examination of the extent to which the harmonization of Member States' laws could contribute towards reducing the consumption and supply of drugs in the European Union;
3. Improving judicial cooperation:
- 3.1. *in civil matters:*
- (a) draft Convention on the services of judicial and extrajudicial documents in civil or commercial matters;
- (b) draft 'Brussels II' Convention (on matrimonial matters and custody of children);
- (c) launching of discussions on the necessity and possibility of drawing up a European enforcement order and a convention on the law applicable to extracontractual obligations;
- 3.2. *in criminal matters:*
- (a) draft Convention on extradition;
- (b) draft Convention on mutual assistance in criminal matters;
- (c) analysis and adaptation of existing instruments concerning other forms of judicial cooperation;
- (d) draft Convention on the enforcement of driving disqualifications;
- (e) combating counterfeiting;
- 3.3. *in civil and criminal matters:*
- implementation of the joint action concerning the liaison magistrates and consideration of the desirability of setting up a network of contact magistrates;
4. Improvement of cooperation with regard to immigration and asylum:
- (a) implementation of the Dublin Convention;
- (b) harmonization of national procedures for granting the right to asylum;
- (c) harmonization of conditions for the reception of asylum applicants;
- (d) development of the Eurodac system (Convention and technical specifications);
- (e) examination of the legal status of third-country nationals residing legally in the territory of the Member States;
- (f) examination of the problems of temporary protection and burden-sharing;
- (g) examination of forms of alternative protection (*de facto* protection and humanitarian residence permit);
- (h) strengthening measures to combat illegal immigration, especially illegal immigration networks, and illegal employment;
- (i) improving cooperation with countries of origin;
- (j) improving cooperation regarding the expulsion of illegal immigrants; problems of readmission;
- (k) false documents: development of a harmonized image filing and transmission system; practical cooperation;
- (l) examination of the problem of family reunification;
5. Stepping up checks on persons at external frontiers:
- (a) draft Convention on the crossing of external frontiers and implementing measures;
- (b) draft Convention on the European Information System (EIS);
- (c) increased operational cooperation between authorities carrying out checks at external frontiers;
- (d) visas: mutual recognition of visas; manual and other implementing measures; updating of relevant regulations;
6. Combating racism and xenophobia:
- (a) assessment of the recommendations of the consultative committee on racism and xenophobia;
- (b) continuation of work, both at judicial (monitoring of joint action against racism and xenophobia) and police level;

7. **Combating corruption and fraud affecting the Community's financial interests:**
- (a) draft second Protocol to the Convention on the protection of the Community's financial interests;
 - (b) draft Convention on corruption;
8. **Horizontal actions:**
- (a) preventing crime;
 - (b) combating trafficking in human beings.
- II. In support of the priority activities listed in point I, the Council will encourage the exchange of officials and magistrates between Member States and — if need be by granting Community financing — the organization of seminars and conferences and the establishment of training programmes.
- The Council will endeavour, wherever possible, to coordinate the positions of Member States in international organizations and at international conferences when they deal with a topic connected with the priorities defined in point I.
- Finally, the Council will carry out periodic checks of the implementation by the Member States of the binding instruments adopted under Title VI of the Treaty on European Union.
- III. The Council's activities in respect of cooperation in the fields of justice and home affairs with third countries will be covered by one or more separate work programmes.
- With regard to countries involved in a structured dialogue with the European Union, cooperation will focus particularly on combating organized crime and drug trafficking.
- IV. Without prejudice to the right of initiative of Member States and the Commission as provided for in Article K.3 (2) of the Treaty on European Union, the Council, acting on a proposal from the Committee set up by Article K.4 (1) of that Treaty, will confer on a programme, in principle at the beginning of each Presidency and in any event once a year, in order to lay down the priorities for the following two years. On that occasion, the Council will decide which activities must be removed from the list of priorities, either because they have already been successfully completed, or because achieving them in the short term is impossible or is no longer a priority, and which other activities must be regarded as having priority and be included in the programme.
- V. This resolution and the Annex thereto will be sent to the European Parliament and published in the Official Journal.

ANNEX

Subject	Instrument/Action	Completion
1. Terrorism		
(a) strengthening of cooperation	adoption of measures	ongoing
(b) threat document	continual updating	ongoing
(c) directory of centres of special competence	practical implementation	ongoing
2. Organized crime, drugs		
2.1 <i>Police and customs cooperation</i>		
(a) implementation of Europol and monitoring of EDU activities	implementing regulations and completion of IT network	ongoing
(b) police training and cooperation between training schools	agreement between schools, creation of a cooperation structure, agreement on programmes for courses and seminars	long term
(c) technical cooperation		
— interception	implementation of Council Resolutions and Seminar Quantico 4/Satellite communication (Enfopol 90, 1995)	for the record
— cooperation between forensic laboratories	practical cooperation	for the record
— cooperation between national crime intelligence services	definition of technical standards practical cooperation	ongoing
— radio communication	follow-up to discussions on new technology	ongoing
— public order cooperation	review of existing police cooperation experts' meeting	new
(d) report on organized crime	updating	ongoing
(e) Naples II	new Convention	ongoing
(f) strategies for checks at external borders	practical cooperation	ongoing
(g) combating counterfeiting and trafficking in works of art	practical cooperation	ongoing
2.2. <i>Drug control</i>		
(a) reports from the experts on drugs	implementation at the judicial, police and customs levels	ongoing

Subject	Instrument/Action	Completion
b) fight against drugs in Latin America including the Caribbean	setting up a mechanism and implementing the recommendations	ongoing
3. Judicial cooperation		
3.1. <i>Judicial cooperation in civil matters</i>		
(a) transmission of judicial and extrajudicial documents in civil or commercial matters	draft Convention	for the record
(b) matrimonial matters and custody of children (Brussel II)	draft Convention	for the record
(c) European enforcement order and the law applicable to extra contractual obligations	draft Convention	examination of advisability of drawing up a Convention
3.2. <i>Judicial cooperation in criminal matters</i>		
(a) extradition	draft Convention and explanatory report	for the record
(b) mutual assistance	draft Convention	ongoing
(c) other forms of cooperation	analysis and adaptation of existing instruments	initiation of proceedings
(d) driving disqualification	draft Convention	for the record
3.3. <i>Judicial cooperation in civil and criminal matters</i>		
(a) liaison magistrates	practical cooperation	ongoing
(b) contact magistrates	practical cooperation	initiation of proceedings
4. Immigration and asylum		
(a) Dublin Convention	practical cooperation	on entry into force
(b) harmonization of national procedures for granting right of asylum		initiation of proceedings
(c) harmonization of conditions for the reception of asylum applicants		initiation of proceedings
(d) Eurodac	draft Convention	ongoing
(e) legal status of third-country nationals residing legally in the territory of the European Union	examination	initiation of proceedings
(f) temporary protection and burden-sharing	examination	ongoing
(g) <i>de facto</i> protection and humanitarian residence permit	examination	initiation of proceedings

Subject	Instrument/Action	Completion
(h) stepping up the fight against illegal immigration and employment		
(i) cooperation with countries of origin	practical cooperation	ongoing
(j) expulsion of illegal immigrants; readmission problems	practical cooperation	several Presidencies
(k) false documents	practical cooperation	several Presidencies
(l) problems of family reunification	examination	initiation of proceedings
5. External frontiers		
(a) crossing of external frontiers	— draft Convention — practical cooperation	ongoing
(b) European Information System	draft Convention	ongoing
(c) visas	updating of regulations implementing measures	ongoing
6. Racism and xenophobia		
(a) recommendation of the consultative committee	examination	ongoing
(b) judicial and police measures	examination	ongoing
7. Combating corruption and fraud affecting the Community's financial interests		
(a) protection of financial interests (PFI)	draft Protocol to the PFI Convention	for the record
(b) corruption	draft Convention	for the record
8. Horizontal actions		
(a) crime prevention	examination	initiation of proceedings
(b) combating trafficking in human beings	— examination — practical cooperation	ongoing

(Acts adopted under Title VI of the Treaty of European Union)

COUNCIL RECOMMENDATION

of 27 September 1996

on combating the illegal employment of third-country nationals

(96/C 304/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.1 and K.2 thereof,

Having regard to the Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control⁽¹⁾,

Having regard to the Resolution of the Council of 20 June 1994 on limitations on admission of non-EC nationals to Member States for employment,

Whereas Article K.1 (3) (c) lays down that combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States constitutes a matter of common interest;

Whereas measures to combat the illegal employment and exploitation of third-country nationals should be complemented by measures to promote the integration of foreign workers lawfully established and legally employed in the territory of the Member States, guaranteeing them appropriate conditions of access to vocational training;

Whereas illegal employment may distort the conditions of free competition in the internal market by reducing social costs or giving employers other advantages and by lowering levels of social protection;

Whereas this Recommendation is aimed at strengthening cooperation between Member States on immigration policies in relation to third countries,

RECOMMENDS THAT the governments of the Member States apply the principles set out below with a view to combating illegal employment of third-country nationals:

I. Scope

This Recommendation applies to third-country nationals, with the exception of:

- members of the families of citizens of the Union exercising their right to free movement,
- nationals of Member States of the European Free Trade Association party to the Agreement on the European Economic Area and members of their families exercising their right to free movement.

This Recommendation does not apply to third-country nationals to the extent that they are in a situation covered by Community law.

This Recommendation is without prejudice to the rights of third-country nationals whose status is covered by agreements concluded with third countries by the Community, by the Community and its Member States or by one or more Member States, where such agreements contain more favourable provisions relating to employment.

II. Authorization to reside and to work

1. Third-country nationals wishing to work in the territory of a Member State must be in possession of the authorizations to reside and to work required by the law of the Member State concerned.
2. The activity carried out, the post and its location and duration must, in accordance with the law in force, effectively correspond to the content of the authorization granted by the Member State concerned.

III. Penalties for employing persons without authorization

1. The employment of third-country nationals who do not possess the necessary authorization is prohibited and

⁽¹⁾ OJ No C 5, 10. 1. 1996, p. 1.

should give rise to the imposition of criminal and/or administrative penalties in accordance with the provisions of the law of the Member State concerned.

2. The penalties referred to in paragraph 1 should be imposed in accordance with the provisions of the law of the Member State concerned upon those who employ illegal workers and those who encourage, facilitate or promote illegal employment.

3. Illegal trafficking in labour organized by persons acting on their own or in networks should constitute a criminal offence and incur criminal and/or administrative penalties in accordance with the law of the Member State concerned.

4. The procedures for punishing the employment of workers who do not possess the necessary authorization could:

- allow the application of penalties which are effective, dissuasive, appropriate and proportionate to the seriousness of the offences committed,
- permit the elimination of added profits or other advantages obtained by employers as a result of the offences committed in particular as regards the wages and charges imposed by the relevant provisions in each Member State.

The said procedures must provide for appropriate mechanisms and procedures for judicial control.

IV. Coordination and collaboration between enforcement agencies

Member States should adopt the measures necessary to coordinate the activities of the competent services or authorities with the aim of combating the illegal employment and the exploitation of third-country nationals, given that the specialization in separate areas of control should be supplemented by the necessary coordination and collaboration in the activities of the services concerned.

The coordination could be put into practice through the preparation of joint operations to be defined by sectors of productive activity, geographical areas and periods of time in which non-compliance with the rules on the employment of third-country nationals appears to be concentrated.

The collaboration might take the form of:

- support, at the request of one of the competent services, for preventive action, such as inspection visits to places of work where there is hard evidence that the activities of those services could be obstructed or nullified or could involve any type of risk,
- support during inspections where the work of the competent services is seriously impeded in their investigations into the hidden economy,
- prompt support where assistance is requested by the competent services in emergency situations.

V. Exchange of information

Member States should exchange information, both bilaterally and within the Council, regarding the fight against the illegal employment of third-country nationals and organized networks trafficking in labour.

VI. Monitoring of compliance with the Recommendation

The Council will examine the progress of compliance with the principles of this Recommendation periodically, and for the first time one year after its adoption.

Done at Brussels, 27 September 1996.

For the Council
The President
 M. LOWRY