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COUNCIL ACT

of 18 December 1997

drawing up, on the basis of Article K. 3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations

(98/C 24/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular point c of Article K. 3(2) thereof, Whereas for the purposes of achieving the objectives of the Union, 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, is hereby drawn up,

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

Done at Brussels, 18 December 1997.

For the Council
The President
F. BODEN

CONVENTION**drawn up on the basis of Article K. 3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations**

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 18 December 1997,

RECALLING the need to strengthen 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 on the customs territory of the Community and, in particular at its points of entry and exit, for the prevention, investigation and suppression of offences not only against Community rules, but also against national laws, in particular the cases 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,

CONSIDERING that particular forms of cooperation involving cross-border actions for the prevention, investigation and prosecution of certain infringements of both the national legislation of the Member States

and Community customs regulations should be regulated, and that such cross-border actions must always be carried out in compliance with the principles of legality (conforming with the relevant law applicable in the requested Member State and with the Directives of the competent authorities of that Member State), subsidiarity (such actions to be launched only if it is clear that other less significant actions are not appropriate) and proportionality (the scale and duration of the action to be determined in the light of the seriousness of the presumed infringement),

CONVINCED that it is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange data concerned with illicit trafficking activities,

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

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I

GENERAL PROVISIONS*Article 1***Scope**

1. Without prejudice to the competences of the Community, the Member States of the European Union shall provide each other with mutual assistance and shall cooperate with one another through their customs administrations, with a view to:

- preventing and detecting infringements of national customs provisions,
- and
- prosecuting and punishing infringements of Community and national customs provisions.

2. Without prejudice to Article 3, this Convention shall not affect the provisions applicable regarding mutual assistance in criminal matters between judicial authorities, more favourable provisions in bilateral or multilateral agreements between Member States governing cooperation as provided for in paragraph 1 between the customs authorities or other competent authorities of the Member States, or arrangements in the same field agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance.

*Article 2***Powers**

The customs administrations shall apply this Convention with the limits of the powers conferred upon them under national provisions. Nothing in this Convention may be construed as affecting the powers conferred under national provisions upon the customs administrations within the meaning of this Convention.

*Article 3***Relationship to mutual assistance provided by the judicial authorities**

1. This Convention covers mutual assistance and cooperation in the framework of criminal investigations concerning infringements of national and Community customs provisions, concerning which the applicant authority has jurisdiction on the basis of the national provisions of the relevant Member State.

2. Where a criminal investigation is carried out by or under the direction of a judicial authority, that authority shall determine whether requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable concerning mutual assistance in criminal matters or on the basis of this Convention.

*Article 4***Definitions**

For the purposes of this Convention, the following definitions shall apply:

1. 'national customs provisions': all laws, regulations and administrative provisions of a Member State the application of which comes wholly or partly within the jurisdiction of the customs administration of the Member State concerning:

- cross-border traffic in goods subject to bans, restrictions or controls, in particular pursuant to Articles 36 and 223 of the Treaty establishing the European Community,
- non-harmonised excise duties;

2. 'Community customs provisions':

- the body of Community provisions and associated implementing provisions governing the import, export, transit and presence of goods traded between Member States and third countries, and between Member States in the case of goods that do not have Community status within the meaning of Article 9(2) of the Treaty establishing the European Community or goods subject to additional controls or investigations for the purposes of establishing their Community status,
- the body of provisions adopted at Community level under the common agricultural policy and the specific provisions adopted with regard to goods resulting from the processing of agricultural products,
- the body of provisions adopted at Community level for harmonised excise duties and for value-added tax on importation together with the national provisions implementing them;

3. 'infringement': acts in conflict with national or Community customs provisions, including, *inter alia*:

- participation in, or attempts to commit, such infringements,
- participation in a criminal organization committing such infringements,
- the laundering of money deriving from the infringements referred to in this paragraph;

4. 'mutual assistance': the granting of assistance between customs administrations as provided for in this Convention;

5. 'applicant authority': the competent authority of the Member State which makes a request for assistance;

6. 'requested authority': the competent authority of the Member State to which a request for assistance is made;

7. 'customs administrations': Member States' customs authorities as well as other authorities with jurisdiction for implementing the provisions of this Convention;

8. 'personal data': all information relating to an identified or identifiable natural person; a person is considered to be identifiable if he or she can be directly or indirectly identified, *inter alia* by means of an identification number or of one or more specific

elements which are characteristic of his or her physical, physiological, psychological, economic, cultural or social identity;

9. 'cross-border cooperation': cooperation between customs administrations across the borders of each Member State.

Article 5

Central coordinating units

1. Member States shall appoint in their customs authorities a central unit (coordinating unit). It shall be responsible for receiving all applications for mutual assistance under this Convention and for coordinating mutual assistance, without prejudice to paragraph 2. The unit shall also be responsible for cooperation with other authorities involved in an assistance measure under this Convention. The coordinating units of the Member States shall maintain the necessary direct contact with each other, particularly in the cases covered by Title IV.

2. The activity of the central coordinating units shall not exclude, particularly in an emergency, direct cooperation between other services of the customs authorities of the Member States. For reasons of efficiency and consistency, the central coordinating units shall be informed of any action involving such direct cooperation.

3. If the customs authority is not, or not completely, competent to process a request, the central coordinating unit shall forward the request to the competent national authority and inform the applicant authority that it has done so.

4. If it is not possible to accede to the request for legal or substantive reasons, the coordinating unit shall return the request to the applicant authority with an explanation as to why the request could not be processed.

Article 6

Liaison officers

1. Member States may make agreements between themselves on the exchange of liaison officers for limited or unlimited periods, and on mutually-agreed conditions.

2. Liaison officers shall have no powers of intervention in the host country.

3. In order to promote cooperation between Member States' customs administrations, liaison officers may, with the agreement or at the request of the competent authorities of the Member States, have the following duties:

- (a) promoting and speeding up the exchange of information between the Member States;
- (b) providing assistance in investigations which relate to their own Member State or the Member State they represent;
- (c) providing support in dealing with requests for assistance;

- (d) advising and assisting the host country in preparing and carrying out cross-border operations;
- (e) any other duties which Member States may agree between themselves.

4. Member States may agree bilaterally or multilaterally on the terms of reference and the location of the liaison officers. Liaison officers may also represent the interests of one or more Member States.

Article 7

Obligation to prove identity

Unless otherwise specified in this Convention, officers of the applicant authority present in another Member State in order to exercise the rights laid down in this Convention shall at all times be able to produce written authority stating their identity and their official functions.

TITLE II

ASSISTANCE ON REQUEST

Article 8

Principles

1. In order to provide the assistance required under this Title, the requested authority or the competent authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own Member State. In so doing it shall avail itself of all the legal powers at its disposal within the framework of its national law in order to respond to the request.

2. The requested authority shall extend this assistance to all circumstances of the infringement which have any recognisable bearing on the subject of the request for

assistance without this requiring any additional request. In case of doubt, the requested authority shall firstly contact the applicant authority.

Article 9

Form and content of the request for assistance

1. Requests for assistance shall always be made in writing. Documents necessary for the execution of such requests shall accompany the request.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority making the request;
- (b) the measure requested;
- (c) the object of, and the reason for, the request;
- (d) the laws, rules and other legal provisions involved;
- (e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations;
- (f) a summary of the relevant facts, except in cases provided for in Article 13.

3. Requests shall be submitted in an official

language of the Member State of the requested authority or in a language acceptable to such authority.

4. When required because of the urgency of the situation, oral requests shall be accepted, but must be confirmed in writing as soon as possible.

5. If a request does not meet the formal requirements, the requested authority may ask for it to be corrected or completed; measures necessary to comply with the request may be commenced in the meantime.

6. The requested authority shall agree to apply a particular procedure in response to a request, provided that that procedure is not in conflict with the legal and administrative provisions of the requested Member State.

Article 10

Requests for information

1. At the request of the applicant authority, the requested authority shall communicate to it all information which may enable it to prevent, detect and prosecute infringements.

2. The information communicated is to be accompanied by reports and other documents, or certified copies or extracts of the same, on which that information is based and which are in the possession of the request authority or which were produced or obtained in order to execute the request for information.

3. By agreement between the applicant authority and the requested authority, officers authorised by the applicant authority may, subject to detailed instructions from the requested authority, obtain information pursuant to paragraph 1 from the offices of the requested Member State. This shall apply to all information derived from the documentation to which the staff of those offices have access. Those officers shall be authorised to take copies of the said documentation.

Article 11

Requests for surveillance

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept on persons where there are serious grounds for believing that they have infringed Community or national customs provisions or that they are committing or have carried out preparatory acts with a view to the commission of such infringements. At the request of the applicant authority, the requested authority shall also keep a watch on places, means of transport and goods connected with activities which might be in breach of the abovementioned customs provisions.

Article 12

Requests for enquiries

1. The requested authority shall at the request of the applicant authority carry out, or arrange to have carried out, appropriate enquiries concerning operations which constitute, or appear to the applicant authority to constitute, infringements.

The requested authority shall communicate the results of such enquiries to the applicant authority. Article 10(2) shall apply *mutatis mutandis*.

2. By agreement between the applicant authority and the requested authority, officers appointed by the applicant authority may be present at the enquiries referred to in paragraph 1. Enquiries shall at all times be carried out by officers of the requested authority. The applicant authority's officers may not, of their own initiative, assume the powers conferred on officers of the requested authority. They shall, however, have access to the same premises and the same documents as the latter, through their intermediary and for the sole purpose of the enquiry being carried out.

Article 13

Notification

1. At the request of the applicant authority, the requested authority shall, in accordance with the national rules of the Member State in which it is based, notify the addressee or have it notified of all instruments or decisions which emanate from the competent authorities of the Member State in which the applicant authority is based and concern the application of this Convention.

2. Requests for notification, mentioning the subject of the instrument or decision to be notified, shall be accompanied by a translation in the official language or an official language of the Member State in which the requested authority is based, without prejudice to the latter's right to waive such a translation.

Article 14

Use as evidence

Findings, certificates, information, documents, certified true copies and other papers obtained in accordance with their national law by officers of the requested authority and transmitted to the applicant authority in the cases of assistance provided for in Articles 10 to 12 may be used as evidence in accordance with national law by the competent bodies of the Member State where the applicant authority is based.

TITLE III

SPONTANEOUS ASSISTANCE

Article 15

Principle

The competent authorities of each Member State shall, as laid down in Articles 16 and 17, subject to any

limitations imposed by national law, provide assistance to the competent authorities of the other Member States without prior request.

Article 16

Surveillance

Where it serves the prevention, detection and prosecution of infringements in another Member State, each Member State's competent authorities shall:

- (a) as far as is possible keep, or have kept, the special watch described in Article 11;
- (b) communicate to the competent authorities of the other Member States concerned all information in their possession and, in particular, reports and other documents or certified true copies or extracts thereof, concerning operations which are connected with a planned or committed infringement.

Article 17

Spontaneous information

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States concerned all relevant information concerning planned or committed infringements and, in particular, information concerning the goods involved and new ways and means of committing such infringements.

Article 18

Use as evidence

Surveillance reports and information obtained by officers of one Member State and communicated to another Member State in the course of the spontaneous assistance provided for in Articles 15 to 17 may be used in accordance with national law as evidence by the competent bodies of the Member State receiving the information.

TITLE IV

SPECIAL FORMS OF COOPERATION

Article 19

Principles

1. Customs administrations shall engage in cross-border cooperation in accordance with this Title. They shall provide each other with the necessary assistance in terms of staff and organisational support. Requests for cooperation shall, as a rule, take the form of requests for assistance in accordance with Article 9. In specific cases referred to in this Title, officers of the applicant authority may engage in activities in the territory of the requested State, with the approval of the requested authority.

Coordination and planning of cross-border operations shall be the responsibility of the central coordinating units in accordance with Article 5.

2. Cross-border cooperation within the meaning of

paragraph 1 shall be permitted for the prevention, investigation and prosecution of infringements in cases of:

- (a) illicit traffic in drugs and psychotropic substances, weapons, munitions, explosive materials, cultural goods, dangerous and toxic waste, nuclear material or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons (prohibited goods);
- (b) trade in substances listed in Tables I and II of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances and intended for the illegal manufacture of drugs (precursor substances);
- (c) illegal cross-border commercial trade in taxable goods to evade tax or to obtain unauthorised State payments in connection with the import or export of goods, where the extent of the trade and the related risk to taxes and subsidies is such that the potential financial cost to the budget of the European Communities or the Member States is considerable;
- (d) any other trade in goods prohibited by Community or national rules.

3. The requested authority shall not be obliged to engage in the specific forms of cooperation referred to in this Title if the type of investigation sought is not permitted or not provided for under the national law of the requested Member State. In this case, the applicant authority shall be entitled to refuse, for the same reason, the corresponding type of cross-border cooperation in the reverse case, where it is requested by an authority of the requested Member State.

4. If necessary under the national law of the Member States, the participating authorities shall apply to their judicial authorities for approval of the planned investigations. Where the competent judicial authorities make their approval subject to certain conditions and requirements, the participating authorities shall ensure that those conditions and requirements are observed in the course of the investigations.

5. Where officers of a Member State engage in activities in the territory of another Member State by virtue of this Title and cause damage by their activities, the Member State in whose territory the damage was caused shall make good the damage, in accordance with its national legislation in the same way as it would have done if the damage had been caused by its own officers. That Member State will be reimbursed in full by the Member State whose officers have caused the damage for the amounts it has paid to the victims or to other entitled persons or institutions.

6. Without prejudice to the exercise of its rights *vis-à-vis* third parties and notwithstanding the obligation to make good damages according to the second sentence of paragraph 5, each Member State shall refrain, in the case provided for in the first sentence of paragraph 5, from requesting reimbursement of the amount of damages it has sustained from another Member State.

7. Information obtained by officers during

cross-border cooperation provided in Articles 20 to 24 may be used, in accordance with national law and subject to particular conditions laid down by the competent authorities of the State in which the information was obtained, as evidence by the competent bodies of the Member State receiving the information.

8. In the course of the operations referred to in Articles 20 to 24, officers on mission in the territory of another Member State shall be treated in the same way as officers of that State as regards infringements committed against them or by them.

Article 20

Hot pursuit

1. Officers of the customs administration of one of the Member States pursuing in their country, an individual observed in the act of committing one of the infringements referred to in Article 19(2) which could give rise to extradition, or participating in such an infringement, shall be authorised to continue pursuit in the territory of another Member State without prior authorisation where, given the particular urgency of the situation, it was not possible to notify the competent authorities of the other Member State prior to entry into that territory or where these authorities have been unable to reach the scene in time to take the pursuit.

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Member State in whose territory the pursuit is to take place. The pursuit shall cease as soon as the Member State in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent authorities of the said Member State shall challenge the pursued person so as to establish his identity or to arrest him. Member States shall inform the depositary of the pursuing officers to whom this provision applies; the depositary shall inform the other Member States.

2. The pursuit shall be carried out in accordance with the following procedures, defined by the declaration provided for in paragraph 6:

- (a) the pursuing officers shall not have the right to apprehend;
- (b) however, if no request to cease the pursuit is made and if the competent authorities of the Member State in whose territory the pursuit is taking place are unable to intervene quickly enough, the pursuing officers may apprehend the person pursued until the officers of the said Member State, who must be informed without delay, are able to establish his identity or arrest him.

3. Pursuit shall be carried out in accordance with paragraphs 1 and 2 in one of the following ways as defined by the declaration provided for in paragraph 6:

- (a) in an area or during a period, as from the crossing of the border, to be established in the declaration;
- (b) without limit in space or time.

4. Pursuit shall be subject to the following general conditions:

- (a) the pursuing officers shall comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they shall obey the instructions of the competent authorities of the said Member State;
- (b) when the pursuit takes place on the sea, it shall, where it extends to the high sea or the exclusive economic zone, be carried out in conformity with the international law of the sea as reflected in the United Nations Convention on the Law of the Sea, and, when it takes place in the territory of another Member State, it shall be carried out in accordance with the provisions of this Article;
- (c) entry into private homes and places not accessible to the public shall be prohibited;
- (d) the pursuing officers shall be easily identifiable, either by their uniform or an armband or by means of accessories fitted to their means of transport; the use of civilian clothes combined with the use of unmarked means of transport without the aforementioned identification is prohibited; the pursuing officers shall at all times be able to prove that they are acting in an official capacity;
- (e) the pursuing officers may carry their service weapons, save (i) where the requested Member State has made a general declaration that weapons may never be carried into its territory or (ii) where specifically decided otherwise by the requested Member State. When officers of another Member State are permitted to carry their service weapons, their use shall be prohibited save in cases of legitimate self-defence;
- (f) once the pursued person has been apprehended as provided for in paragraph 2(b), for the purpose of bringing him before the competent authorities of the Member State in whose territory the pursuit took place he may be subjected only to a security search; handcuffs may be used during his transfer; objects carried by the pursued person may be seized;
- (g) after each operation mentioned in paragraphs 1, 2 and 3, the pursuing officers shall present themselves before the competent authorities of the Member State in whose territory they were operating and shall give an account of their mission; at the request of those authorities, they must remain at their disposal until the circumstances of their action have been adequately elucidated; this condition shall apply even where the pursuit has not resulted in the arrest of the pursued person;
- (h) the authorities of the Member State from which the pursuing officers have come shall, when requested by the authorities of the Member State in whose territory the pursuit took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

5. A person who, following the action provided for in paragraph 2, has been arrested by the competent authorities of the Member State in whose territory the pursuit took place may, whatever his nationality, be

held for questioning. The relevant rules of national law shall apply *mutatis mutandis*.

If the person is not a national of the Member State in whose territory he was arrested, he shall be released no later than six hours after his arrest, not including the hours between midnight and 9 a.m., unless the competent authorities of the said Member State have previously received a request for his provisional arrest for the purposes of extradition in any form.

6. On signing this convention, each Member State shall make a declaration in which it shall define, on the basis of paragraphs 2, 3 and 4, the procedures for implementing pursuit in its territory.

A Member State may at any time replace its declaration by another declaration, provided the latter does not restrict the scope of the former.

Each declaration shall be made after consultations with each of the Member States concerned and with a view to obtaining equivalent arrangements in those States.

7. Member States may, on a bilateral basis, extend the scope of paragraph 1 and adopt additional provisions in implementation of this Article.

8. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or by part thereof. Such declaration may be withdrawn at any time.

Article 21

Cross-border surveillance

1. Officers of the customs administration of one of the Member States who are keeping under observation in their country persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements referred to in Article 19(2) shall be authorised to continue their observation in the territory of another Member State where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

Member States shall inform the depositary of the officers to whom this provision applies; the depositary shall inform the other Member States.

On request, the observation shall be entrusted to officers of the Member State in whose territory it is carried out.

The request referred to in the first subparagraph shall be sent to an authority designated by each of the Member States empowered to grant the requested authorisation or pass on the request.

Member States shall inform the depositary of the authority designated for this purpose; the depositary shall inform the other Member States.

2. Where, for particularly urgent reasons, prior authorisation of the other Member State cannot be requested, the officers conducting the observation shall be authorised to continue beyond the border the

observation of persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements referred to in Article 19(2), provided that the following conditions are met:

- (a) the competent authorities of the Member State in whose territory the observation is to be continued shall be notified immediately of the crossing of the border, during the observation;
- (b) a request submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b), or where authorisation has not been obtained five hours after the border was crossed.

3. The observation referred to in paragraph 1 and 2 shall be carried out only under the following general conditions:

- (a) the officers conducting the observation shall comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent authorities of the said Member State;
- (b) except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted;
- (c) the officers conducting the observation shall be able at all times to provide proof that they are acting in an official capacity;
- (d) the officers conducting the observation may carry their service weapons during the observation save (i) where the requested Member State has made a general declaration that weapons may never be carried into its territory or (ii) where specifically decided otherwise by the requested Member State. When officers of another Member State are permitted to carry their service weapons, their use shall be prohibited save in cases of legitimate self-defence;
- (e) entry into private homes and places not accessible to the public shall be prohibited;
- (f) the officers conducting the observation may neither challenge nor arrest the person under observation;
- (g) all operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers conducting the observation may be required to appear in person;
- (h) the authorities of the Member State from which the observing officers have come shall, when requested by the authorities of the Member State in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. The Member States may, at bilateral level, extend the scope of this Article and adopt additional measures in implementation thereof.

5. When depositing its instruments of adoption of

this Convention, a Member State may declare that it is not bound by this Article or by part thereof. Such declaration may be withdrawn at any time.

Article 22

Controlled delivery

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State.

The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance. During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at any time it has the possibility of arresting the perpetrators and seizing the goods.

4. Consignments the controlled delivery of which is agreed to may, with the consent of the Member States concerned, be intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part.

Article 23

Covert investigations

1. At the request of the applicant authority, the requested authority may authorise officers of the customs administration of the requesting Member State or officers acting on behalf of such administration operating under cover of a false identity (covert investigators) to operate on the territory of the requested Member State. The applicant authority shall make the request only where it would be extremely difficult to elucidate the facts without recourse to the proposed investigative measures. The officers in question shall be authorised in the course of their activities to collect information and make contact with subjects or other persons associated with them.

2. Covert investigations in the requested Member State shall have a limited duration. The preparation and supervision of the investigations shall take place in close cooperation between the relevant authorities of the requested and applicant Member States.

3. The conditions under which a covert investigation is allowed, as well as the conditions under which it is carried out, shall be determined by the requested authority in accordance with its national law. If, in the

course of a covert investigation, information is acquired in relation to an infringement other than that covered by the original request, then the conditions concerning the use to which such information may be put shall also be determined by the requested authority in accordance with its national law.

4. The requested authority shall provide the necessary manpower and technical support. It shall take measures to protect the officers referred to in paragraph 1, while they are active in the requested Member State.

5. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or part thereof. Such declaration may be withdrawn at any time.

Article 24

Joint special investigation teams

1. By mutual agreement, the authorities of several Member States may set up a joint special investigation team based in a Member State and comprising officers with the relevant specialisations.

The joint special investigation team shall have the following tasks:

- implementation of difficult and demanding investigations of specific infringements, requiring simultaneous, coordinated action in the Member States concerned,
- coordination of joint activities to prevent and detect particular types of infringement and obtain information on the persons involved, their associates and the methods used.

2. Joint special investigation teams shall operate under the following general conditions:

- (a) they shall be set up only for a specific purpose and for a limited period;
- (b) an officer from the Member State in which the team's activities take place shall head the team;
- (c) the participating officers shall be bound by the law of the Member State in whose territory the team's activities take place;
- (d) the Member State in which the team's activities take place shall make the necessary organizational arrangements for the team to operate.

3. Membership of the team shall not bestow on officers any powers of intervention in the territory of another Member State.

TITLE V

DATA PROTECTION

Article 25

Data protection for the exchange of data

1. When information is exchanged, the customs administrations shall take into account in each specific case the requirements for the protection of personal data. They shall respect the relevant provisions of the Convention of the Council of Europe

of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data. In the interest of data protection, a Member State may, in accordance with paragraph 2, impose conditions concerning the processing of personal data by another Member State to which such personal data may be passed.

2. Without prejudice to the provisions of the Convention concerning the use of information technology for customs purposes, the following provisions shall apply to personal data which are communicated pursuant to the application of this Convention:

- (a) processing of the personal data by the recipient authority shall be authorised only for the purpose referred to in Article 1(1). That authority may forward them, without prior consent from the Member State supplying them, to its customs administrations, its investigative authorities and its judicial bodies to enable them to prosecute and punish infringements within the meaning of Article 4(3). In all other cases of data transmission, the consent of the Member State which supplied the information is necessary;
- (b) the authority of the Member State which communicates data shall ensure that they are accurate and up-to-date. If it emerges that inaccurate data have been communicated or data have been communicated which should not have been communicated or that lawfully communicated data are required at a later stage to be erased in accordance with the law of the communicating Member State, the recipient authority shall be immediately informed thereof. It shall be obliged to correct such data or have them erased. If the recipient authority has reason to believe that communicated data are inaccurate or should be erased, it shall inform the communicating Member State;
- (c) in cases where communicated data should, according to the law of the communicating Member State, be erased or amended, the persons concerned must be given the effective right to correct the data;
- (d) the forwarding and receipt of exchanged data shall be recorded by the authorities concerned;
- (e) if so requested, the communicating and recipient authorities shall inform the person concerned, at that person's request, of the personal data communicated and the use to which they are to be put. There is no obligation to provide the information if it is found, on consideration of the matter, that the importance to the public of the information being withheld outweighs the importance to the person concerned of receiving it. Moreover, the right of the person concerned to receive information about the personal data communicated shall be determined in accordance with the national laws, regulations and procedures of the Member State in whose territory the information is requested. Before any decision is taken on providing information, the communicating

authority shall be given the opportunity of stating its position;

- (f) Member States shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through the processing of data communicated in the Member State concerned. This shall also be the case where the injury was caused by the communication of inaccurate data or the fact that the communicating authority communicated data in violation of the Convention;
- (g) the data communicated shall be kept for a period not exceeding that necessary for the purposes for which they were communicated. The need to keep them shall be examined at the appropriate moment by the Member State concerned;
- (h) in any event, the data shall enjoy at least the same protection as is given to similar data in the Member State which received them;
- (i) every Member State shall take the appropriate measures to ensure compliance with this Article by the application of effective controls. Every Member State may assign the task of control to the national supervisory authority mentioned in Article 17 of the Convention concerning the use of information technology for customs purposes.

3. For the purposes of this Article, 'the processing of personal data' shall be understood in accordance with the definition in Article 2(b) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

TITLE VI

INTERPRETATION OF THE CONVENTION

Article 26

Court of Justice

1. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention whenever it has proved impossible for the dispute to be settled by the Council within six months of its being referred to the Council by one of its members.

2. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States and the Commission concerning the interpretation or application of this Convention which it has proved impossible to settle through negotiation. The dispute may be submitted to the Court of Justice after the expiry of a period of six months from the date on which one of the parties notified the other of the existence of a dispute.

3. The Court of Justice shall have jurisdiction, subject to the conditions laid down in paragraphs 4 to 7, to give preliminary rulings on the interpretation of this Convention.

⁽¹⁾ OJ L 281, 23. 11. 1995, p. 31.

4. By a declaration made at the time of the signing of this Convention 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 this Convention as specified in either paragraph 5(a) or (b).

5. A Member State which has made a declaration pursuant to paragraph 4 shall 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 this Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement, 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 this Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

6. 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.

7. Any Member State, whether or not it has made a declaration pursuant to paragraph 4, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 5.

8. The Court of Justice shall not have jurisdiction to check the validity or proportionality of operations carried out by competent law enforcement agencies under this Convention nor to rule on the exercise of responsibilities which devolve upon Member States for maintaining law and order and for safeguarding internal security.

TITLE VII

IMPLEMENTATION AND FINAL PROVISIONS

Article 27

Confidentiality

The customs administrations shall take account, in each specific case of exchange of information, of the requirements of investigation secrecy. To that end, a Member State may impose conditions covering the use of information by another Member State to which that information may be passed.

Article 28

Exemptions from the obligation to provide assistance

1. This Convention shall not oblige the authorities of Member States to provide mutual assistance where

(²) OJ L 302, 19. 10. 1992, p. 2.

such assistance would be likely to harm the public policy or other essential interests of the State concerned, particularly in the field of data protection, or where the scope of the action requested, in particular in the context of the special forms of cooperation provided for in Title IV, is obviously disproportionate to the seriousness of the presumed infringement. In such cases, assistance may be refused in whole or in part or made subject to compliance with certain conditions.

2. Reasons must be given for any refusal to provide assistance.

Article 29

Expenses

1. Member States shall normally waive all claims for reimbursement of costs incurred in the implementation of this Convention, with the exception of expenses for fees paid to experts.

2. If expenses of a substantial and extraordinary nature are, or will be, required to execute the request, the customs administrations involved shall consult to determine the terms and conditions under which a request shall be executed as well as the manner in which the costs shall be borne.

Article 30

Reservations

1. Save as provided in Article 20(8), Article 21(5) and Article 23(5), this Convention shall not be the subject of any reservations.

2. Member States which have already established agreements between them covering matters regulated in Title IV of this Convention may make reservations pursuant to paragraph 1 only in so far as such reservations do not affect their obligations under such agreements.

3. Accordingly, the obligations arising out of the provisions of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders which provide for closer cooperation shall not be affected by this Convention in the context of relations between the Member States which are bound by those provisions.

Article 31

Territorial application

1. This Convention shall apply to the territories of the Member States as referred to in Article 3(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (²), as revised by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European

Union is founded ⁽³⁾ and in Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 ⁽⁴⁾, including, for the Federal Republic of Germany, the Island of Heligoland and the territory of Büsingen (within the framework of and pursuant to the Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation on the inclusion of the commune of Büsingen am Hochrhein in the customs territory of the Swiss Confederation, or the current version thereof) and, for the Italian Republic, the municipalities of Livigno and Campione d'Italia, and to the territorial waters, the inland maritime waters and the airspace of the territories of the Member States.

2. The Council, acting unanimously by the procedure provided for in Title VI of the Treaty on European Union, may adapt paragraph 1 to any amendment of the provisions of Community law referred to therein.

Article 32

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 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 later time, declare that as far as it is concerned this Convention, with the exception of Article 23 thereof, 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 applicant Member State.

6. On the date of entry into force of this Convention, the Convention on the provision of mutual assistance between customs administrations of 7 September 1967 shall be repealed.

Article 33

Accession

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

2. The text of the Convention in the language of the acceding Member State, as 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 come 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 upon expiry of the said period of 90 days.

5. Where this Convention has not yet entered into force at the time of the deposit of their instrument of accession, Article 32(4) shall apply to acceding Member States.

Article 34

Amendments

1. Amendments to this Convention may be proposed by any Member State that is a High Contracting Party. Any proposed amendment shall be sent to the depositary, who shall communicate it to the Council and the Commission.

2. Without prejudice to Article 31(2), the amendments to the Convention shall be adopted by the Council, which shall recommend them to the Member States for adoption in accordance with their respective constitutional requirements.

3. Amendments adopted in accordance with paragraph 2 shall come into force in accordance with Article 32(3).

Article 35

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, implementation, declarations and reservations, and also any other notification concerning this Convention.

Done at Brussels on the eighteenth day of December in the year one thousand nine hundred and ninety-seven 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.

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

⁽³⁾ OJ L 1, 1. 1. 1995, p. 181.

⁽⁴⁾ OJ L 17, 21. 1. 1997, p. 2.

Bevollmächtigten ihre Unterschrift unter dieses Übereinkommen gesetzt.

Σε πίστωση τον ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα 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 la 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 fédo 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 bekräftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el dieciocho de diciembre de mil novecientos noventa y siete, en un ejemplar único, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, 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.

Udfærdiget i Bruxelles, den attende december nitten hundrede og syvoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, idet hver af disse tekster har samme gyldighed; de deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am achtzehnten Dezember neunzehnhundertsiebenundneunzig 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 δεκαοκτώ Δεκεμβρίου χίλια εννιακόσια ενενήντα επτά, σε ένα μόνο αντίτυπο στην αγγλική, γαλλική, γερμανική], δανική, ελληνική, ιρλανδική], ισπανική], ιταλική], ολλανδική], πορτογαλική, σουηδική και φινλανδική γλώσσα: κάθε κείμενο είναι εξίσου αυθεντικό και κατατίθεται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Fait à Bruxelles, le dix-huit décembre mil neuf cent quatre-vingt-dix-sept, en un exemplaire unique, en

langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, chaque texte faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil ar an ochtú lá déag de Nollaig sa bhliain míle naoi gcéad nócha a seacht, 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 diciotto dicembre millenovecentonovantasette, in un unico esemplare, in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, portoghese, spagnola, svedese e tedesca, ciascun testo facente ugualmente fede, e depositato negli archivi del Segretariato generale del Consiglio dell'Unione europea.

Gedaan te Brussel, de achttiende december negentienhonderd zevenennegentig, 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 dezoito de Dezembro de mil novecentos e noventa e sete em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fétodos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

Tehty Brysselissä kahdeksantenatoista päivänä joulukuuta vuonna tuhatyhdeksänsataayhdeksänkymmmentäseitsemän englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä yhtenä alkuperäiskappaleena, joka talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon ja jonka jokainen teksti on yhtä todistusvoimainen.

Som skedde i Bryssel den artonde december nittonhundranittiosju i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, vilka samtliga texter är lika giltiga, vilket skall deponeras i arkivet vid generalsekretariatet vid 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 κυβερνηση Ελληνικης 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 Konungariket Sveriges vägnar
For the Government of the United Kingdom of Great
Britain and Northern Ireland

ANNEX

**DECLARATIONS TO BE ANNEXED TO THE CONVENTION AND PUBLISHED IN THE OFFICIAL
JOURNAL**1. *Re Articles 1(1) and 28*

With reference to the exceptions to the obligation to provide assistance under Article 28 of the Convention, Italy declares that the execution of mutual assistance requests, on the basis of the Convention, concerning infringements which under Italian law are not infringements of national or community customs provisions, may – for reasons relating to the subdivision of competence among domestic authorities in prevention and prosecution of crimes – harm the public policy or other national essential interests.

2. *Re Articles 1(2) and 3(2)*

Denmark and Finland declare that they interpret the term 'judicial authorities' or 'judicial authority' in Articles 1(2) and 3(2) of the Convention in the sense of their declarations made pursuant to Article 24 of the European Convention on mutual assistance in criminal matters, signed in Strasbourg on 20 April 1959.

3. *Re Article 4(3) second indent*

Denmark declares, as far as it is concerned, that Article 4(3), second indent, covers only actions by which a person participates in the commission by a group of people, acting toward a common goal, of one or more of the infringements concerned, including situations where the person concerned does not take part in the actual commission of the offence or offences in question; such participation must be based on knowledge of the purpose and general criminal activities of the group, or on knowledge of the group's intention to commit the offence(s) in question.

4. *Re Article 4(3), third indent*

Denmark declares, as far as it is concerned, that Article 4(3), third indent, applies only to the predicate offences in respect of which at any time receiving stolen goods is punishable under Danish law, including Section 191a of the Danish criminal Code on receiving stolen drugs and Section 284 of the Criminal Code on receiving goods in connection with smuggling of a particularly aggravated nature.

5. *Re Article 6(4)*

Denmark, Finland and Sweden declare that the liaison officers referred to in Article 6(4) may also represent the interests of Norway and Iceland or vice versa. The five Nordic countries have since 1982 had

an arrangement whereby the stationed liaison officers from one of the countries involved also represent the other Nordic countries. This arrangement was made in order to strengthen the fight against drug trafficking and to limit the economic burden imposed on individual countries by the stationing of the liaison officers. Denmark, Finland and Sweden attach great importance to the continuation of this arrangement, which operates well.

6. *Re Article 20(8)*

Denmark declares that it accepts the provisions of Article 20, subject to the following conditions: In case of a hot pursuit exercised by the customs authorities of another Member State at sea or through the air, such pursuit may be extended to Danish territory, including Danish territorial waters and the airspace above Danish territory and territorial waters, only if the competent Danish authorities have received prior notice thereof.

7. *Re Article 21(5)*

Denmark declares that it accepts the provisions of Article 21, subject to the following conditions:

Cross-border surveillance without prior authorisation may be carried out only in accordance with Article 21(2) and (3) if there are serious grounds for believing that the persons under observation are involved in one of the infringements referred to in Article 19(2) which could give rise to extradition.

8. *Re Article 25(2)(i)*

Member States undertake to keep each other informed in the Council on measures taken to ensure that the commitments referred to in point (i) are observed.

9. *Declaration made pursuant to Article 26(4)*

At the time of the signing of this Convention, the following declared that they accepted the jurisdiction of the Court of Justice in accordance with the procedures laid down in Article 26(5):

- Ireland in accordance with the procedures laid down in Article 26(5)(a),
- the Federal Republic of Germany, the Hellenic Republic, the Italian Republic and the Republic of Austria in accordance with the procedures laid down in Article 26(5)(b).

DECLARATION

The Federal Republic of Germany, the Italian Republic and the Republic of Austria, reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Convention on mutual assistance and cooperation between customs administrations 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 of the European Communities.

