

# Official Journal of the European Communities

English edition

## Information and Notices

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*(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<sup>(1)</sup>;

*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

<sup>(1)</sup> 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

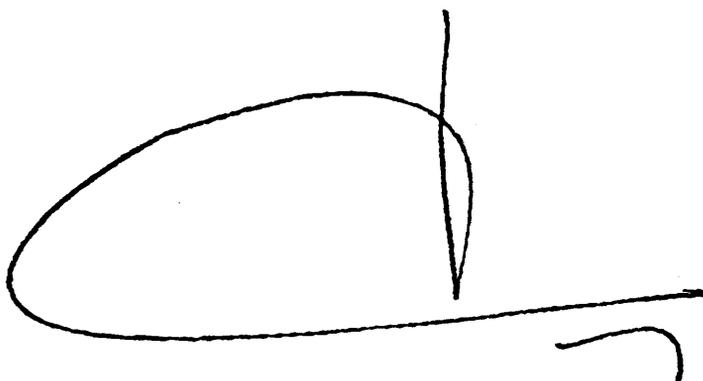
1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

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.

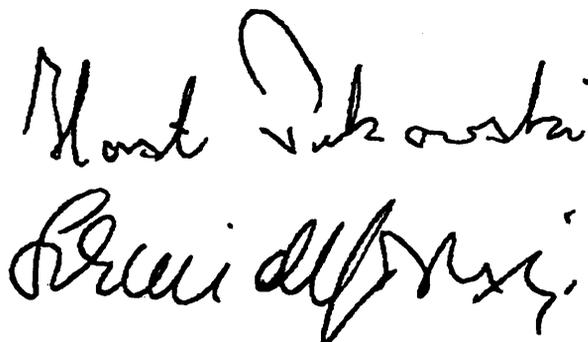
Pour le gouvernement du Royaume de Belgique  
Voor de Regering van het Koninkrijk België  
Für die Regierung des Königreichs Belgien



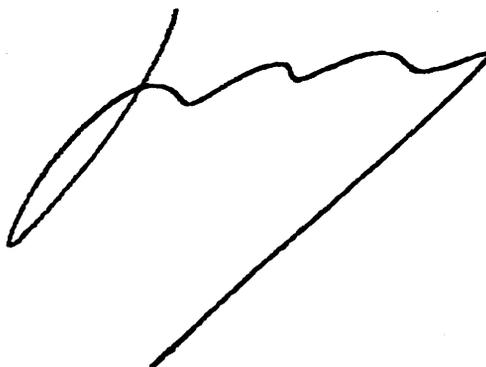
For regeringen for Kongeriget Danmark



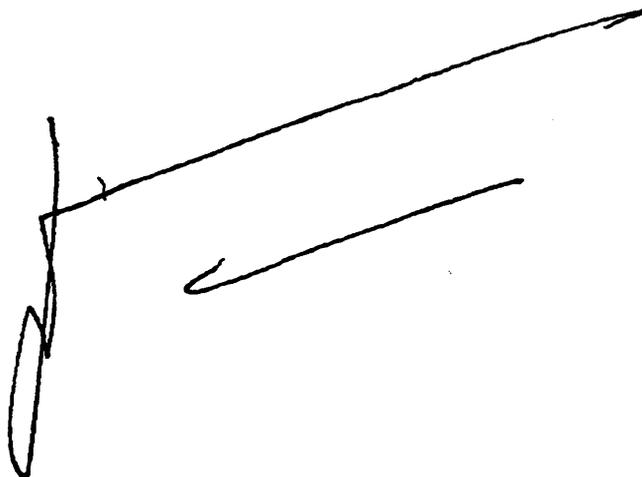
Für die Regierung der Bundesrepublik Deutschland



Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



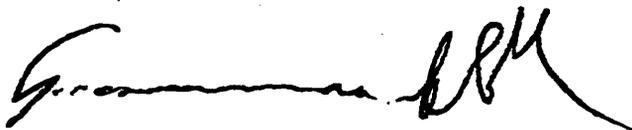
Pour le gouvernement de la République française



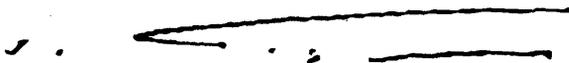
Thar ceann Rialtas na hÉireann  
For the Government of Ireland



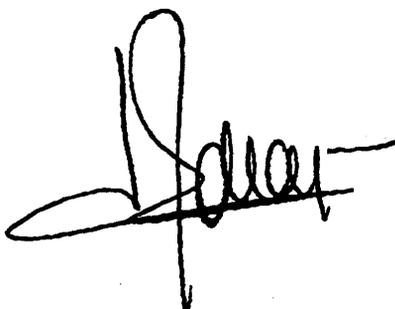
Per il Governo della Repubblica italiana



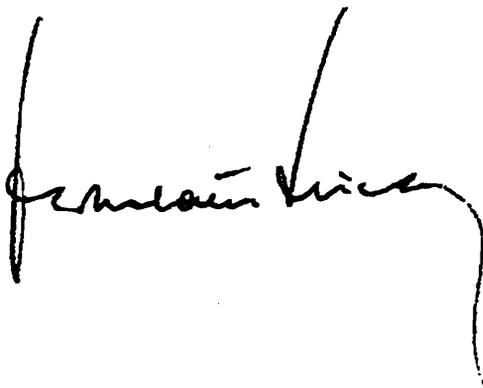
Pour le gouvernement du Grand-Duché de Luxembourg



Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich

A handwritten signature in black ink, appearing to read 'Franz Vranitzky', written in a cursive style.

Pelo Governo da República Portuguesa

A handwritten signature in black ink, appearing to read 'Jaime Cortesão', written in a cursive style.

Suomen hallituksen puolesta  
På finska regeringens vägnar

A handwritten signature in black ink, appearing to read 'Väinö Tanner', written in a cursive style.

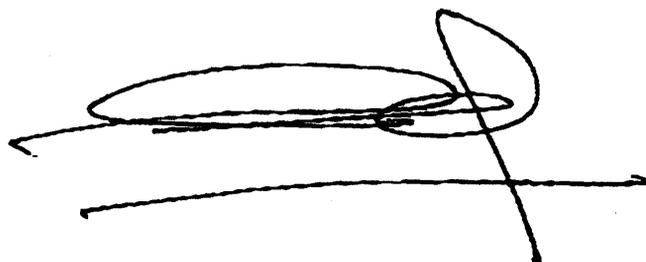
På svenska regeringens vägnar

A handwritten signature in black ink, appearing to read 'L. P. Sjöström', written in a cursive style.

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

A handwritten signature in black ink, appearing to read 'Michael Howard', written in a cursive style.

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.'

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**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**

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<sup>(1)</sup> 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.

<sup>(1)</sup> 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

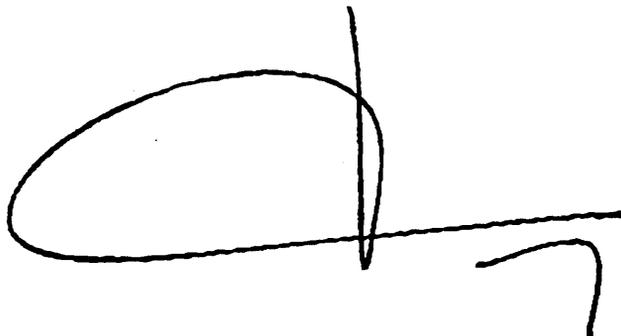
1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

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.

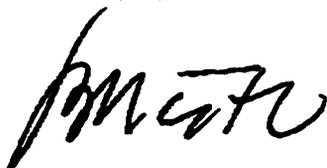
In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

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.

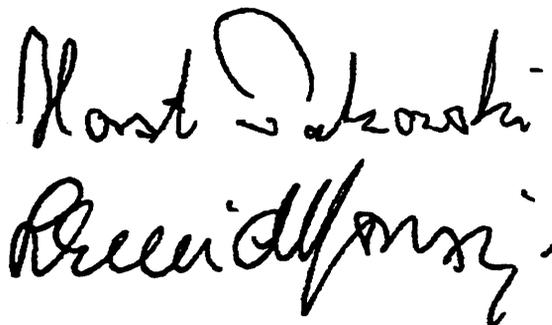
Pour le gouvernement du Royaume de Belgique  
Voor de Regering van het Koninkrijk België  
Für die Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark



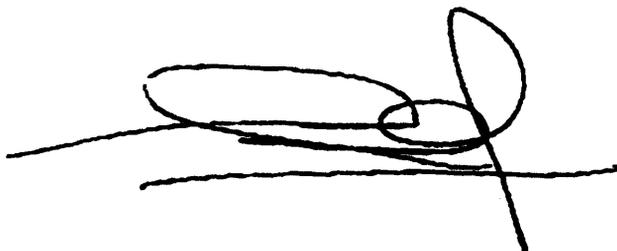
Für die Regierung der Bundesrepublik Deutschland



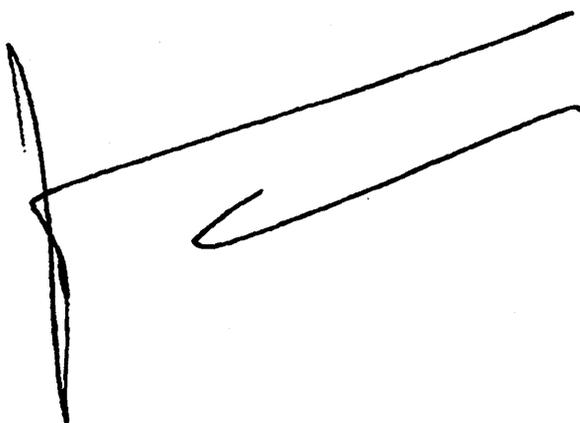
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España

A stylized handwritten signature consisting of several overlapping loops and horizontal strokes.

Pour le gouvernement de la République française

A handwritten signature with a prominent vertical stroke on the left and several diagonal strokes extending to the right.

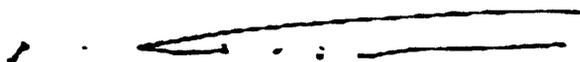
Thar ceann Rialtas na hÉireann  
For the Government of Ireland

A handwritten signature in cursive script, appearing to read 'Nora Owen'.

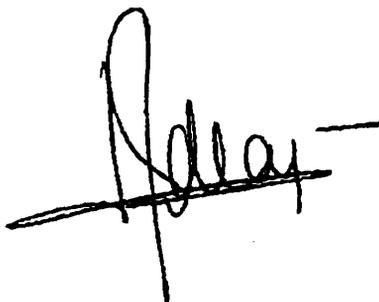
Per il Governo della Repubblica italiana

A handwritten signature in cursive script, appearing to read 'Giuseppe'.

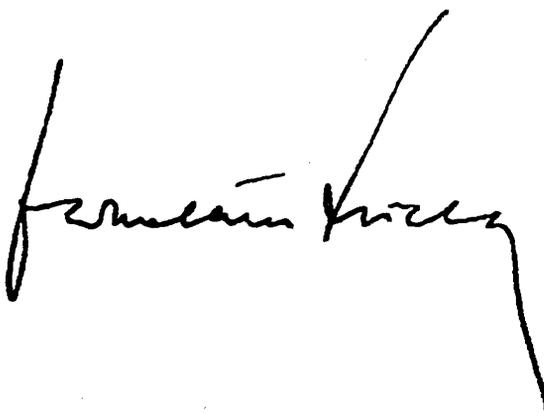
Pour le gouvernement du Grand-Duché de Luxembourg

A handwritten signature consisting of a few horizontal strokes.

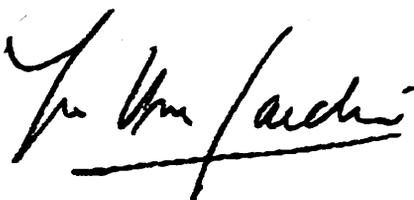
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



Suomen hallituksen puolesta  
På finska regeringens vägnar



På svenska regeringens vägnar

A handwritten signature in black ink, appearing to be 'P. J. Green', written in a cursive style.

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

A handwritten signature in black ink, appearing to be 'Nigel Hounet', written in a cursive style.

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## 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.

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**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.

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**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.

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**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.
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**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.

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**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.
-