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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 November 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: ANNEX Convention established by the Council in accordance with Article  
34 of the Treaty on European Union, on Mutual Assistance in Criminal  
Matters between the Member States of the European Union  
accompanying the Recommendation for a Council Decision concerning  
the accession of Croatia to the Convention of 29 May 2000, established by  
the Council in accordance with Article 34 of the Treaty on European Union,  
on Mutual Assistance in Criminal Matters between the Member States of  
the European Union and its Protocol of 16 October 2001

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Delegations will find attached document COM(2014) 685 final ANNEX 1.

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Encl.: COM(2014) 685 final ANNEX 1



EUROPEAN  
COMMISSION

Brussels, 30.10.2014  
COM(2014) 685 final

ANNEX 1

## ANNEX

**Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union**

*accompanying the*

**Recommendation for a Council Decision**

**concerning the accession of Croatia to the Convention of 29 May 2000, established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol of 16 October 2001**

## CONVENTION

### **established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union**

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

REFERRING to the Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

WISHING to improve judicial cooperation in criminal matters between the Member States of the Union, without prejudice to the rules protecting individual freedom,

POINTING OUT the Member States' common interest in ensuring that mutual assistance between the Member States is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial,

RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by a Convention of the European Union,

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

CONSIDERING that the Member States attach importance to strengthening judicial cooperation, while continuing to apply the principle of proportionality,

RECALLING that this Convention regulates mutual assistance in criminal matters, based on the principles of the Convention of 20 April 1959,

WHEREAS, however, Article 20 of this Convention covers certain specific situations concerning interception of telecommunications, without having any implications with regard to other such situations outside the scope of the Convention,

WHEREAS the general principles of international law apply in situations which are not covered by this Convention,

RECOGNISING that this Convention does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, and that it is a matter for each Member State to determine, in accordance with Article 33 of the Treaty on European Union, under which conditions it will maintain law and order and safeguard internal security,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

## TITLE I

### GENERAL PROVISIONS

#### *Article 1*

#### **Relationship to other conventions on mutual assistance**

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

- (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the 'European Mutual Assistance Convention';
- (b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
- (c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the 'Schengen Implementation Convention') which are not repealed pursuant to Article 2(2);
- (d) Chapter 2 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 the context of relations between the Member States of the Benelux Economic Union.

2. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the European Mutual Assistance Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories.

#### *Article 2*

#### **Provisions relating to the Schengen *acquis***

1. The provisions of Articles 3, 5, 6, 7, 12 and 23 and, to the extent relevant to Article 12, of Articles 15 and 16, to the extent relevant to the Articles referred to, of Article 1 constitute measures amending or building upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* <sup>(1)</sup>.
2. The provisions of Articles 49(a), 52, 53 and 73 of the Schengen Implementation Convention are hereby repealed.

#### *Article 3*

#### **Proceedings in connection with which mutual assistance is also to be afforded**

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 36.

#### Article 4

### **Formalities and procedures in the execution of requests for mutual assistance**

1. Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.
2. The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadline.
3. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.
4. If it is foreseeable that the deadline set by the requesting Member State for executing its request cannot be met, and if the reasons referred to in paragraph 2, second sentence, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request.

#### Article 5

### **Sending and service of procedural documents**

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.
2. Procedural documents may be sent via the competent authorities of the requested Member State only if:
  - (a) the address of the person for whom the document is intended is unknown or uncertain; or
  - (b) the relevant procedural law of the requesting Member State requires proof of service of the document on the addressee, other than proof that can be obtained by post; or
  - (c) it has not been possible to serve the document by post; or
  - (d) the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.
3. Where there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the important passages thereof, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only some other language, the document, or at least the important passages thereof, must be translated into that other language.
4. All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. Paragraph 3 shall also apply to that report.
5. This Article shall not affect the application of Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty.

## Article 6

### Transmission of requests for mutual assistance

1. Requests for mutual assistance and spontaneous exchanges of information referred to in Article 7 shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity. Such requests shall be made directly between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified in this Article.

Any information laid by a Member State with a view to proceedings before the courts of another Member State within the meaning of Article 21 of the European Mutual Assistance Convention and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities.

2. Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:

(a) between a central authority of a Member State and a central authority of another Member State; or

(b) between a judicial authority of one Member State and a central authority of another Member State.

3. Notwithstanding paragraph 1, the United Kingdom and Ireland, respectively, may, when giving the notification provided for in Article 27(2), declare that requests and communications to it, as specified in the declaration, must be sent via its central authority. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them.

Any Member State may apply the principle of reciprocity in relation to the declarations referred to above.

4. Any request for mutual assistance may, in case of urgency, be made via the International Criminal Police Organisation (Interpol) or any body competent under provisions adopted pursuant to the Treaty on European Union.

5. Where, in respect of requests pursuant to Articles 12, 13 or 14, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts.

6. Where, in respect of requests for mutual assistance in relation to proceedings as envisaged in Article 3(1), the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities.

7. Any Member State may declare, when giving the notification provided for in Article 27(2), that it is not bound by the first sentence of paragraph 5 or by paragraph 6 of this Article, or both or that it will apply those provisions only under certain conditions which it shall specify. Such a declaration may be withdrawn or amended at any time.

8. The following requests or communications shall be made through the central authorities of the Member States:

(a) requests for temporary transfer or transit of persons held in custody as referred to in Article 9 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;

(b) notices of information from judicial records as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities.

## Article 7

### **Spontaneous exchange of information**

1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
3. The receiving authority shall be bound by those conditions.

## TITLE II

### **REQUEST FOR CERTAIN SPECIFIC FORMS OF MUTUAL ASSISTANCE**

#### **Article 8 Restitution**

1. At the request of the requesting Member State and without prejudice to the rights of *bona fide* third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles either before or after handling them over to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of *bona fide* third parties shall not be affected.
3. In the event of a waiver before handing over the articles to the requesting Member State, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Member State to collect taxes or duties from the rightful owner.

## Article 9

### **Temporary transfer of persons held in custody for purpose of investigation**

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of the person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.
2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he or she must be returned to the territory of the requesting Member State.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.
5. The provisions of Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention shall apply *mutatis mutandis* to this Article.
6. When giving the notification provided for in Article 27(2), each Member State may declare that, before an agreement is reached under paragraph 1 of this Article, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the declaration.

### Hearing by videoconference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by videoconference, as provided for in paragraphs 2 to 8.

2. The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.

3. Requests for a hearing by videoconference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its law.

5. With reference to hearing by videoconference, the following rules shall apply:

- (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;
- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
- (d) at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.

6. Without prejudice to any measures agreed for the protection of the persons, the judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.

8. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by videoconference involving an accused person. In this case, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, shall be subject to agreement between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

Any Member State may, when giving its notification pursuant to Article 27(2), declare that it will not apply the first subparagraph. Such a declaration may be withdrawn at any time.

Hearings shall only be carried out with the consent of the accused person. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.



## Article 11

### Hearing of witnesses and experts by telephone conference

1. If a person is one Member State's territory and has to be heard as a witness or expert by judicial authorities of another Member State, the latter may, where its national law so provides, request assistance of the former Member State to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 5.
2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
3. The requested Member State shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
4. A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned. When agreeing such arrangements, the requested Member State shall undertake to:
  - (a) notify the witness or expert concerned of the time and the venue of the hearing;
  - (b) ensure the identification of the witness or expert;
  - (c) verify that the witness or expert agrees to the hearing by telephone conference.The requested Member State may make its agreement subject, fully or in part, to the relevant provisions of Article 10(5) and (8). Unless otherwise agreed, the provisions of Article 10(7) shall apply *mutatis mutandis*.

## Article 12

### Controlled deliveries

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

## Article 13

### Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement. A joint investigation team may, in particular, be set up where:
- (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
  - (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- (b) the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;
- (c) the Member State in which the team operates shall make the necessary organizational arrangements for it to do so.

4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being 'seconded' to the team.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.

7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:

- (a) for the purposes for which the team has been set up;
- (b) subject to the prior consent of the Member State where the information became available, for detecting, investigation and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;

- (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
- (d) for other purposes to the extent that this is agreed between Member States setting up the team.

11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

#### Article 14

### **Covert investigations**

1. The requesting and the requested Member State may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.
3. Covert investigations shall take place in accordance with the national law and procedures of the Member States on the territory of which the covert investigation takes place. The Member States involved shall cooperate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
4. When giving the notification provided for in Article 27(2), any Member State may declare that it is not bound by this Article. Such a declaration may be withdrawn at any time.

#### Article 15

### **Criminal liability regarding officials**

During the operations referred to in Articles 12, 13 and 14, officials from a Member State other than the Member State of operation shall be regarded as officials of the Member State of operation with respect of offences committed against them or by them.

#### Article 16

### **Civil liability regarding officials**

1. Where, in accordance with Articles 12, 13 and 14, officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

## TITLE III

### INTERCEPTION OF TELECOMMUNICATIONS

#### Article 17

##### **Authorities competent to order interception of telecommunications**

For the purpose of the application of the provisions of Articles 18, 19 and 20, 'competent authority' shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

#### Article 18

##### **Requests for interception of telecommunications**

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:

- (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
- (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.

2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:

- (a) the requesting Member State and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications;
- (b) the requesting Member State and his or her communications can be intercepted in that Member State;
- (c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.

3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:

- (a) an indication of the authority making the request;
- (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of this interception;
- (d) an indication of the criminal conduct under investigation;
- (e) the desired duration of the interception; and
- (f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.

5. The requested Member State shall undertake to comply with requests under paragraph 1(a):

- (a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;

(b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case.

6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.

7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

#### *Article 19*

### **Interceptions of telecommunications on national territory by the use of service providers**

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.

2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.

3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(b).

4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

#### *Article 20*

### **Interception of telecommunications without the technical assistance of another Member State**

1. Without prejudice to the general principles of international law as well as to the provisions of Article 18(2)(c), the obligations under this Article shall apply to interception orders made or authorised by the competent authority of one Member State in the course of criminal investigations which present the characteristics of being an investigation following the commission of a specific criminal offence, including attempts in so far as they are criminalised under national law, in order to identify and arrest, charge, prosecute or deliver judgment on those responsible.

2. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State'), and the telecommunication address of the subject specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall inform the notified Member State of the interception:

(a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;

(b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State.

3. The information to be notified by the intercepting Member State shall include:

- (a) an indication of the authority ordering the interception;
- (b) confirmation that a lawful interception order has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of the interception;
- (d) an indication of the criminal conduct under investigation; and
- (e) the expected duration of the interception.

4. The following shall apply where a Member State is notified pursuant to paragraphs 2 and 3:

- (a) Upon receipt of the information provided under paragraph 3 the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to:
  - (i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case;
  - (ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State, or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where the notified Member State imposes such a requirement, it shall give reasons for its decision in writing;
  - (iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The notified Member State shall inform the intercepting Member State of the reasons justifying the said conditions;
  - (iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the conditions which, pursuant to its national law, justify the requested extension of the deadline.
- (b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State:
  - (i) may continue the interception; and
  - (ii) may not use the material already intercepted, except:
    - if otherwise agreed between the Member States concerned; or
    - for taking urgent measures to prevent an immediate and serious threat to public security. The notified Member State shall be informed of any such use and the reasons justifying it.
- (c) The notified Member State may request a summary of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case. Such a request does not affect the application of subparagraph (b), unless otherwise agreed between the notified Member State and the intercepting Member State.
- (d) The Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. To this end they shall designate contact points, on duty twenty-four hours a day, and include them in their statements under Article 24(1)(e).

5. The notified Member State shall keep the information provided under paragraph 3 confidential in accordance with its national law.

6. Where the intercepting Member State is of the opinion that the information to be provided under paragraph 3 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.

7. When giving its notification under Article 27(2), or at any time thereafter, any Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article.

Article 21

**Responsibility for charges made by telecommunications operators**

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be borne by the requesting Member State.

Article 22

**Bilateral arrangements**

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

TITLE IV

Article 23

**Personal data protection**

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:
  - (a) for the purpose of proceedings to which this Convention applies;
  - (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
  - (c) for preventing an immediate and serious threat to public security;
  - (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.
2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.
3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.
4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.
5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.
6. This Article does not apply to personal data obtained by a Member State under this Convention and originating from that Member State.
7. Luxembourg may, when signing the Convention, declare that where personal data are communicated by Luxembourg under this Convention to another Member State, the following applies:

Luxembourg may, subject to paragraph 1(c), in the circumstances of a particular case require that unless that Member State concerned has obtained the consent of the data subject, the personal data may only be used for the purposes referred to in paragraph 1(a) and (b) with the prior consent of Luxembourg in respect of proceedings for which Luxembourg could have refused or limited the transmission or use of the personal data in accordance with the provisions of this Convention or the instruments referred to in Article 1.

If, in a particular case, Luxembourg refuses to give its consent to a request from a Member State pursuant to the provisions of paragraph 1, it must give reasons for its decision in writing.

## TITLE V FINAL PROVISIONS

### Article 24

#### Statements

1. When giving the notification referred to in Article 27(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:
  - (a) the competent administrative authorities within the meaning of Article 3(1), if any;
  - (b) one or more central authorities for the purposes of applying Article 6 as well as the authorities competent to deal with the requests referred to in Article 6(8);
  - (c) the police or customs authorities competent for the purpose of Article 6(5), if any;
  - (d) the administrative authorities competent for the purposes of Article 6(6), if any; and
  - (e) the authority or authorities competent for the purposes of the application of Articles 18 and 19 and Article 20(1) to (5).
2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

### Article 25

#### Reservations

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

### Article 26

#### Territorial application

The application of this Convention to Gibraltar will take effect upon extension of the European Mutual Assistance Convention to Gibraltar.

The United Kingdom shall notify in writing the President of the Council when it wishes to apply the Convention to the Channel Islands and the Isle of Man following extension of the European Mutual Assistance Convention to those territories. A decision on this request shall be taken by the Council acting with the unanimity of its members.

### Article 27

#### 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, 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 establishing this Convention, which is the eighth to complete this formality, enter into force for the eight Member States concerned.
4. Any notification by a Member State subsequent to the receipt of the eighth notification referred to in paragraph 2 shall have the effect that, 90 days after the subsequent notification, this Convention shall enter into force as between this Member State and those Member States for which the Convention has already entered into force.
5. Before the Convention has entered into force pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Convention in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.



6. This Convention shall apply to mutual assistance initiated after the date on which it has entered into force, or is applied pursuant to paragraph 5, between the Member States concerned.

#### Article 28

### Accession of new Member States

1. This Convention shall be open to accession by any State which 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 which 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 of 90 days.
5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 27(5) shall apply to acceding Member States.

#### Article 29

### Entry into force for Iceland and Norway

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (the 'Association Agreement'), the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Convention has already entered into force pursuant to Article 27(3) or (4).
2. Any entry into force of this Convention for a Member State after the date of entry into force of the provisions referred to in Article 2(1) for Iceland and Norway, shall render these provisions also applicable in the mutual relations between that Member State and Iceland and Norway.
3. The provisions referred to in Article 2(1) shall in any event not become binding on Iceland and Norway before the date to be fixed pursuant to Article 15(4) of the Association Agreement.
4. Without prejudice to paragraphs 1, 2 and 3 above, the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway not later than on the date of entry into force of this Convention for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Convention.

#### Article 30

### 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, statements and reservations and also any other notification concerning this Convention.

Hecho en Bruselas, el veintinueve de mayo de dos mil, en un ejemplar unico, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que sera depositado en los archivos de la Secretaría General del Consejo de la Union Europea. El Secretario General remitirá una copia certificado del mismo a cada Estado miembro.

Udfærdiget i Bruxelles den niogtyvende maj to tusind 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 Den Europæiske Union. Generalsekretæren fremsender en bekræftet kopi heraf til hver medlemsstat.

Geschehen zu Brüssel am neunundzwanzigsten Mai zweitausend in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt. Der Generalsekretär übermittelt jedem Mitgliedstaat eine beglaubigte Abschrift dieser Urschrift.

Έγινε στις Βρυξέλλες στις είκοσι εννεα Μαΐου δυο χιλιάδες σε ενα μόνο αντίτυπο στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, και όλα τα κεόμενα εόναι εξήσου αοθενικα. Η συμβασή κατατίθεται στο αρχαιο τής Γενικής Γραμματείας του Συμβουλίου τής Ευρωπαϊκής Ένωσής. Ο Γενικός Γραμματεας διαβιβάζει ακριβες επικυρωμενο αντιγραφο σε καθε κρατος μελος.

Done at Brussels on the twenty-ninth day of May in the year two thousand in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

Fait à Bruxelles, le vingt-neuf mai deux mille, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, les textes établis dans chacune de ces langues faisant également foi, lequel est déposé dans les archives du secrétariat général du Conseil de l'Union européenne. Le secrétaire général en fait parvenir une copie certifiée à chaque Etat membre.

Arna dhéanamh sa Bhruiséil, an naou la is fiche de Bhealtaine sa bhliain dha mhíle i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmainis, sa Ghréigis, san Iodailis, san Ollainnis, sa Phortaingéilis, sa Spainnis agus sa tSualainnis, agus comhudas ag gach ceann de na téacsanna sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardánaíocht Chomhairle an Aontais Eorpaigh. Díreoidh an tArdúnaí ceip fhíordheimhnihte de chuig gach Ballstát.

Fatto a Bruxelles, addì ventinove maggio duemila, in un esemplare unico nelle lingue danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, ciascuna di esse facente ugualmente fede, depositato negli archivi del segretariato generale del Consiglio dell'Unione europea. Il segretario generale ne trasmette una copia certificata conforme a ogni Stato membro.

Gedaan te Brussel, de negentwintigste mei tweeduizend, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het secretariaat-generaal van de Raad van de Europese Unie. De secretaris-generaal zendt een voor eensluidend gewaarmerkt afschrift daarvan toe aan elke lidstaat.

Feito em Bruxelas, aos vinte e nove de Maio de dois mil num unico exemplar, nas línguas alema, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, todos os textos fazendo igualmente fé, o qual sera depositado nos arquivos do Secretariado-Geral do Conselho da Uniao Europeia. O secretario-geral remetera dele uma copia autenticada a cada Estado-Membro.

Tehty Brysselissä kahdentakymmenentenäyhdeksäntenä päivänä toukokuuta vuonna kaksituhatta yhtenä ainoana alkuperäiskappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä, jonka kullakin kielellä laadittu teksti on yhtä todistusvoimainen, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon. Pääsihteeri toimittaa oikeaksi todistetun jäljennöksen yleissopimuksesta jokaiselle jäsenvaltiolle.

Som skedde i Bryssel den tjugonionde maj tjugohundra i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, varvid varje text äger samma giltighet, och detta exemplar skall deponeras i arkivet hos generalsekretariatet för Europeiska unionens råd. Generalsekreteraren skall överlämna en bestyrkt kopia därav till varje medlemsstat.

Pour le gouvernement du Royaume de Belgique Voor

de regering van het Koninkrijk België Für die

Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark

Frank Jensen

Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



Pour le gouvernement de la République française

Thar ceann Rialtas na hEireann For the Government of Ireland



io della Repubblica italiana  
*PiUuO í&vtλ ^*

Pour le gouvernement du Grand-Duché de Luxembourg

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Voor de regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich

*α M ibtũuié/*

Pelo Governo da Republica Portuguesa

Suomen hallituksen puolesta På finska regeringens vägnar

A handwritten signature in black ink, reading "Johannes Lehtonen" followed by a horizontal line.

På svenska regeringens vägnar

A handwritten signature in black ink, appearing to be "L. Lehtonen" followed by a horizontal line.

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

A handwritten signature in black ink, reading "Jack Straw" followed by a horizontal line.



### **Council Declaration on Article 10(9)**

When considering the adoption of an instrument as referred to in Article 10(9), the Council shall respect Member States' obligations under the European Convention on Human Rights.

### **Declaration by the United Kingdom on Article 20**

This Declaration shall form an agreed, integral part of the Convention

In the United Kingdom, Article 20 will apply in respect of interception warrants issued by the Secretary of State to the police service or HM Customs & Excise where, in accordance with national law on the interception of communications, the stated purpose of the warrant is the detection of serious crime. It will also apply to such warrants issued to the Security Service where, in accordance with national law, it is acting in support of an investigation presenting the characteristics described in Article 20(1).