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Information and Notices

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

COUNCIL ACT

of 19 June 1997

drawing up, on the basis of Article K.3 of the Treaty on European Union and Article 41 (3) of the Europol Convention, the Protocol on the privileges and immunities of Europol, the members of its organs, the Deputy Directors and employees of Europol

(97/C 221/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3,

Having regard to the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) ⁽¹⁾, and in particular Article 41 (3) thereof,

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

HAS DECIDED on the drawing up of the Protocol, the text of which is attached hereto, which has been signed today by the Representatives of the Governments of the Member States of the European Union,

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

Done at Luxembourg, 19 June 1997.

For the Council

The President

M. DE BOER

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 1.

PROTOCOL

drawn up, on the basis of Article K.3 of the Treaty on European Union and Article 41 (3) of the Europol Convention, on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol

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

REFERRING to the Council Act of 19 June 1997,

CONSIDERING that pursuant to Article 41 (1) of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), Europol, the members of its organs, the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out the rules to be applied in all Member States,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'Convention' means the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention);
- (b) 'Europol' means the European Police Office;
- (c) 'Organs of Europol' means the Management Board as referred to in Article 28 of the Convention, the Financial Controller as referred to in Article 35 (7) of the Convention, and the Financial Committee as referred to in Article 35 (8) of the Convention;
- (d) 'Board' means the Management Board as referred to in Article 28 of the Convention;
- (e) 'Director' means the Director of Europol as referred to in Article 29 of the Convention;
- (f) 'Staff' means the Director, Deputy Directors and the employees of Europol as referred to in Article 30 of the Convention with the exception of the local staff as referred to in Article 3 of the Staff Regulations;
- (g) 'Archives of Europol' means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by Europol or any of its staff members, and any other similar material which in the unanimous opinion of the Board and Director forms part of the archives of Europol.

Article 2

Immunity from legal process and immunity from search, seizure, requisition, confiscation and any other form of interference

1. Europol shall have immunity from legal process for the liability referred to in Article 38 (1) of the Convention in respect of unauthorized or incorrect data processing.
2. The property, funds and assets of Europol, wherever located on the territories of the Member States and by whomsoever held, shall be immune from search, seizure, requisition, confiscation and any other form of interference.

Article 3

Inviolability of archives

The archives of Europol wherever located on the territories of the Member States and by whomsoever held shall be inviolable.

Article 4

Exemption from taxes and duties

1. Within the scope of its official activities, Europol, its assets, income and other property shall be exempt from all direct taxes.
2. Europol shall be exempt from indirect taxes and duties included in the price of movable and immovable property and services, acquired for its official use and involving considerable expenditure. The exemption may be granted by way of a refund.

3. Goods purchased under this Article with exemption from value-added tax or excise duties shall not be sold or otherwise disposed of, except in accordance with the conditions agreed upon with the Member State that has granted the exemption.

4. No exemption will be granted from taxes and duties which represent charges for specific services rendered.

Article 5

Freedom of financial assets from restrictions

Without being subject to any financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, Europol may freely:

- (a) purchase any currencies through authorized channels and hold and dispose of them;
- (b) operate accounts in any currency.

Article 6

Facilities and immunities in respect of communication

1. Member States shall permit Europol to communicate freely and without a need for special permission, for all official purposes, and shall protect the right of Europol to do so. Europol shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

2. Europol shall, as far as may be compatible with the International Telecommunications convention of 6 November 1982, for its official communications enjoy treatment not less favourable than that accorded by member States to any international organization or government, including diplomatic missions of such government, in the matter of priorities for communication by mail, cable, telegraph, telex, radio, television, telephone, fax, satellite, or other means.

Article 7

Entry, stay and departure

Member States shall facilitate, if necessary, the entry, stay and departure of the persons listed in Article 8 for purposes of official business. This shall not prevent the requirement of reasonable evidence to establish that per-

sons claiming the treatment provided for under this Article come within the classes described in Article 8.

Article 8

Privileges and immunities of members of the organs of Europol and staff members of Europol

1. Members of the organs of Europol and staff members of Europol shall enjoy the following immunities:

- (a) Without prejudice to Article 32 and, so far as applicable, Article 40 (3) of the Convention, immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in the exercise of their official functions, such immunity to continue notwithstanding that the persons concerned may have ceased to be members of an organ of Europol or staff members of Europol;
- (b) inviolability of all their official papers and documents and other official materials.

2. Staff members of Europol, whose salaries and emoluments are subject to a tax for the benefit of Europol as mentioned in Article 10, shall enjoy exemption from income tax with respect to salaries and emoluments paid by Europol. However, such salaries and emoluments may be taken into account when assessing the amount of tax payable on income from other sources. This paragraph does not apply to pensions and annuities paid to former staff members of Europol and their dependants.

3. The provisions of Article 14 of the Protocol on the privileges and immunities of the European Communities shall apply to the staff members of Europol.

Article 9

Exemptions to immunities

The immunity granted to persons mentioned in Article 8 shall not extend to civil action by a third party for damages, including personal injury or death, arising from a traffic accident caused by any such person.

Article 10

Taxes

1. Subject to the conditions and following the procedures laid down by Europol and agreed by the Board, the staff members of Europol engaged for a minimum period of one year shall be subject to a tax for

the benefit of Europol on salaries and emoluments paid by Europol.

2. Each year, Member States shall be notified of the names and addresses of the staff members of Europol mentioned in this Article as well as of any other personnel contracted to work at Europol. Europol shall deliver to each of them a yearly certificate bearing the total gross and net amount of remuneration of any kind paid by Europol for the year in question, including the details and nature of payments and the amounts of withholdings at source.

3. This Article does not apply to pensions and annuities paid to former staff members of Europol and their dependants.

Article 11

Protection of personnel

Member States shall, if so requested by the Director, take all reasonable steps in accordance with their national laws to ensure the necessary safety and protection of the persons mentioned in this Protocol whose security is endangered due to their services to Europol.

Article 12

Waiver of immunities

1. The privileges and immunities granted under the provisions of this Protocol are conferred in the interests of Europol and not for the personal benefit of the individuals themselves. It is the duty of Europol and all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of Member States.

2. The Director shall be required to waive the immunity of Europol and any staff member of Europol, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of Europol. In respect of the Director, the Financial Controller and the members of the Financial Committee, the Board has a similar obligation. In respect of Members of the Board, the waiving of the immunities shall be within the competence of the respective Member States.

3. When the immunity of Europol as mentioned in Article 2 (2) has been waived, searches and seizures ordered by the judicial authorities of the Member States shall be effected in the presence of the Director or a person delegated by him, in compliance with the rules of confidentiality laid down in or by virtue of the Convention.

4. Europol shall cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice and shall prevent any abuse of the privileges and immunities granted under the provisions of this Protocol.

5. Should a competent authority or judicial body of a Member State consider that an abuse of a privilege or immunity conferred by this Protocol has occurred, the body responsible for waiving immunity pursuant to paragraph 2 shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory for both sides, the matter shall be settled in accordance with the procedure set out in Article 13.

Article 13

Settlement of disputes

1. Disputes on a refusal to waive an immunity of Europol or of a person who, by reason of his official position, enjoys immunity as mentioned in Article 8 (1), shall be discussed by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with the aim of finding a settlement.

2. When such disputes are not settled, the Council shall unanimously decide on the modalities according to which they shall be settled.

Article 14

Reservations

Reservations shall not be permissible in respect of this Protocol.

Article 15

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 depositary of the completion of their respective constitutional requirements for adopting this Protocol.

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

*Article 16***Accession**

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.
2. Instruments of accession shall be deposited with the depositary.
3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
4. This Protocol shall enter into force with respect to any State that accedes to it, ninety days after the date of deposit of its instrument of accession, or on the date of the entry into force of this Protocol if the latter has not yet come into force when the said period of ninety days expires.

*Article 17***Evaluation**

1. Within two years after the entry into force of this Protocol, it will be evaluated under the supervision of the Management Board.
2. Immunity pursuant to Article (8) (1) (a) shall be granted only in respect of official acts which require to be undertaken in fulfilment of the tasks set out in Article 3 of the Convention in the version signed on 26 July 1995. Prior to each amendment or extension of the tasks in Article 3 of the Convention there shall be a review in

accordance with the first paragraph, in particular with regard to Article 8 (1) (a) and 13.

*Article 18***Amendments**

1. Amendments to this Protocol may be proposed by any member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.
2. Amendments shall be established unanimously by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.
3. Amendments thus established shall enter into force in accordance with the provisions of Article 15.
4. The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

*Article 19***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* the notifications, instruments or communications concerning this Protocol.

EN FE DE LO CUAL los plenipotenciarios abajo firmantes suscriben el presente Protocolo.

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne protokol.

ZU URKUND DESSEN haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Protokoll gesetzt.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από το παρόν πρωτόκολλο.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent protocole.

DÁ FHIANÚ SIN, chuir na Lánchumhachtaigh thíos-síithe a lámh leis an bPrótacal seo.

IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente protocollo.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigden hun handtekening onder dit protocol hebben gesteld.

EM FÉ DO QUE, os plenipotenciários abaixo assinados apuseram as suas assinaturas no presente Protocolo.

TÄMÄN VAKUUDEKSI alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän pöytäkirjan.

TILL BEVIS HÄRPÅ har undertecknade befullmäktigade undertecknat detta protokoll.

Hecho en Bruselas, el diecinueve de junio de mil novecientos noventa y siete, en un ejemplar único, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, siendo cada uno de estos textos igualmente auténtico, que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

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

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

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

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

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

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

Fatto a Bruxelles, il diciannove giugno millenovecentonovantasette, in un unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, tutti i testi facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale del Consiglio dell'Unione europea.

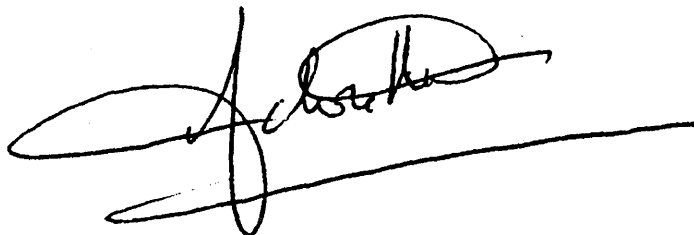
Gedaan te Brussel, de negentiende juni negentienhonderd zevenennegentig, opgesteld in één exemplaar in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat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

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

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

Utfärdat i Bryssel den nittonde juni nittonhundra nittoniosju i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, vilka samtliga texter är lika giltiga, och detta original skall deponeras i arkiven hos generalsekretariatet för Europeiska unionens råd.

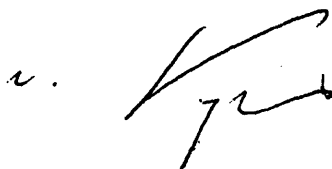
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Voor de regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



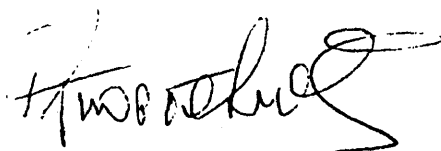
For regeringen for Kongeriget Danmark



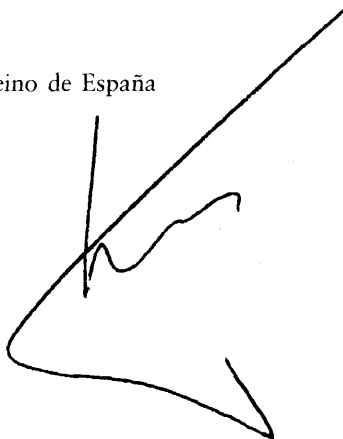
Für die Regierung der Bundesrepublik Deutschland



Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



Pour le gouvernement de la République française



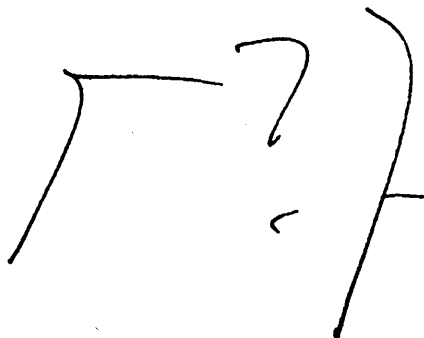
Thar ceann Rialtas na hÉireann
For the Government of Ireland



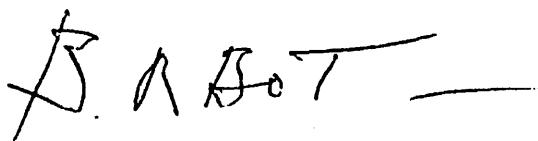
Per il governo della Repubblica italiana



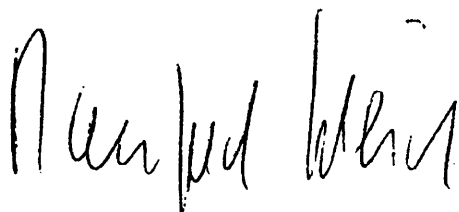
Pour le gouvernement du grand-duché de Luxembourg




Voor de regering van het Koninkrijk der Nederlanden



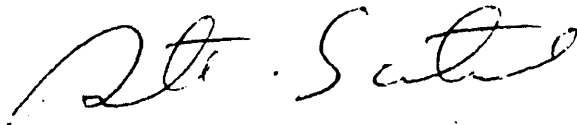
Für die Regierung der Republik Österreich



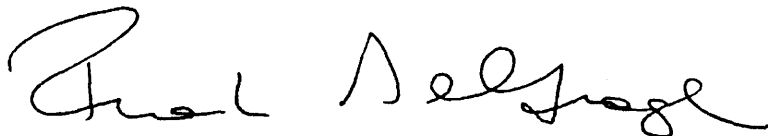
Pelo Governo da República Portuguesa



Suomen hallituksen puolesta
På finska regeringens vägnar



På svenska regeringens vägnar



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



COUNCIL ACT

of 19 June 1997

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

(97/C 221/02)

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 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 ⁽¹⁾ the Council drew up, as a first agreement, the Convention on the protection of the Communities' financial interests which is intended more specifically to combat fraud that damages those interests;

Whereas by its Act of 27 September 1996 ⁽²⁾ the Council drew up, as a second stage, a protocol to the Convention 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;

Whereas the Convention needs to be further supplemented by a second protocol directed in particular at the liability of legal persons, confiscation, money laundering and the cooperation between the Member States and the Commission for the purpose of protecting the European Communities' financial interests and protecting personal data related thereto;

DECIDES that the Second 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 Luxembourg, 19 June 1997.

For the Council

The President

M. DE BOER

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 48.

⁽²⁾ OJ No C 313, 23. 10. 1996, p. 1.

ANNEX

SECOND 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 19 June 1997;

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 in combating fraud affecting Community revenue and expenditure;

RECOGNIZING the importance of the Protocol of 27 September 1996 to the said Convention in the fight against corruption damaging or likely to damage the European Communities' financial interests;

AWARE that the financial interests of the European Communities may be damaged or threatened by acts committed on behalf of legal persons and acts involving money laundering;

CONVINCED of the need for national law to be adapted, where necessary, to provide that legal persons can be held liable in cases of fraud or active corruption and money laundering committed for their benefit that damage or are likely to damage the European Communities' financial interests;

CONVINCED of the need for national law to be adapted, where necessary, to penalize acts of laundering of proceeds of fraud or corruption that damage or are likely to damage the European Communities' financial interests and to make it possible to confiscate proceeds of such fraud and corruption;

CONVINCED of the need for national law to be adapted, where necessary, in order to prevent the refusal of mutual assistance solely because offences covered by this Protocol concern or are considered as tax or customs duty offences;

NOTING that cooperation between Member States is already covered by the Convention on the protection of the European Communities' financial interests of 26 July 1995, but that there is a need, without prejudice to obligations under Community law, for appropriate provision also to be made for cooperation between member States and the Commission to ensure effective action against fraud, active and passive corruption and related money laundering damaging or likely to damage the European Communities' financial interests, including exchange of information between the Member States and the Commission;

CONSIDERING that, in order to encourage and facilitate the exchange of information, it is necessary to ensure adequate protection of personal data;

CONSIDERING that the exchange of information should not hinder ongoing investigations and that it is therefore necessary to provide for the protection of investigation secrecy;

CONSIDERING that appropriate provisions have to be drawn up on the competence of the Court of Justice of the European Communities;

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 certain acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests, of 26 July 1995 ⁽¹⁾;
- (b) 'fraud' shall mean the conduct referred to in Article 1 of the Convention;
- (c) — 'passive corruption' shall mean the conduct referred to in Article 2 of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union on the convention on the protection of the European Communities' financial interests, of 27 September 1996 ⁽¹⁾,
— 'active corruption' shall mean the conduct referred to in Article 3 of the same Protocol;
- (d) 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations;
- (e) 'money laundering' shall mean the conduct as defined in the third indent of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering ⁽²⁾, related to the proceeds of fraud, at least in serious cases, and of active and passive corruption.

Article 2

Money laundering

Each Member State shall take the necessary measures to establish money laundering as a criminal offence.

Article 3

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on

- a power of representation of the legal person, or
- an authority to take decisions on behalf of the legal person, or
- an authority to exercise control within the legal person,

as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.

Article 4

Sanctions for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 5

Confiscation

Each Member State shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 49.

⁽¹⁾ OJ No C 313, 23. 10. 1996, p. 2.

⁽²⁾ OJ No L 166, 28. 6. 1991, p. 77.

of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the Member State in accordance with its national law.

Article 6

Cooperation with the Commission of the European Communities

A Member State may not refuse to provide mutual assistance in respect of fraud, active and passive corruption and money laundering for the sole reason that it concerns or is considered as a tax or customs duty offence.

Article 7

Cooperation with the Commission of the European Communities

1. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering.

To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

Article 8

Data protection responsibility for the Commission

The Commission shall ensure that, in the context of the exchange of information under Article 7 (2), it shall observe, as regards the processing of personal data, a level of protection equivalent to the level of protection set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection

of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

Article 9

Publication of data protection rules

The rules adopted concerning the obligations under Article 8 shall be published in the *Official Journal of the European Communities*.

Article 10

Transfer of data to other Member States and third countries

1. Subject to any conditions referred to in Article 7 (2), the Commission may transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any other Member State. The Commission shall inform the Member State which supplied the information of its intention to make such a transfer.

2. The Commission may, under the same conditions, transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any third country provided that the Member State which supplied the information has agreed to such transfer.

Article 11

Supervisory authority

Any authority designated or created for the purpose of exercising the function of independent data protection supervision over personal data held by the Commission pursuant to its functions under the Treaty establishing the European Community, shall be competent to exercise the same function with respect to personal data held by the Commission by virtue of this Protocol.

Article 12

Relation to the Convention

1. The provisions of Articles 3, 5 and 6 of the Convention shall also apply to the conduct referred to in Article 2 of this Protocol.

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

⁽¹⁾ OJ No L 281, 23. 11. 1995, p. 31.

- Article 4, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 16 (2) of this Protocol, any declaration within the meaning of Article 4 (2) of the Convention, shall also apply to this Protocol,
- Article 7, on the understanding that the *ne bis in idem* principle also applies to legal persons, and that, unless otherwise indicated at the time the notification provided for in Article 16 (2) of this Protocol is being given, any declaration within the meaning of Article 7 (2), of the Convention shall also apply to this Protocol,
- Article 9,
- Article 10.

Article 13

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 by a party to the dispute.

2. Any dispute between one or more Member States and the Commission concerning the application of Article 2 in relation to Article 1 (e), and Article 7, 8, 10 and 12 (2), fourth indent of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice, after the expiry of a period of six months from the date on which one of the parties has notified the other of the existence of a dispute.

3. The Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, of 29 November 1996⁽¹⁾, shall apply to this Protocol, on the understanding that a declaration made by a Member State pursuant to Article 2 of that Protocol is also valid regarding this Protocol unless the Member State concerned makes a declaration to the contrary when giving the notification provided for in Article 16 (2) of this Protocol.

⁽¹⁾ OJ No C 151, 20. 5. 1997, p. 1.

Article 14

Non-contractual liability

For the purposes of this Protocol, the non-contractual liability of the Community shall be governed by the second paragraph of Article 215 of the Treaty establishing the European Community. Article 178 of the same Treaty shall apply.

Article 15

Judicial control

1. The Court of Justice shall have jurisdiction in proceedings instituted by any natural or legal person against a decision of the Commission addressed to that person or which is of direct and individual concern to that person, on ground of infringement of Article 8 or any rule adopted pursuant thereto, or misuse of powers.

2. Articles 168 a (1) and (2), 173, fifth paragraph, 174, first paragraph, 176, first and second paragraphs, 185 and 186 of the Treaty establishing the European Community, as well as the Statute of the Court of Justice of the European Community, shall apply, *mutatis mutandis*.

Article 16

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 ninety days after the notification provided for in paragraph 2, by the State which, being a member of the European Union on the date of the 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.

4. However, the application of Article 7 (2) shall be suspended if, and for so long as, the relevant institution of the European Communities has not complied with its obligation to publish the data protection rules pursuant

to Article 9 or the terms of Article 11 concerning the supervisory authority have not been complied with.

Article 17

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 ninety 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 ninety days.

Article 18

Reservations

1. Each Member State may reserve the right to establish the money laundering related to the proceeds of active and passive corruption as a criminal offence only in serious cases of active and passive corruption. Any Member State making such a reservation shall inform the

depositary, giving details of the scope of the reservation, when giving the notification provided for in Article 16 (2). Such a reservation shall be valid for a period of five years after the said notification. It may be renewed once for a further period of five years.

2. The Republic of Austria may, when giving its notification referred to in Article 16 (2), declare that it will not be bound by Articles 3 and 4. Such a declaration shall cease to have effect five years after the date of the adoption of the act drawing up this Protocol.

3. No other reservations shall be authorized, with the exception of those provided for in Article 12 (2), first and second indent.

Article 19

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.

EN FE DE LO CUAL, los plenipotenciarios abajo firmantes suscriben el presente Protocolo.

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne protokol.

ZU URKUND DESSEN haben die Bevollmächtigten ihre Unterschriften unter dieses Protokoll gesetzt.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από το παρόν πρωτόκολλο.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereto set their hands.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent protocole.

DÁ FHIANÚ SIN, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an bPrótacal seo.

IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente protocollo.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigen hun handtekening onder dit protocol hebben gesteld.

EM FÉ DO QUE, os plenipotenciários abaixo assinados apuseram as suas assinaturas no presente protocolo.

TÄMÄN VAKUUDEKSI täysivaltaiset edustajat ovat allekirjoittaneet tämän pöytäkirjan.

TILL BEVIS HÄRPÅ har de befullmäktigade undertecknat detta protokoll.

Hecho en Bruselas, el diecinueve de junio de mil novecientos noventa y siete, en un ejemplar único, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, siendo cada uno de estos textos igualmente auténtico, que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

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

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

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

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

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

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

Fatto a Bruxelles, il diciannove giugno millenovecentonovantasette, in un unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, tutti i testi facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale del Consiglio dell'Unione europea.

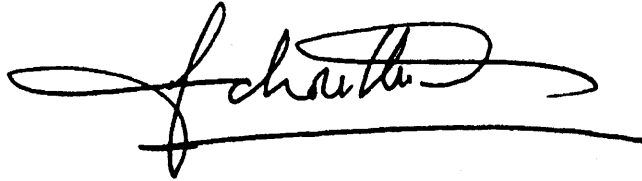
Gedaan te Brussel, de negentiende juni negentienhonderd zevenennegentig, opgesteld in één exemplaar in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat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

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

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

Utfärdat i Bryssel den nittonde juni nittonhundra nittiosju i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, vilka samtliga texter är lika giltiga, och detta original skall deponeras i arkiven hos generalsekretariatet för Europeiska unionens råd.

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



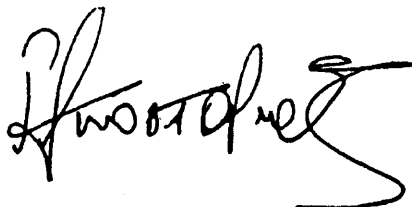
For regeringen for Kongeriget Danmark



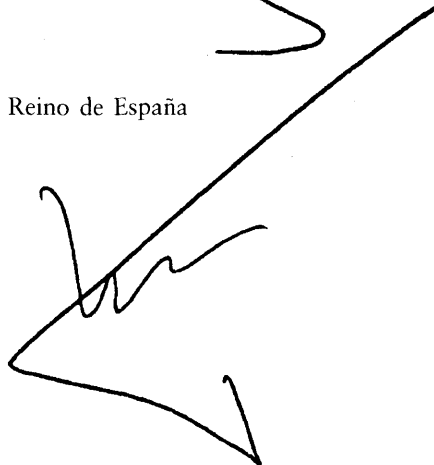
Für die Regierung der Bundesrepublik Deutschland



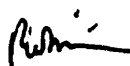
Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



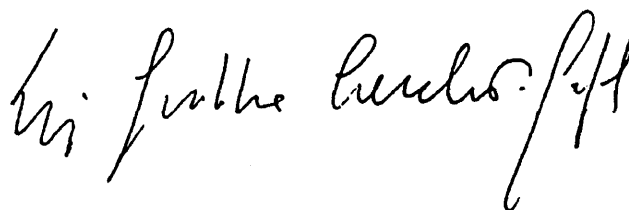
Pour le gouvernement de la République française



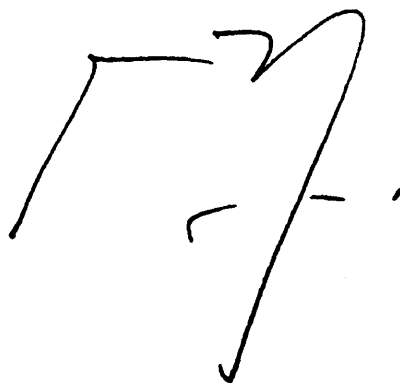
Thar ceann Rialtas na hÉireann
For the Government of Ireland



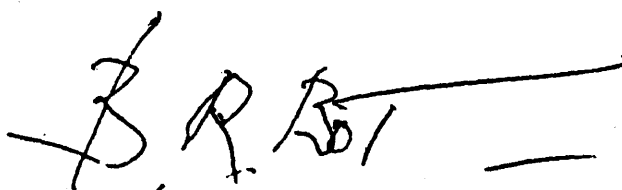
Per il governo della Repubblica italiana



Pour le gouvernement du grand-duché de Luxembourg



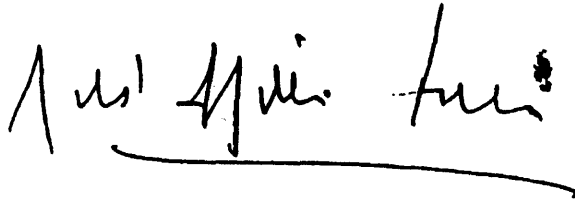
Voor de regering van het Koninkrijk der Nederlanden



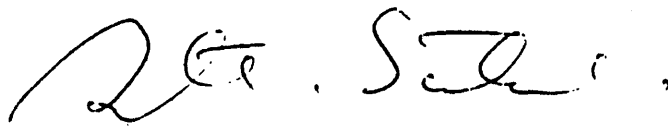
Für die Regierung der Republik Österreich



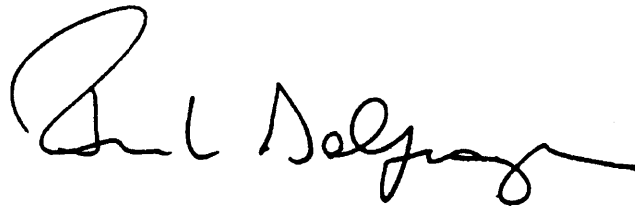
Pelo Governo da República Portuguesa



Suomen hallituksen puolesta
På finska regeringens vägnar



På svenska regeringens vägnar



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



Joint Declaration on Article 13 (2)

The Member States declare that the reference in Article 13 (2) to Article 7 of the Protocol shall apply only to cooperation between the Commission on the one hand and the Member States on the other and is without prejudice to Member States' discretion in supplying information in the course of criminal investigations.

Commission Declaration on Article 7

The Commission accepts the tasks entrusted to it under Article 7 of the Second Additional Protocol to the Convention on the protection of the European Communities' financial interests.

COUNCIL RESOLUTION

of 26 June 1997

on unaccompanied minors who are nationals of third countries

(97/C 221/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

Whereas, pursuant to Article K.1 (3) (a), (b) and (c) of the Treaty, the conditions of entry of, and residence by, nationals of third countries on the territory of Member States and measures to combat unauthorized immigration and residence by nationals of third countries on the territory of Member States constitute matters of common interest;

Whereas Article K.1 (1) of the Treaty provides that asylum policy is to be regarded as a matter of common interest for the Member States;

Whereas third-country minors sometimes enter and stay in the territory of Member States without being accompanied by a responsible person and without obtaining the necessary authorization;

Whereas unaccompanied minors who are nationals of third countries can be the victims of facilitators, and it is important for Member States to cooperate in combating such form of facilitating;

Whereas unaccompanied minors who are nationals of third countries generally are in a vulnerable situation requiring special safeguards and care;

Whereas recognition of the vulnerable situation of unaccompanied minors in the territory of Member States justifies the laying down of common principles for dealing with such situations;

Whereas, in accordance with Article K.2 (1) of the Treaty, this Resolution is without prejudice to the international commitments entered into by the Member States pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

Whereas this Resolution is without prejudice to the international commitments entered into by the Member States pursuant to the United Nations Convention on the Rights of the Child, 1989;

Whereas, pursuant to Article 2 of that Convention, States Parties shall respect the rights set forth in the Convention without discrimination;

Whereas, pursuant to Article 3 of that Convention, in all actions concerning children, the best interests of the child shall be a primary consideration;

Whereas Article 22 of that Convention aims to protect and assist minors who seek refugee status or who are regarded as refugees;

Whereas it is of great importance for the Member States, true to their common humanitarian tradition and in accordance with the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, to grant refugees appropriate protection;

Whereas on 20 June 1995 the Council adopted a Resolution on minimum guarantees for asylum procedures ⁽¹⁾;

Whereas this Resolution is without prejudice to the Strasbourg Convention of 28 January 1981 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data;

Whereas the unauthorized presence in the territory of Member States of unaccompanied minors who are not regarded as refugees must be temporary, with Member States endeavouring to cooperate among themselves and with the third countries of origin to return the minor to his country of origin or to a third country prepared to accept him, without jeopardizing his safety, in order to find, whenever possible, the persons responsible for the minor, and to reunite him with such persons;

Whereas the application of such principles should not interfere with the application of national laws on public policy, public health or public security,

⁽¹⁾ OJ No C 274, 18. 9. 1996, p. 13.

HEREBY ADOPTS THIS RESOLUTION:

Article 1

Scope and purpose

1. This Resolution concerns third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person.

This Resolution can also be applied to minors who are nationals of third countries and who are left unaccompanied after they have entered the territory of the Member States.

The persons covered by the previous two sentences shall be referred to herein as 'unaccompanied minors'.

2. This Resolution shall not apply to third-country nationals who are members of the family of nationals of a Member State of the European Union, nor to nationals of a Member State of the European Free Trade Association party to the Agreement on the European Economic Area and the members of their family, whatever the latter's nationality may be, where, pursuant to the Treaty establishing the European Community or the Agreement on the European Economic Area respectively, rights to freedom of movement are being exercised.

3. The purpose of this Resolution is to establish guidelines for the treatment for unaccompanied minors, with regard to matters such as the conditions for their reception, stay and return and, in the case of asylum seekers, the handling of applicable procedures.

4. This Resolution shall be without prejudice to more favourable provisions of national law.

5. The following guidelines are to be notified to the competent authorities responsible for matters covered by this Resolution, and such authorities shall take them into consideration in their action. Implementation of these guidelines is not to be subject to any form of discrimination.

Article 2

Admission

1. Member States may, in accordance with their national legislation and practice, refuse admission at the frontier to unaccompanied minors in particular if they are with-

out the required documentation and authorizations. However, in case of unaccompanied minors who apply for asylum, the Resolution on Minimum Guarantees for Asylum Procedures is applicable, in particular the principles set out in paragraphs 23 to 25 thereof.

2. In this connection, Member States should take appropriate measures, in accordance with their national legislation, to prevent the unauthorized entry of unaccompanied minors and should cooperate to prevent illegal entry and illegal residence of unaccompanied minors on their territory.

3. Unaccompanied minors who, pursuant to national provisions, must remain at the border until a decision has been taken on their admission to the territory or on their return, should receive all necessary material support and care to satisfy their basic needs, such as food, accommodation suitable for their age, sanitary facilities and medical care.

Article 3

Minimum guarantees for all unaccompanied minors

1. Member States should endeavour to establish a minor's identity as soon as possible after arrival, and also the fact that he or she is unaccompanied. Information on the minor's identity and situation can be obtained by various means, in particular by means of an appropriate interview, which should be conducted as soon as possible and in a manner in keeping with his age.

The information obtained should be effectively documented. In requesting, receiving, forwarding and storing information obtained, particular care and confidentiality should be exercised, in particular in the case of asylum seekers in order to protect both the minor and the members of his family. This early information may in particular enhance the prospects of reunification of the minor with his family in the country of origin or a third country.

2. Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law.

3. Member States should, with a view to reunification, endeavour to trace the members of the family of an unaccompanied minor as soon as possible, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence.

Unaccompanied minors may also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organizations, or other organizations for the purpose of tracing their family members. Particularly, in the case of asylum seekers, whenever contracts are made in the context of tracing family members, confidentiality should be duly respected in order to protect both the minor and the members of his family.

4. For the purposes of applying this Resolution, Member States should provide as soon as possible for the necessary representation of the minor by:

- (a) legal guardianship, or
- (b) representation by a (national) organization which is responsible for the care and well-being of the minor, or
- (c) other appropriate representation.

5. Where a guardian is appointed for an unaccompanied minor, the guardian should ensure, in accordance with national law, that the minor's needs (for example, legal, social, medical or psychological) are duly met.

6. When it can be assumed that an unaccompanied minor of school age will be staying in a Member State for a prolonged period, the minor should have access to general education facilities on the same basis as nationals of the host Member State or alternatively, appropriate special facilities should be offered to him.

7. Unaccompanied minors should receive appropriate medical treatment to meet immediate needs. Special medical or other assistance should be provided for minors who have suffered any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.

Article 4

Asylum procedure

1. Every unaccompanied minor should have the right to apply for asylum. However, Member States may reserve the right to require that a minor under a certain age, to be determined by the Member State concerned, cannot apply for asylum until he has the assistance of a legal guardian, a specifically appointed adult representative or institution.

2. Having regard to the particular needs of minors and their vulnerable situation, Member States should treat the processing of asylum applications by unaccompanied minors as a matter of urgency.

3. (a) In principle, an unaccompanied asylum-seeker claiming to be a minor must produce evidence of his age.

(b) If such evidence is not available or serious doubt persists, Member States may carry out an assessment of the age of an asylum-seeker. Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.

4. Member States should normally place unaccompanied minors during the asylum procedure:

- (a) with adult relatives,
- (b) with a foster-family,
- (c) in reception centres with special provisions for minors, or
- (d) in other accommodation with suitable provisions for minors, for example such as to enable them to live independently but with appropriate support.

Member States may place unaccompanied minors aged 16 or above in reception centres for adult asylum seekers.

5. (a) During any interview on their asylum application, unaccompanied minor asylum-seekers may be accompanied by a legal guardian, specially appointed adult representative or institution, adult relative or legal assistant.

(b) The interview should be conducted by officers who have the necessary experience or training.

The importance of appropriate training for officers interviewing unaccompanied minor asylum-seekers should be duly recognized.

6. When an application for asylum from an unaccompanied minor is examined, allowance should be made, in addition to objective facts and circumstances, for a minor's age, maturity and mental development, and for the fact that he may have limited knowledge of conditions in the country of origin.

7. As soon as an unaccompanied minor is granted refugee status or any other permanent right of residence, he should be provided with long-term arrangements for accommodation.

*Article 5***Return of unaccompanied minors**

1. Where a minor is not allowed to prolong his stay in a Member State, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein — depending on his needs in the light of age and degree of independence — adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies.

2. As long as return under these conditions is not possible, Member States should in principle make it possible for the minor to remain in their territory.

3. The competent authorities of the Member States should, with a view to a minor's return, cooperate:

- (a) in re-uniting unaccompanied minors with other members of their family, either in the minor's country of origin or in the country where those family members are staying;
- (b) with the authorities of the minor's country of origin or with those of another country, with a view to finding an appropriate durable solution;
- (c) with international organizations such as UNHCR or UNICEF, which already take an active part in advising governments on guidelines for dealing with unaccompanied minors, in particular asylum-seekers;

(d) where appropriate, with non-governmental organizations in order to ascertain the availability of reception and care facilities in the country to which the minor will be returned.

4. In any case, a minor may not be returned to a third country where this return would be contrary to the Convention relating to the status of refugees, the European Convention on Human Rights and Fundamental Freedoms or the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment or the Convention on the Rights of the Child, without prejudice to any reservations which Member States may have tabled when ratifying it, or the Protocols to these Conventions.

*Article 6***Final provisions**

1. Member States should take account of these guidelines in the case of all proposals for changes to their national legislations. In addition, Member States should strive to bring their national legislations into line with these guidelines before 1 January 1999.

2. Member States shall remain free to allow for more favourable conditions for unaccompanied minors.

3. The Council, in conjunction with the Commission and in consultation with UNHCR in the framework of its competences, shall review the application of the above guidelines once a year, commencing on 1 January 1999, and if appropriate adapt them to developments in asylum and migration policy.

ANNEX

MEASURES TO COMBAT TRAFFICKING IN MINORS

Member States, mindful of the particular vulnerability of minors, should take all measures to prevent and combat the trafficking and exploitation of minors, and cooperate in this regard.

MEASURES TO PREVENT ILLEGAL ENTRY

Measures which Member States may take to prevent the unauthorized arrival in the territory of the Member States of unaccompanied minors who are nationals of third countries may include:

- (i) collaboration with competent authorities and bodies including airline companies in the countries of departure, in particular through the use of liaison officers;
 - (ii) observation at airports of arrival of flights from sensitive countries;
 - (iii) consequent application of international obligations including carriers' liability legislation where unaccompanied minors who are nationals of third countries arrive without the appropriate documentation.
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