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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1385/2004**of 29 April 2004****on administering the double-checking system without quantitative limits in respect of the export of certain steel products from Kazakhstan to the European Community****(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (4) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾,

- (1) The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part ⁽¹⁾, entered into force on 1 July 1999.

- (2) The European Community and the Republic of Kazakhstan agreed to establish a double-checking system in respect of certain steel products for the period from 1 January 2000 to 31 December 2001. This Agreement in the form of an Exchange of Letters was approved on behalf of the European Community by means of Decision 1999/865/EC ⁽²⁾. Regulation (EC) No 2743/1999 ⁽³⁾ established the corresponding implementing legislation for the Community.

- (3) The situation relating to imports of certain steel products from the Republic of Kazakhstan to the Community has been the subject of thorough examination and, on the basis of relevant information supplied to them, the Parties have concluded an Agreement in the form of an Exchange of Letters ⁽⁴⁾ which establishes a double-checking system without quantitative limits for the period between the date of entry into force of this Regulation and 31 December 2004, unless both Parties agree to terminate the system earlier.

HAS ADOPTED THIS REGULATION:

Article 1

1. For the period running from the date on which this Regulation enters into force to 31 December 2004, in accordance with the provisions of the abovementioned Agreement in the form of an Exchange of Letters, imports into the Community of certain steel products originating in the Republic of Kazakhstan, as listed in Appendix I, shall be subject to the presentation of a surveillance document conforming to the model shown in Appendix II issued by the authorities in the Community.

2. For the period running from the date on which this Regulation enters into force to 31 December 2004, imports into the Community of the steel products originating in the Republic of Kazakhstan and listed in Appendix I shall, in addition, be subject to the issue of an export document issued by the competent Kazakhstan authorities. The export document shall conform to the model shown in Appendix III. It shall be valid for exports throughout the customs territory of the Community. The importer must present the original of the export document not later than 31 March of the year following that in which the goods covered by the document were shipped.

3. Shipment is considered to have taken place on the date of loading on to the exporting means of transport.

⁽¹⁾ OJ L 196, 28.7.1999, p. 3.

⁽²⁾ OJ L 342, 31.12.1999, p. 37.

⁽³⁾ OJ L 342, 31.12.1999, p. 1.

⁽⁴⁾ See page 49 of this Official Journal.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

4. The classification of the products covered by this Regulation is based on the tariff and statistical nomenclature of the Community (hereinafter called the CN). The origin of the products covered by this Regulation shall be determined in accordance with the rules in force in the Community.

5. The competent authorities of the Community shall inform the Republic of Kazakhstan of any changes in the CN in respect of products covered by this Regulation before their date of entry into force in the Community.

6. Goods shipped before the entry into force of this Regulation shall be excluded from the scope of this Regulation.

Article 2

1. The surveillance document referred to in Article 1 shall be issued automatically by the competent authority in the Member States, without charge for any quantities requested, within five working days of presentation of an application by any Community importer, wherever established in the Community. This application shall be deemed to have been received by the competent national authority no later than three working days after submission, unless it is proven otherwise.

2. A surveillance document issued by one of the competent national authorities listed in Appendix IV shall be valid throughout the Community.

3. The importer's application for a surveillance document shall include the following elements:

- (a) the name and full address of the applicant (including telephone and telefax numbers, and possible identification number used by the competent national authorities) and VAT registration number, if subject to VAT;
- (b) if applicable, the name and full address of the declarant or representative of the applicant (including telephone and fax numbers);
- (c) the full name and address of the exporter;
- (d) the exact description of the goods, including:
 - their trade name,
 - the CN code(s),
 - the country of origin,
 - the country of consignment;
- (e) the net weight, expressed in kg and also quantity in the unit prescribed where other than net weight, by combined nomenclature heading;
- (f) the cif value of the goods in euros at the Community frontier by combined nomenclature heading;

(g) whether the products concerned are seconds or of standard quality ⁽¹⁾;

(h) the proposed period and place of customs clearance;

(i) whether the application is a repeat of a previous application concerning the same contract;

(j) the following declaration, dated and signed by the applicant with the transcription of his name in capital letters:

'I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Community.';

The importer shall also submit a copy of the contract of sale or purchase, the pro forma invoice and/or, in cases where the goods are not directly purchased in the country of production, a certificate of production issued by the producing steel mill.

4. Surveillance documents may be used only for such time as arrangements for the liberalisation of imports remain in force in respect of the transactions concerned. Without prejudice to possible changes in the import regulations in force or decisions taken in the framework of an agreement or the management of a quota:

— the period of validity of the surveillance document is hereby fixed at four months,

— unused or partly used surveillance documents may be renewed for an equal period.

5. The importer shall return surveillance documents to the issuing authority at the end of their period of validity.

Article 3

1. A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 % or that the total value or quantity of the products presented for import exceeds the value or quantity given in the import document by less than 5 % shall not preclude the release for free circulation of the products in question.

2. Applications for import documents and the documents themselves shall be confidential. They shall be restricted to the competent authorities and the applicant.

⁽¹⁾ Under the criteria given in the Commission communication concerning identification criteria of non-prime steel products from third countries applied by customs services of Member States (OJ C 180, 11.7.1991, p. 4).

Article 4

1. Within the first 10 days of each month, the Member States shall communicate to the Commission:

- (a) details of the quantities and values (calculated in euros) for which import documents were issued during the preceding month;
- (b) details of imports during the month preceding the month referred to in (a).

The information provided by Member States shall be broken down by product, CN code and by country.

2. The Member States shall give notification of any anomalies or cases of fraud which they discover and, where relevant, the basis on which they have refused to grant an import document.

Article 5

Any notices to be given hereunder shall be given to the Commission and shall be communicated electronically within the integrated network set up for this purpose, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

*Article 6***Committee**

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

*Article 7***Final provisions**

Amendments to the Appendices which may be necessary to take into account modifications to the Annex or Appendices attached to the Agreement in the Form of an Exchange of Letters between the European Community and the Republic of Kazakhstan, or amendments made to Community rules on statistics, customs arrangements, common rules for imports or import surveillance, shall be adopted in accordance with the procedure laid down in Article 6(2).

This Regulation shall enter into force on the 15th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

*Appendix I***List of products subject to double-checking without quantitative limits**

KAZAKHSTAN

ex 7211 23 30 (TARIC code 7211 23 30 99)
ex 7211 23 80 (TARIC code 7211 23 80 99)
ex 7211 29 00 (TARIC code 7211 29 00 91)
ex 7211 29 00 (TARIC code 7211 29 00 99)
ex 7211 90 00 (TARIC code 7211 90 00 90)
ex 7211 23 20 (TARIC code 7211 23 20 90)
ex 7225 19 10 (TARIC code 7225 19 10 00)
ex 7225 19 90 (TARIC code 7225 19 90 00)
ex 7226 19 10 (TARIC code 7226 19 10 00)
ex 7226 19 80 (TARIC code 7226 19 80 10)
ex 7226 19 80 (TARIC code 7226 19 80 90)
ex 7226 11 00 (TARIC code 7226 11 00 90)

Appendix II

EUROPEAN COMMUNITY SURVEILLANCE DOCUMENT

1	1. Consignee (name, full address, country, VAT number)	2. Issue number	
Holder's copy		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
	1	5. Declarant/representative as applicable (name and full address)	
6. Country of origin (and nomenclature code)			
7. Country of consignment (and nomenclature code)			
9. Description of goods		10. CN code and category	
		11. Quantity in kilograms (net mass) or in additional units	
		12. Value in euro, cif at Community frontier	
13. Additional remarks			
14. Competent authority's endorsement Date : Signature: Stamp:			

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto

EUROPEAN COMMUNITY SURVEILLANCE DOCUMENT

2	1. Consignee (name, full address, country, VAT number)	2. Issue number	
Copy for the issuing authority		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
		5. Declarant/representative as applicable (name and full address)	
		6. Country of origin (and nomenclature code)	
2		7. Country of consignment (and nomenclature code)	
		8. Last day of validity	
9. Description of goods		10. CN code and category	
		11. Quantity in kilograms (net mass) or in additional units	
		12. Value in euro, cif at Community frontier	
13. Additional remarks			
14. Competent authority's endorsement Date : Signature: Stamp:			

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto

Appendix III

1. Exporter (name, full address, country)	ORIGINAL		2. No	
	3. Year		4. Product group	
5. Consignee (name, full address, country)	EXPORT DOCUMENT (steel products)			
	6. Country of origin		7. Country of destination	
8. Place and date of shipment – means of transport	9. Supplementary details			
10. Description of goods - manufacturer		11. CN code	12. Quantity ⁽¹⁾	13. Fob value ⁽²⁾
14. CERTIFICATION BY THE COMPETENT AUTHORITY				
15 Competent authority (name, full address, country)		At on (Signature) (Stamp)		

⁽¹⁾ Show net weight (kg) and also quantity in the unit prescribed where other than net weight.
⁽²⁾ In the currency of the sale contract.

1. Exporter (name, full address, country)	COPY		2 No	
	3. Year		4 Product group	
5. Consignee (name, full address, country)	EXPORT DOCUMENT (steel products)			
8. Place and date of shipment – means of transport	9. Supplementary details			
10. Description of goods - manufacturer		11. CN code	12. Quantity ⁽¹⁾	13. Fob value ⁽²⁾
14. CERTIFICATION BY THE COMPETENT AUTHORITY				
15. Competent authority (name, full address, country)		At on (Signature) (Stamp)		

⁽¹⁾ Show net weight (kg) and also quantity in the unit prescribed where other than net weight.

⁽²⁾ In the currency of the sale contract.

Appendix IV

LISTA DE LAS AUTORIDADES NACIONALES COMPETENTES
SEZNAM PŘÍSLUŠNÝCH VNITROSTÁTNÍCH ORGÁNŮ
LISTE OVER KOMPETENTE NATIONALE MYNDIGHEDER
LISTE DER ZUSTÄNDIGEN BEHÖRDEN DER MITGLIEDSTAATEN
PÄDEVATE RIIKLIKE ASUTUSTE NIMEKIRI
ΔΙΕΥΘΥΝΣΕΙΣ ΤΩΝ ΑΡΧΩΝ ΕΚΔΟΣΗΣ ΑΔΕΙΩΝ ΤΩΝ ΚΡΑΤΩΝ ΜΕΛΩΝ
LIST OF THE COMPETENT NATIONAL AUTHORITIES
LISTE DES AUTORITÉS NATIONALES COMPÉTENTES
ELENCO DELLE COMPETENTI AUTORITÀ NAZIONALI
VALSTU KOMPETENTO IESTĀŽU SARAKSTS
ATSAKINGŲ NACIONALINIŲ INSTITUCIJŲ SĄRAŠAS
AZ ILLETÉKES NEMZETI HATÓSÁGOK LISTÁJA
LISTA TA' L-AWTORITAJIET KOMPETENTI NAZZJONALI
LIJST VAN BEVOEGDE NATIONALE INSTANTIES
LISTA WŁAŚCIWYCH ORGANÓW KRAJOWYCH
LISTA DAS AUTORIDADES NACIONAIS COMPETENTES
ZOZNAM PŘÍSLUŠNÝCH ŠTÁTNYCH ORGÁNOV
SEZNAM PRISTOJNIH NACIONALNIH ORGANOV
LUETTELO TOIMIVALTAISISTA KANSALLISISTA VIRANOMAISISTA
FÖRTECKNING ÖVER BEHÖRIGA NATIONELLA MYNDIGHETER

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COUNCIL DIRECTIVE 2004/80/EC
of 29 April 2004
relating to compensation to crime victims

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

- (1) One of the objectives of the European Community is to abolish, as between Member States, obstacles to the free movement of persons and services.
- (2) The Court of Justice held in the Cowan ⁽⁴⁾ Case that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.
- (3) At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.
- (4) The Brussels European Council, meeting on 25 and 26 March 2004, in the Declaration on Combating Terrorism, called for the adoption of this Directive before 1 May 2004.
- (5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. ⁽⁵⁾ This Decision, based on Title VI of the Treaty on the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings.
- (6) Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries

they have suffered, regardless of where in the European Community the crime was committed

- (7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.
- (8) Most Member States have already established such compensation schemes, some of them in fulfilment of their obligations under the European Convention of 24 November 1983 on the compensation of victims of violent crimes.
- (9) Since the measures contained in this Directive are necessary in order to attain objectives of the Community and the Treaty provides for no powers other than those in Article 308 thereof for the adoption of this Directive, that Article should be applied.
- (10) Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.
- (11) A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.
- (12) This system should ensure that crime victims could always turn to an authority in their Member State of residence and should ease any practical and linguistic difficulties that occur in a cross-border situation.
- (13) The system should include the provisions necessary for allowing the crime victim to find the information needed to make the application and for allowing for efficient cooperation between the authorities involved.
- (14) This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 69.

⁽²⁾ Opinion delivered on 23 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ C 95, 23.4.2003, p. 40.

⁽⁴⁾ Case 186/87, European Court reports 1989, p. 195.

⁽⁵⁾ OJ L 82, 22.3.2001, p. 1.

- (15) Since the objective of facilitating access to compensation to victims of crimes of cross-border situations cannot be sufficiently achieved by the Member States because of the cross-border elements and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (16) The measures necessary for the implementation of the Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

ACCESS TO COMPENSATION IN CROSS-BORDER SITUATIONS

Article 1

Right to submit an application in the Member State of residence

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

Article 2

Responsibility for paying compensation

Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.

Article 3

Responsible authorities and administrative procedures

1. Member States shall establish or designate one or several authorities or any other bodies, hereinafter referred to as 'assisting authority or authorities', to be responsible for applying Article 1.
2. Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation, hereinafter referred to as 'deciding authority or authorities'.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

3. Member States shall endeavour to keep to a minimum the administrative formalities required of an applicant for compensation.

Article 4

Information to potential applicants

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Article 5

Assistance to the applicant

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).
2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.
3. The assisting authority shall not make any assessment of the application.

Article 6

Transmission of applications

1. The assisting authority shall transmit the application and any supporting documentation as quickly as possible to the deciding authority.
2. The assisting authority shall transmit the application using the standard form referred to in Article 14.
3. The language of the application and any supporting documentation shall be determined in accordance with Article 11(1).

Article 7

Receipt of applications

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

- (a) the contact person or the department responsible for handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

*Article 8***Requests for supplementary information**

The assisting authority shall if necessary provide general guidance to the applicant in meeting any request for supplementary information from the deciding authority.

It shall upon the request of the applicant subsequently transmit it as soon as possible directly to the deciding authority, enclosing, where appropriate, a list of any supporting documentation transmitted.

*Article 9***Hearing of the applicant**

1. If the deciding authority decides, in accordance with the law of its Member State, to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for:

- (a) the person(s) to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of telephone- or video-conferencing; or
- (b) the person(s) to be heard by the assisting authority, in accordance with the law of its Member State, which will subsequently transmit a report of the hearing to the deciding authority.

2. The direct hearing in accordance with paragraph 1(a) may only take place in cooperation with the assisting authority and on a voluntary basis without the possibility of coercive measures being imposed by the deciding authority.

*Article 10***Communication of the decision**

The deciding authority shall send the decision on the application for compensation, by using the standard form referred to in Article 14, to the applicant and to the assisting authority, as soon as possible, in accordance with national law, after the decision has been taken.

*Article 11***Other provisions**

1. Information transmitted between the authorities pursuant to Articles 6 to 10 shall be expressed in:

- (a) the official languages or one of the languages of the Member State of the authority to which the information is sent, which corresponds to one of the languages of the Community institutions; or
- (b) another language of the Community institutions that that Member State has indicated it can accept;

with the exception of:

(i) the full text of decisions taken by the deciding authority, where the use of languages shall be governed by the law of its Member State;

(ii) reports drawn up following a hearing in accordance with Article 9(1)(b), where the use of languages shall be determined by the assisting authority, subject to the requirement that it corresponds to one of the languages of the Community institutions.

2. Services rendered by the assisting authority in accordance with Articles 1 to 10 shall not give rise to a claim for any reimbursement of charges or costs from the applicant or from the deciding authority.

3. Application forms and any other documentation transmitted in accordance with Articles 6 to 10 shall be exempted from authentication or any equivalent formality.

CHAPTER II

NATIONAL SCHEMES ON COMPENSATION*Article 12*

1. The rules on access to compensation in cross-border situations drawn up by this Directive shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories.

2. All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

CHAPTER III

IMPLEMENTING PROVISIONS*Article 13***Information to be sent to the Commission and the manual**

1. Member States shall, no later than 1 July 2005, send to the Commission details of:

- (a) the list of authorities established or designated in accordance with Articles 3(1) and 3(2), including, where appropriate, information on the special and territorial jurisdiction of these authorities;
- (b) the language(s) referred to in Article 11(1)(a) which the authorities can accept for the purpose of applying Articles 6 to 10 and the official language or languages other than its own which is or are acceptable to it for the transmission of applications in accordance with Article 11(1)(b).

- (c) the information established in accordance with Article 4;
 - (d) the application forms for compensation;
- Member States shall inform the Commission of any subsequent changes to this information.

2. The Commission shall, in cooperation with the Member States establish and publish on the internet a manual containing the information provided by the Member States pursuant to paragraph 1. The Commission shall be responsible for arranging the necessary translations of the manual.

Article 14

Standard form for transmission of applications and decisions

Standard forms shall be established, at the latest by 31 October 2005, for the transmission of applications and decisions in accordance with the procedure referred to in Article 15(2).

Article 15

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its Rules of Procedure.

Article 16

Central contact points

Member States shall appoint a central contact point for the purposes of:

- (a) assisting with the implementation of Article 13(2);
- (b) furthering close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and
- (c) giving assistance and seeking solutions to any difficulties that may occur in the application of Articles 1 to 10.

The contact points shall meet regularly.

Article 17

More favourable provisions

This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their

territory, or any other person affected by such a crime, subject to any conditions that Member States may specify for that purpose.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005. They shall forthwith inform the Commission thereof.

2. Member States may provide that the measures necessary to comply with this Directive shall apply only to applicants whose injuries result from crimes committed after 30 June 2005.

3. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

4. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

Article 19

Review

No later than by 1 January 2009, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

COUNCIL DIRECTIVE 2004/81/EC

of 29 April 2004

on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 3 of Article 63 thereof,

Having regard to the proposal from the Commission, ⁽¹⁾

Having regard to the opinion of the European Parliament, ⁽²⁾

Having regard to the opinion of the European Economic and Social Committee, ⁽³⁾

Having consulted the Committee of the Regions,

Whereas:

- (1) The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat illegal immigration, is a constituent element of the European Union's objective of creating an area of freedom, security and justice.
- (2) At its special meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source, for example by targeting those who engage in trafficking of human beings and the economic exploitation of migrants. It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims.
- (3) An indication of the growing concern about this phenomenon at international level was the adoption by the United Nations General Assembly of a Convention against Transnational Organised Crime, supplemented by a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air. These were signed by the Community and the 15 Member States in December 2000.
- (4) This Directive is without prejudice to the protection granted to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.
- (5) This Directive is without prejudice to other provisions on the protection of victims, witnesses or persons who

are particularly vulnerable. Nor does it detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds.

- (6) This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.
- (7) Member States should give effect to the provision of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
- (8) At European level, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ⁽⁴⁾ and Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings ⁽⁵⁾ were adopted to strengthen the prevention and the fight against the above offences.
- (9) This Directive introduces a residence permit intended for victims of trafficking in human beings or, if a Member State decides to extend the scope of this Directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse.
- (10) To this end, it is necessary to lay down the criteria for issuing a residence permit, the conditions of stay and the grounds for non-renewal and withdrawal. The right to stay under this Directive is subject to conditions and is of provisional nature.
- (11) The third country nationals concerned should be informed of the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to cooperate with the competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively.

⁽¹⁾ OJ C 126 E, 28.5.2002, p. 393.

⁽²⁾ Opinion delivered on 5 December 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 221, 17.9.2002, p. 80.

⁽⁴⁾ OJ L 328, 5.12.2002, p. 17.

⁽⁵⁾ OJ L 203, 1.8.2002, p. 1.

- (12) Given their vulnerability, the third-country nationals concerned should be granted the assistance provided by this Directive. This assistance should allow them to recover and escape the influence of the perpetrators of the offences. The medical treatment to be provided to the third-country nationals covered by this Directive also includes, where appropriate, psychotherapeutical care.
- (13) A decision on the issue of a residence permit for at least six months or its renewal has to be taken by the competent authorities, who should consider if the relevant conditions are fulfilled.
- (14) This Directive should apply without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating the offences concerned.
- (15) Member States should consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfil the conditions set by it, for the members of his/her family or for persons treated as members of his/her family.
- (16) To enable the third-country nationals concerned to gain their independence and not return to the criminal network, the holders of the residence permit should be authorised, under the conditions set by this Directive, to have access to the labour market and pursue vocational training and education. In authorising access of the holders of the residence permit to vocational training and education, Member States should consider in particular the likely duration of stay.
- (17) The participation of the third-country nationals concerned to programmes and schemes, already existing or to be introduced, should contribute to their recovery of a normal social life.
- (18) If the third-country nationals concerned submit an application for another kind of residence permit, Member States take a decision on the basis of ordinary national aliens' law. When examining such an application, Member States should consider the fact that the third-country nationals concerned have been granted the residence permit issued under this Directive.
- (19) Member States should provide the Commission, with respect to the implementation of this Directive, with the information which has been identified in the framework of the activities developed with regard to the collection and treatment of statistical data concerning matters falling within the area of Justice and Home Affairs.
- (20) Since the objective of introducing a residence permit for the third-country nationals concerned who cooperate in the fight against trafficking in human beings cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at the Community level, the Community may

adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (21) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (22) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) 'action to facilitate illegal immigration' covers cases such as those referred to in Articles 1 and 2 of Directive 2002/90/EC;
- (c) 'trafficking in human beings' covers cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA;
- (d) 'measure to enforce an expulsion order' means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national;

(e) 'residence permit' means any authorisation issued by a Member State, allowing a third-country national who fulfils the conditions set by this Directive to stay legally on its territory.

Article 6

Reflection period

(f) 'unaccompanied minors' means third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

Article 3

Scope

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.

2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

Article 4

More favourable provisions

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive.

CHAPTER II

PROCEDURE FOR ISSUING THE RESIDENCE PERMIT

Article 5

Information given to the third-country nationals concerned

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive.

Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

Article 7

Treatment granted before the issue of the residence permit

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

*Article 8***Issue and renewal of the residence permit**

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

- (a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
- (b) whether he/she has shown a clear intention to cooperate and
- (c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.

3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

CHAPTER III

TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT*Article 9***Treatment granted after the issue of the residence permit**

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

*Article 10***Minors**

If Member States have recourse to the option provided for in Article 3(3), the following provisions shall apply:

- (a) Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity

of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.

- (b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.
- (c) In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

*Article 11***Work, vocational training and education**

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

Such access shall be limited to the duration of the residence permit.

2. The conditions and the procedures for authorising access to the labour market, to vocational training and education shall be determined, under the national legislation, by the competent authorities.

*Article 12***Programmes or schemes for the third-country nationals concerned**

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

CHAPTER IV

NON-RENEWAL AND WITHDRAWAL*Article 13***Non-renewal**

1. The residence permit issued on the basis of this Directive shall not be renewed if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.

2. When the residence permit issued on the basis of this Directive expires ordinary aliens' law shall apply.

*Article 14***Withdrawal**

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

- (a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or
- (b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
- (c) for reasons relating to public policy and to the protection of national security; or
- (d) when the victim ceases to cooperate; or
- (e) when the competent authorities decide to discontinue the proceedings.

CHAPTER V

FINAL PROVISIONS*Article 15***Safeguard clause**

This Directive shall apply without prejudice to specific national rules concerning the protection of victims and witnesses.

*Article 16***Report**

1. No later than 6 August 2008, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.

2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

*Article 17***Transposal**

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 6 August 2006. They shall immediately inform the Commission accordingly.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 18***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 19***Addressees**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

COUNCIL DIRECTIVE 2004/82/EC**of 29 April 2004****on the obligation of carriers to communicate passenger data**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and Article 63(3)(b) thereof,

Having regard to the initiative of the Kingdom of Spain ⁽¹⁾,

Whereas:

- (1) In order to combat illegal immigration effectively and to improve border control, it is essential that all Member States introduce provisions laying down obligations on air carriers transporting passengers into the territory of the Member States. In addition, in order to ensure the greater effectiveness of this objective, the financial penalties currently provided for by the Member States for cases where carriers fail to meet their obligations should be harmonised to the extent possible, taking into account the differences in legal systems and practices between the Member States.
- (2) The European Council of 25 and 26 March 2004 adopted a Declaration on combating terrorism stressing the need to expedite examination of measures in this area and take work forward on the proposed Council Directive on the obligation of carriers to communicate passenger data with a view to an early conclusion on this measure.
- (3) It is important to avoid a vacuum in the Community's action in combating illegal immigration.
- (4) As from 1 May 2004 the Council can no longer act on an initiative of a Member State.
- (5) The Council has exhausted all possibilities to obtain in time the opinion of the European Parliament.
- (6) Under these exceptional circumstances the Directive should be adopted without the opinion of the European Parliament.
- (7) The obligations to be imposed on carriers by virtue of this Directive are complementary to those established pursuant to the provisions of Article 26 of the 1990 Schengen Convention implementing the Schengen Agreement of 14 June 1985, as supplemented by Council Directive 2001/51/EC ⁽²⁾, the two types of obligation serving the same objective of curbing migratory flows and combating illegal immigration.
- (8) Without prejudice to the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾, the freedom of the Member States to retain or introduce additional obligations for air carriers or some categories of other carriers, including information or data in relation to return tickets, whether referred to in this Directive or not, should not be affected.
- (9) In order to combat illegal immigration more effectively and in order to ensure the greater effectiveness of this objective, it is essential that, without prejudice to the provisions of Directive 95/46/EC, account be taken at the earliest opportunity of any technological innovation, especially with reference to the integration and use of biometric features in the information to be provided by the carriers.
- (10) Member States should ensure that in any proceedings brought against carriers which may result in the application of penalties, the rights of defence and the right of appeal against such decisions can be exercised effectively.
- (11) These measures take up the control options set out in the Decision of the Executive Committee of Schengen (SCH/Com-ex (94) 17-rev. 4), aimed at enabling border checks to be increased and providing for sufficient time to enable detailed and comprehensive checks to be carried out on all passengers through the transmission of passenger data to the authorities responsible for carrying out such controls.
- (12) Directive 95/46/EC applies with regard to the processing of personal data by the authorities of the Member States. This means, that whereas it would be legitimate to process the passenger data transmitted for the performance of border checks also for the purposes of allowing their use as evidence in proceedings aiming at the enforcement of the laws and regulations on entry and immigration, including their provisions on the protection of public policy (ordre public) and national security, any further processing in a way incompatible with those purposes would run counter to the principle set out in Article 6(1)(b) of Directive 95/46/EC. Member States should provide for a system of sanctions to be applied in the event of use contrary to the purpose of the present Directive.

⁽¹⁾ OJ C 82, 5.4.2003, p. 23.

⁽²⁾ OJ L 187, 10.7.2001, p. 45.

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application. Given that this Directive builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Directive whether it will implement it in its national law.
- (14) As regards Iceland and Norway, this Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning 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* ⁽¹⁾, which fall within the area referred to in Article 1, point E, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽²⁾.
- (15) The United Kingdom is taking part in this Directive in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽³⁾.
- (16) Ireland is taking part in this Directive in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾.
- (17) This Directive constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Objective

This Directive aims at improving border controls and combating illegal immigration by the transmission of advance

passenger data by carriers to the competent national authorities.

Article 2

Definitions

For the purpose of this Directive:

- (a) 'carrier' means any natural or legal person whose occupation it is to provide passenger transport by air;
- (b) 'external borders' means the external borders of the Member States with third countries;
- (c) 'border control' means a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration;
- (d) 'border crossing point' means any crossing point authorised by the competent authorities for crossing external borders;
- (e) 'personal data', 'processing of personal data' and 'personal data filing system' have the meaning as stipulated under Article 2 of Directive 95/46/EC.

Article 3

Data transmission

1. Member States shall take the necessary steps to establish an obligation for carriers to transmit at the request of the authorities responsible for carrying out checks on persons at external borders, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State.

2. The information referred to above shall comprise:

- the number and type of travel document used,
- nationality,
- full names,
- the date of birth,
- the border crossing point of entry into the territory of the Member States,
- code of transport,
- departure and arrival time of the transportation,
- total number of passengers carried on that transport,
- the initial point of embarkation.

3. In any case the transmission of the above mentioned data does not discharge the obligations and responsibilities laid down in the provisions of Article 26 of the Schengen Convention for carriers, as supplemented by Directive 2001/51/EC.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

Article 4

Sanctions

1. Member States shall take the necessary measures to impose sanctions on carriers which, as a result of fault, have not transmitted data or have transmitted incomplete or false data. Member States shall take the necessary measures to ensure that sanctions are dissuasive, effective and proportionate and that either:

- (a) the maximum amount of such sanctions is not less than EUR 5 000, or than the equivalent national currency at the rate of exchange published in the *Official Journal of the European Union* on the day on which this Directive enters into force for each journey for which passenger data were not communicated or were communicated incorrectly; or
- (b) the minimum amount of such sanctions is not less than EUR 3 000, or than the equivalent national currency at the rate of exchange published in the *Official Journal of the European Union* on the day on which this Directive enters into force for each journey for which passenger data were not communicated or were communicated incorrectly.

2. This Directive shall not prevent Member States from adopting or retaining, for carriers which infringe very seriously the obligations arising from the provisions of this Directive, other sanctions, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

Article 5

Proceedings

Member States shall ensure that their laws, regulations and administrative provisions stipulate that carriers against which proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

Article 6

Data processing

1. The personal data referred to in Article 3(1) shall be communicated to the authorities responsible for carrying out checks on persons at external borders through which the passenger will enter the territory of a Member State, for the purpose of facilitating the performance of such checks with the objective of combating illegal immigration more effectively.

Member States shall ensure that these data are collected by the carriers and transmitted electronically or, in case of failure, by any other appropriate means to the authorities responsible for carrying out border checks at the authorised border crossing point through which the passenger will enter the territory of a Member State. The authorities responsible for carrying out checks on persons at external borders shall save the data in a temporary file.

After passengers have entered, these authorities shall delete the data, within 24 hours after transmission, unless the data are needed later for the purposes of exercising the statutory functions of the authorities responsible for carrying out checks on persons at external borders in accordance with national law and subject to data protection provisions under Directive 95/46/EC.

Member States shall take the necessary measures to oblige carriers to delete, within 24 hours of the arrival of the means of transportation pursuant to Article 3(1), the personal data they have collected and transmitted to the border authorities for the purposes of this Directive.

In accordance with their national law and subject to data protection provisions under Directive 95/46/EC, Member States may also use the personal data referred to in Article 3(1) for law enforcement purposes.

2. Member States shall take the necessary measures to oblige the carriers to inform the passengers in accordance with the provisions laid down in Directive 95/46/EC. This shall also comprise the information referred to in Article 10(c) and Article 11(1)(c) of Directive 95/46/EC.

Article 7

Transposal

1. Member States shall take the necessary measures to comply with this Directive not later than 5 September 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

*Article 8***Entry into force**

This Directive shall enter into force 30 days after its publication in the *Official Journal of the European Union*.

*Article 9***Addressees**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 April 2004

**on the organisation of joint flights for removals from the territory of two or more Member States,
of third-country nationals who are subjects of individual removal orders**

(2004/573/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the initiative of the Italian Republic ⁽¹⁾,

Whereas:

- (1) The comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union ⁽²⁾, approved by the Council on 28 February 2002, which built upon the Communication of 15 November 2001 from the Commission to the Council and to the European Parliament on a common policy on illegal immigration states that readmission and return policy is an integral and vital component of the fight against illegal immigration. To that end, the Comprehensive Plan emphasises the necessity of highlighting a number of practical measures, including the establishment of a joint approach and cooperation between Member States with regard to the implementation of return measures. Common standards should therefore be adopted for return procedures.
- (2) The plan for the management of the external borders of the European Union, approved by the Council on 13 June 2002, which built upon the Communication of 7 May 2002 from the Commission to the Council and the European Parliament 'Towards integrated management of the external borders of the Member States of the European Union', provides for rational repatriation operations as one of the measures and actions for the integrated management of the external borders of the Member States of the European Union.
- (3) The Return Action Programme, approved by the Council on 28 November 2002, which built upon the Commission Green Paper of 10 April 2002 on a Community

return policy on illegal residents, as well as on the Communication of 14 October 2002 from the Commission to the European Parliament and to the Council on a Community return policy on illegal residents recommends, as one of the measures and actions with regard to improved operational cooperation among Member States, that the return of third-country nationals illegally resident in a Member State should be made as efficient as possible by sharing existing capacities for organising joint flights.

- (4) It is important to avoid a vacuum of the Community in the field of the organisation of joint flights.
- (5) As from 1 May 2004 the Council can no longer act on an initiative of a Member State.
- (6) The Council has exhausted all the possibilities to obtain in time the opinion of the European Parliament.
- (7) Under these exceptional circumstances the Decision should be adopted without the opinion of the European Parliament.
- (8) Member States are to implement this Decision with due respect for human rights and fundamental freedoms, and in particular for the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984, the Geneva Convention of 28 July 1951 and the New York Protocol thereto of 31 January 1967, relating to the status of refugees, the Convention on the rights of the child of 20 November 1989, and the Charter of fundamental rights of the European Union of 18 December 2000 ⁽³⁾.

⁽¹⁾ OJ C 223, 19.9.2003, p. 3.

⁽²⁾ OJ C 142, 14.6.2002, p. 23.

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

- (9) This Decision should apply without prejudice to the relevant international instruments in the area of removal by air, such as Annex 9 to the 1944 Chicago Convention on International Civil Aviation (ICAO) and the relevant documents of the European Civil Aviation Conference (ECAC).
- (10) The non-binding Common Guidelines on security provisions for joint removals by air should provide useful guidance in the implementation of this Decision.
- (11) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. However, given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark, in accordance with Article 5 of the said Protocol, is to decide within a period of six months after the Council has adopted this Decision, whether it will implement it in its national law.
- (12) As regards the Republic of Iceland and the Kingdom of Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 between 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* ⁽¹⁾, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽²⁾. As a result of the procedures laid down in the said Agreement, the rights and obligations arising from this Decision should also apply to those two States and in relations between those two States and the Member States of the European Community to which this Decision is addressed.
- (13) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, these Member States have notified their wish to take part in the adoption and application of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Purpose

The purpose of this Decision is to coordinate joint removals by air, from two or more Member States, of third-country

nationals who are subjects of individual removal orders (hereinafter referred to as third-country nationals).

Article 2

Definitions

For the purpose of this Decision:

- (a) 'third-country national', means any person who is not a national of a Member State of the European Union, the Republic of Iceland or the Kingdom of Norway;
- (b) 'organising Member State', means a Member State, which is responsible for the organisation of joint flights;
- (c) 'participating Member State', means a Member State which participates in joint flights organised by an organising Member State;
- (d) 'joint flight', means the transport of third-country nationals carried out by an air carrier selected for that purpose;
- (e) 'removal operations' and 'joint removals by air', mean all the activities which are necessary to return the third-country nationals concerned, including transport on joint flights;
- (f) 'escort(s)', means the security personnel responsible for accompanying third-country nationals on a joint flight and the persons in charge of medical care and interpreters.

Article 3

National authority

Each Member State shall appoint the national authority responsible for organising and/or participating in joint flights and communicate the relevant information to the other Member States.

Article 4

Tasks of the organising Member State

1. Where a Member State decides to organise a joint flight for the removal of third-country nationals which is open to the participation of the other Member States, it shall inform the national authorities of those Member States.
2. The national authority of the organising Member State shall adopt the necessary measures to ensure that the joint flight is conducted properly. In particular, it shall:
 - (a) select the air carrier and determine with the selected air carrier all the relevant costs of the joint flight, assume the relevant contractual obligations and ensure that it takes all the measures necessary for carrying out the joint flight, including providing the appropriate assistance to the third-country nationals and to the escorts;

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

- (b) request and receive, from the third-countries of transit and destination, the authorisations which are required for the implementation of the joint flight;
- (c) make use of contacts and make the appropriate arrangements for the organisation of the joint flight with the participating Member States.
- (d) define the operational details and procedures and determine, in agreement with the participating Member States, the number of the escorts which is appropriate in relation to the number of third-country nationals to be removed;
- (e) conclude all the appropriate financial arrangements with the participating Member States.

Article 5

Tasks of the participating Member State

Where it decides to participate in a joint flight, a participating Member State shall:

- (a) inform the national authority of the organising Member State of its intention to participate in the joint flight, specifying the number of third-country nationals to be removed;
- (b) provide a sufficient number of escorts for each third-country national to be removed. If the escorts are to be provided solely by the organising Member State, each participating Member State shall ensure the presence of at least two representatives on board. These representatives, who shall have the same status as the escorts, shall be in charge of handing over the third-country nationals for whom they are responsible to the authorities of the country of destination.

Article 6

Common tasks

The organising Member State and each participating Member State shall:

- (a) ensure that each third-country national and the escorts hold valid travel documents and any other necessary additional documents, such as entry and/or transit visas, certificates or records;
- (b) inform, as soon as possible, their diplomatic and consular representations in the third-countries of transit and destination of the arrangements concerning the joint flight, in order to obtain necessary assistance.

Article 7

Final clause

In carrying out joint removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air attached hereto.

Article 8

Entry into force

This Decision shall take effect from the day following that of its publication in the *Official Journal of the European Union*.

Article 9

Addressees

This Decision is addressed to the Member States in accordance with the Treaty.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

ANNEX

COMMON GUIDELINES ON SECURITY PROVISIONS FOR JOINT REMOVALS BY AIR**1. PRE-RETURN PHASE****1.1. Requirements for returnees****1.1.1. Legal situation**

Joint flights are organised for illegal residents, who are persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territory of a Member State of the European Union. The organising Member State and each participating Member State shall ensure that the legal situation of each of the returnees for which they are responsible allows for removal.

1.1.2. Medical condition and medical records

The organising Member State and each participating Member State shall ensure that the returnees for whom they are responsible are in an appropriate state of health, which allows legally and factually for a safe removal by air. Medical records shall be provided for returnees with a known medical disposition or where medical treatment is required. These medical records shall include the results of medical examinations, a diagnosis and the specification of possibly needed medication to allow for necessary medical measures. Multilingual versions of medical records shall be provided, if the accompanying medical staff is not able to understand properly the original language. Organising and participating Member States are encouraged to use common standardised forms for medical records or fit-for-fly declarations. Participating Member States shall inform the organising Member State in advance of a removal operation of any medical condition which would have a bearing on the removability of a returnee. The organising Member State shall reserve the right to refuse access to a joint flight to any returnee with a medical condition which would mean that their return was not compatible with the principles of safety and dignity.

1.1.3. Documentation

The organising Member State and each participating Member State shall ensure that for each returnee valid travel documents and other necessary additional documents, certificates or records are available. An authorised person shall keep the documentation until arrival in the country of destination.

It is the responsibility of the organising Member State and each participating State to ensure that escorts and representatives have entry visas where necessary for the country(ies) of transit and destination of the joint flight.

1.1.4. Notifications

The organising Member State shall ensure that the airlines, the transit states, where applicable, and the country of destination are notified and consulted duly in advance about the removal operation.

1.2. Requirements for escorts**1.2.1. Escorts from the organising Member State**

Where the organising Member State provides the escorts for all the returnees, each participating Member State shall assign at least two representatives to be present on board the aircraft; they shall be in charge of handing over the returnees for whom they are responsible to the local authorities in the country of destination.

1.2.2. Escorts from participating Member States

Where the organising Member State intends to take charge solely of the returnees from its own country, the participating Member States shall provide escorts for the returnees, for whom they are responsible. In such cases, the participation of the various national units requires mutual agreement between the organising Member State and the participating Member States on the security rules as set out in these Common Guidelines or in other agreements between Member States and there shall be prior consultation on any other details of the operation.

1.2.3. *Use of private-sector escorts*

When a participating Member State makes use of private-sector escorts, the authorities of that Member State shall provide for at least one official representative on board the flight.

1.2.4. *Skills and training of escorts*

Escorts assigned on board the joint flights shall have received prior special training in order to carry out these missions; they must be provided with the necessary medical support depending on the mission.

Escorts used for joint flights should preferably be familiar with the removal standards of the organising Member State and the participating Member States. Member States are encouraged, therefore, to exchange information on their respective training courses for escorts and to offer training courses to escorts from other Member States.

1.2.5. *Code of conduct for escorts*

The escorts shall not be armed. They may wear civilian dress, which shall have a distinctive emblem for identification purposes. Other duly accredited accompanying staff shall also wear a distinctive emblem.

The members of the escort shall be strategically positioned in the aircraft in order to provide optimum safety. Moreover, they shall be seated with the returnees for whom they have responsibility.

1.2.6. *Arrangements regarding the number of escorts*

The number of escorts shall be determined on a case-by-case basis following an analysis of the potential risks and following mutual consultation. It is recommended in most cases that they are at least equivalent to the number of returnees on board. A back-up unit shall be available for support, where necessary (e.g. in cases of long-distance destinations).

2. PRE-DEPARTURE PHASE IN DEPARTURE OR STOPOVER AIRPORTS

2.1. **Transportation to the airport and stay in the airport**

As regards transportation to and stay in the airport the following shall apply:

- (a) in principle, the escorts and the returnees should be at the airport at least three hours before departure;
- (b) returnees should be briefed regarding the enforcement of their removal and advised that it is in their interest to cooperate fully with the escorts. It should be made clear that any disruptive behaviour will not be tolerated and will not lead to the aborting of the removal operation;
- (c) the organising Member State shall provide a secure area at the departure airport in order to ensure a discrete gathering and safe boarding of the returnees. This area shall also secure the arrival of the aircraft of any other Member State, which is transporting returnees to join the joint flight;
- (d) if a joint flight has to stop over at an airport of another Member State for the collection of returnees, it is the responsibility of that Member State to provide for a secure area at the airport;
- (e) the representatives of the participating Member State shall hand over the returnees, for whom they are responsible, to officials of the Member State of the present location, who will usually be from the organising Member State. The representatives of the participating Member States shall indicate, if need be, which of the returnees have expressed their intention not to board the aircraft and in particular which of them need special attention due to their physical or psychological condition;
- (f) the Member State of the present location of the removal operation is responsible for the performance of any sovereign power (e.g. coercive measures). The powers of the escorts from other participating Member States are limited to self-defence. In addition, in the absence of law enforcement officers from the Member State of the present location, or for the purpose of supporting the law-enforcement officers, the escorts may take reasonable and proportionate action in response to an immediate and serious risk in order to prevent the returnee from escaping, causing injury to himself or to a third party, or damage to property.

2.2. Check-in, boarding and security check before take-off

The arrangements as regards check-in, boarding and security checking before take-off shall be as follows:

- (a) the escorts of the Member State of the present location are responsible for checking in and for assisting in passing control areas;
- (b) all returnees shall undergo a meticulous security search before they board a joint flight. All objects that could be a threat to the safety of individuals and to the security of the joint flight shall be seized and placed in the luggage hold;
- (c) 'the returnee's luggage shall not be placed in the passengers' cabin. All luggage placed in the hold shall undergo a security check and be labelled with the owner's name. Anything that is considered as dangerous according to the rules of the International Civil Aviation Organisation (ICAO) shall be removed from luggage;
- (d) money and valuable objects shall be placed in a transparent covering labelled with the owner's name. The returnees shall be informed about the procedure regarding objects and money that have been put aside;
- (e) for each removal operation the organising Member State shall determine the maximum authorised weight of luggage for each returnee;
- (f) All returnees shall be boarded onto the joint flight by personnel of the Member State of the present location and, where appropriate, assisted by the escorts for the removal operation.

3. IN-FLIGHT PROCEDURE

3.1. Security measures on board the aircraft

During the flight the following security measures on board the aircraft shall apply:

- (a) the head of the removal operation of the organising Member State shall define an overall security and surveillance plan to be implemented on board the aircraft (movements within the cabin, meals, etc.). All escorts must be informed about the security and surveillance plan before the beginning of a removal operation;
- (b) in cases where returnees are of different nationalities, they shall be seated in the passengers' cabin according to the Member State responsible for effecting their removal and according to their final destinations;
- (c) seatbelts shall be kept fastened throughout the entire duration of the flight;
- (d) in the event of a major incident on board (i.e. disruptive behaviour likely to jeopardise the completion of the operation or the safety of those on board the flight), the head of operation of the organising Member State, in close liaison with or under instruction of the flight captain, shall be in charge of the operational command to restore order.

3.2. Use of coercive measures

Coercive measures shall be used as follows:

- (a) coercive measures shall be implemented with due respect to the individual rights of the returnees;
- (b) coercion may be used on individuals who refuse or resist removal. All coercive measures shall be proportional and shall not exceed reasonable force. The dignity and physical integrity of the returnee shall be maintained. As a consequence, in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped following the principle 'no removal at all cost';
- (c) any coercive measures should not compromise or threaten the ability of the returnee to breathe normally. In the event that coercive force is used, it shall be ensured that the chest of the returnee remains in upright position and that nothing affects his or her chest in order to maintain normal respiratory function;
- (d) the immobilisation of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity;
- (e) the organising Member State and each participating Member State shall agree on a list of authorised restraints in advance of the removal operation. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security;
- (f) all escorts shall be informed and made aware of the authorised and forbidden restraints;

- (g) restrained returnees shall remain under constant surveillance throughout the flight;
- (h) the decision temporarily to remove a means of restraint shall be made by the head or deputy-head of the removal operation.

3.3. Medical personnel and interpreters

The arrangements with regard to medical personnel and interpreters shall be as follows:

- (a) at least one medical doctor should be present on a joint flight;
- (b) the doctor shall have access to any relevant medical records of the returnees and shall be informed before departure about returnees with particular medical dispositions. Previously unknown medical dispositions, which are discovered immediately before departure and which may affect the enforcement of the removal, should be assessed with the responsible authorities;
- (c) only a doctor may, after a precise medical diagnosis has been made, administer medication to the returnees. Medicine required by a returnee during the course of the flight shall be held on board;
- (d) each returnee shall be able to address the doctor or the escorts directly, or via an interpreter in a language in which he or she can express him- or herself;
- (e) the organising Member States shall ensure that appropriate medical and language staff are available for the removal operation.

3.4. Documentation and monitoring of removal operation

3.4.1. *Recording and observers from third parties*

Any video- and/or audio-recording or monitoring by third-party observers on joint flights shall be subject to prior agreement between the organising Member State and the participating Member States.

3.4.2. *Internal reports on the removal operation*

The organising Member State and participating Member States shall exchange their internal reports on the removal operation, if a common report is not to be prepared. This is particularly important if the removal operation has failed. All mission reports are strictly confidential and for internal use only. Reports shall include statements on incidents, and coercive and medical measures, if any have taken place.

3.4.3. *Media coverage*

The organising and participating Member States shall agree before a removal operation on the nature and timing of publicity (if any) to be given to the removal operation. Information about the removal operation will normally be issued only after its completion. Publication of photographs or personal details of the escorts is to be avoided.

4. TRANSIT PHASE

Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air ⁽¹⁾ shall apply during transit in a Member State.

5. ARRIVAL PHASE

On arrival:

- (a) the organising Member State shall be responsible for contacting the authorities of the country of destination; participating Member States shall be involved in this process;
- (b) the head of the removal operation of the organising Member State shall be the spokesperson to establish first contact with the local authorities upon arrival, unless another spokesperson has been determined among the organising and participating Member States prior to arrival;
- (c) the organising Member State and each participating Member State shall hand over the returnees, for whom they are responsible, to the authorities of the country of destination, with their luggage and any items that were seized prior to boarding. The lead representatives of the organising and participating Member States will be responsible for handing over the returnees to the local authorities upon arrival. The escorts will not normally leave the aircraft;

⁽¹⁾ OJ L 321, 6.12.2003, p. 26.

- (d) where appropriate and feasible, the organising and participating Member States should invite consular staff, immigration liaison officers or advance parties of the Member States concerned to facilitate the handover of the returnees to the local authorities insofar as this is consistent with national practices and procedure;
- (e) the returnees shall be free of handcuffs or any other restraint when handed over to the local authorities;
- (f) the handover of returnees shall take place outside the aircraft (either at the bottom of the gangway or in adequate premises of the airport, as considered appropriate). As far as possible the local authorities shall be prevented from coming on board the aircraft;
- (g) the time spent at the airport of destination should be kept to a minimum;
- (h) it is the responsibility of the organising Member State and each participating Member State to have in place contingency arrangements for escorts and representatives (and returnees whose readmission has not been permitted) in the event that the departure of the aircraft is delayed following disembarkation of the returnees. These arrangements should include the provision of overnight accommodation, if necessary.

6. FAILURE OF THE REMOVAL OPERATION

In the event that the authorities of the country of destination refuse entry to the territory, or the removal operation has to be aborted for other reasons, the organising Member State and each participating Member State shall take responsibility, at its own cost, for the return of the returnees, for whom they are responsible, to their respective territories.

COUNCIL DECISION
of 29 April 2004
amending the Common Manual

(2004/574/CE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance ⁽¹⁾,

Having regard to the initiative of the Italian Republic,

Whereas:

(1) Given the level of harmonisation reached on the criteria for the refusal of entry at the external borders of the Member States, it is desirable to be able to identify the reasons for a previous decision to refuse the entry of an alien. It is therefore necessary to use a standard form for refusal of entry, which includes a categorisation of the possible reasons for refusal, and to indicate in the passport of the alien concerned the reason(s) for refusal. The Common Manual ⁽²⁾ should therefore be amended accordingly. The possibilities to appeal against the decision for refusal of entry are provided for in national law.

(2) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the Council has adopted this Decision, whether it will implement it in its national law.

(3) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽³⁾, which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁴⁾.

(4) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁵⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(5) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁶⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(6) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession,

HAS ADOPTED THIS DECISION:

Article 1

Part II of the Common Manual is hereby amended as follows:

1. the following sentence shall be added at the end of Section 1.4.1:

'To that end a standard form for refusal of entry at the border as contained in Annex 16 shall be filled in and handed to the alien concerned.';

⁽¹⁾ OJ L 116, 26.4.2001, p. 5.

⁽²⁾ OJ C 313, 16.12.2002, p. 97. Manual as last amended by Decision 2004/466/EC (OJ L 157, 30.4.2004, p. 136).

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁶⁾ OJ L 64, 7.3.2002, p. 20.

2. Section 1.4.1a shall be replaced by the following:

'1.4.1a When refusing entry, the checking officer will affix an entry stamp on the passport, cancelled by an indelible cross in black ink, and enter on the right hand side in indelible ink the letter(s) indicating the reason(s) for refusal of entry as set out in the standard form for refusal of entry at the border as contained in Annex 16'.

Article 2

The standard form for refusal of entry at the border, as contained in the Annex to this Decision, shall be added as Annex 16 to the Common Manual.

Article 3

This Decision shall apply from 1 June 2004.

Article 4

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

ANNEX

'Annex []

Standard form for refusal of entry at the

LOGO OF STATE	Name of State (Name of Office) _____	 (¹)
REFUSAL OF ENTRY AT THE BORDER		
On _____ at (time) _____ at the border point _____		
We, the undersigned, _____ have before us:		
Surname _____ First name _____		
Date of birth _____ Place of birth _____ Sex: _____		
Nationality _____ Resident in _____		
Type of identity document _____ number _____		
Issued in _____ on _____		
Visa number _____ type _____ issued by _____ valid from _____ until _____		
For a period of _____ days on the following grounds: _____		
Coming from _____ by means of _____ (indicate means of transport used, e.g. flight number), he/she is hereby informed that he/she is refused entry into the country pursuant to (indicate references to the national legislation in force), for the following reasons:		

(¹) No logo is required for Norway and Iceland.

- ☐ (A) Has no valid travel document(s)
- ☐ (B) Has a false/counterfeit/forged travel document
- ☐ (C) Has no valid visa
- ☐ (D) Has a false/counterfeit/forged visa
- ☐ (E) Has no appropriate documentation justifying the purpose and conditions of stay
- ☐ (F) Does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit, having regard to the information given in Annex 10 to the Common Manual
- ☐ (G) Is a person for whom an alert has been issued for the purposes of refusing entry
- ☐ in the SIS
- ☐ in the national register
- ☐ (H) Is considered to be a threat to public order and public security, national security or the international relations of one or more of the Member States of the European Union *(each State must indicate the references to national legislation relating to such cases of refusal of entry)*

Comments

The person concerned may appeal against the decision to refuse entry as provided for in national law. The person concerned receives a copy of this document *(each State must indicate the references to national legislation relating to the right of appeal).*

Person concerned

Officer responsible
for checks'

COUNCIL DECISION

of 29 April 2004

on the conclusion, on behalf of the European Community, of the Protocol to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea

(2004/575/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 175(1), in conjunction with the first sentence of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) European Community policy on the environment contributes to the pursuit of objectives which include preserving, protecting and improving the quality of the environment and promoting measures at international level to deal with regional or worldwide environmental problems.
- (2) The European Community is a Contracting Party to the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention), approved by Decision 77/585/EEC ⁽²⁾, and its 1995 revision, approved by Decision 1999/802/EC ⁽³⁾. The Community is also a Contracting Party to four protocols of the Barcelona Convention, including the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency approved by Decision 81/420/EEC ⁽⁴⁾.
- (3) The Commission took part, on behalf of the Community, in the negotiations on the Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea (the Protocol), on the basis of the negotiating directives received from the Council on 25 January 2000.
- (4) On 25 January 2002 in Malta, the Community signed the Protocol.
- (5) The Protocol updates the legal instruments of the Barcelona Convention, to include cooperation on the prevention of pollution from ships, to make more effective

cooperation in response to pollution incidents and to promote the implementation of the applicable international regulations.

- (6) The Protocol, not affecting the right of Parties to adopt relevant stricter measures in conformity with international law, contains the measures needed to avoid there being any incoherence with Community legislation already in force in the areas covered by the Protocol.
- (7) The Community should therefore approve the Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea, hereinafter referred to as 'the Protocol', is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered, on behalf of the European Community, to deposit with the Spanish Government the instrument of approval of the Protocol, in accordance with the provisions of Article 23 of the Protocol.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

⁽¹⁾ Opinion of 10 February 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 240, 19.9.1977, p. 1.

⁽³⁾ OJ L 322, 14.12.1999, p. 32.

⁽⁴⁾ OJ L 162, 19.6.1981, p. 4.

PROTOCOL
concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea

THE CONTRACTING PARTIES TO THE PRESENT PROTOCOL,

Being Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995,

Desirous of implementing Articles 6 and 9 of the said Convention,

Recognising that grave pollution of the sea by oil and hazardous and noxious substances or a threat thereof in the Mediterranean Sea Area involves a danger for the coastal States and the marine environment,

Considering that the cooperation of all the coastal States of the Mediterranean Sea is called for to prevent pollution from ships and to respond to pollution incidents, irrespective of their origin,

Acknowledging the role of the International Maritime Organization and the importance of cooperating within the framework of this Organisation, in particular in promoting the adoption and the development of international rules and standards to prevent, reduce and control pollution of the marine environment from ships,

Emphasising the efforts made by the Mediterranean coastal States for the implementation of these international rules and standards,

Acknowledging also the contribution of the European Community to the implementation of international standards as regards maritime safety and the prevention of pollution from ships,

Recognising also the importance of cooperation in the Mediterranean Sea Area in promoting the effective implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships,

Recognising further the importance of prompt and effective action at the national, subregional and regional levels in taking emergency measures to deal with pollution of the marine environment or a threat thereof,

Applying the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilising the best available techniques and the best environmental practices, as provided for in Article 4 of the Convention,

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, which is in force and to which many Mediterranean coastal States and the European Community are Parties,

Taking into account the international conventions dealing in particular with maritime safety, the prevention of pollution from ships, preparedness for and response to pollution incidents, and liability and compensation for pollution damage,

Wishing to further develop mutual assistance and cooperation in preventing and combating pollution,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Protocol:

(a) 'Convention', means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995;

(b) 'pollution incident', means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;

(c) 'hazardous and noxious substances', means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

(d) 'related interests', means the interests of a coastal State directly affected or threatened and concerning, among others:

(i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;

(ii) the historical and tourist appeal of the area in question, including water sports and recreation;

- (iii) the health of the coastal population;
 - (iv) the cultural, aesthetic, scientific and educational value of the area;
 - (v) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;
- (e) 'international regulations', means regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialised agencies, and in particular of the International Maritime Organization;
- (f) 'Regional Centre', means the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the International Maritime Organization and the United Nations Environment Programme, and the objectives and functions of which are defined by the Contracting Parties to the Convention.

Article 2

Protocol area

The area to which the Protocol applies shall be the Mediterranean Sea Area as defined in Article 1 of the Convention.

Article 3

General provisions

1. The Parties shall cooperate:
 - (a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and
 - (b) to take all necessary measures in cases of pollution incidents.
2. In cooperating, the Parties should take into account as appropriate the participation of local authorities, non-governmental organisations and socioeconomic actors.
3. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measures taken by a Party to apply this Protocol shall be in accordance with international law.

Article 4

Contingency plans and other means of preventing and combating pollution incidents

1. The Parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and

combating pollution incidents. These means shall include, in particular, equipment, ships, aircraft and personnel prepared for operations in cases of emergency, the enactment, as appropriate, of relevant legislation, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority or authorities responsible for the implementation of this Protocol.

2. The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as flag State, port State and coastal State, and their applicable legislation. They shall develop their national capacity as regards the implementation of those international conventions and may cooperate for their effective implementation through bilateral or multilateral agreements.

3. The Parties shall inform the Regional Centre every two years of the measures taken for the implementation of this Article. The Regional Centre shall present a report to the Parties on the basis of the information received.

Article 5

Monitoring

The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations.

Article 6

Cooperation in recovery operations

In case of release or loss overboard of hazardous and noxious substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges, the Parties shall cooperate as far as practicable in the salvage of these packages and the recovery of such substances so as to prevent or reduce the danger to the marine and coastal environment.

Article 7

Dissemination and exchange of information

1. Each Party undertakes to disseminate to the other Parties information concerning:
 - (a) the competent national organisation or authorities responsible for combating pollution of the sea by oil and hazardous and noxious substances;
 - (b) the competent national authorities responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Parties;

- (c) the national authorities entitled to act on behalf of the State in regard to measures of mutual assistance and cooperation between Parties;
- (d) the national organisation or authorities responsible for the implementation of paragraph 2 of Article 4, in particular those responsible for the implementation of the international conventions concerned and other relevant applicable regulations, those responsible for port reception facilities and those responsible for the monitoring of discharges which are illegal under MARPOL 73/78;
- (e) its regulations and other matters which have a direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances;
- (f) new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes.

2. The Parties which have agreed to exchange information directly shall communicate such information to the Regional Centre. The latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.

3. Parties concluding bilateral or multilateral agreements within the framework of this Protocol shall inform the Regional Centre of such agreements, which shall communicate them to the other Parties.

Article 8

Communication of information and reports concerning pollution incidents

The Parties undertake to coordinate the utilisation of the means of communication at their disposal in order to ensure, with the necessary speed and reliability, the reception, transmission and dissemination of all reports and urgent information concerning pollution incidents. The Regional Centre shall have the necessary means of communication to enable it to participate in this coordinated effort and, in particular, to fulfil the functions assigned to it by Article 12(2).

Article 9

Reporting procedure

1. Each Party shall issue instructions to masters or other persons having charge of ships flying its flag and to the pilots of aircraft registered in its territory to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements, to the nearest coastal State and to this Party:

- (a) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;
- (b) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances, including hazardous and noxious substances in packaged form, observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.

2. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligations under (a) and (b) of paragraph 1 and may request assistance from the Regional Centre in this respect. It shall inform the International Maritime Organization of the measures taken.

3. Each Party shall also issue instructions to persons having charge of sea ports or handling facilities under its jurisdiction to report to it, in accordance with applicable laws, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

4. In accordance with the relevant provisions of the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, each Party shall issue instructions to persons having charge of offshore units under its jurisdiction to report to it by the most rapid and adequate channels in the circumstances, following reporting procedures it has prescribed, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

5. In paragraphs 1, 3 and 4 of this Article, the term 'incident', means an incident meeting the conditions described therein, whether or not it is a pollution incident.

6. The information collected in accordance with paragraphs 1, 3 and 4 shall be communicated to the Regional Centre in the case of a pollution incident.

7. The information collected in accordance with paragraphs 1, 3 and 4 shall be immediately communicated to the other Parties likely to be affected by a pollution incident:

- (a) by the Party which has received the information, preferably directly or through the Regional Centre; or
- (b) by the Regional Centre.

In case of direct communication between Parties, these shall inform the Regional Centre of the measures taken, and the Centre shall communicate them to the other Parties.

8. The Parties shall use a mutually agreed standard form proposed by the Regional Centre for the reporting of pollution incidents as required under paragraphs 6 and 7 of this Article.

9. In consequence of the application of the provisions of paragraph 7, the Parties are not bound by the obligation laid down in Article 9(2) of the Convention.

Article 10

Operational measures

1. Any Party faced with a pollution incident shall:
 - (a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of oil or hazardous and noxious substances and the direction and speed of drift of the spillage;
 - (b) take every practicable measure to prevent, reduce and, to the fullest possible extent, eliminate the effects of the pollution incident;
 - (c) immediately inform all Parties likely to be affected by the pollution incident of these assessments and of any action which it has taken or intends to take, and simultaneously provide the same information to the Regional Centre, which shall communicate it to all other Parties;
 - (d) continue to observe the situation for as long as possible and report thereon in accordance with Article 9.
2. Where action is taken to combat pollution originating from a ship, all possible measures shall be taken to safeguard:
 - (a) human lives;
 - (b) the ship itself; in doing so, damage to the environment in general shall be prevented or minimised.

Any Party which takes such action shall inform the International Maritime Organization either directly or through the Regional Centre.

Article 11

Emergency measures on-board ships, on offshore installations and in ports

1. Each Party shall take the necessary steps to ensure that ships flying its flag have on board a pollution emergency plan as required by, and in accordance with, the relevant international regulations.
2. Each Party shall require masters of ships flying its flag, in case of a pollution incident, to follow the procedures described in the shipboard emergency plan and in particular to provide the proper authorities, at their request, with such detailed information about the ship and its cargo as is relevant to actions taken in pursuance of Article 9, and to cooperate with these authorities.
3. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligation under paragraph 2 and may request assistance from the Regional

Centre in this respect. It shall inform the International Maritime Organization of the measures taken.

4. Each Party shall require that authorities or operators in charge of sea ports and handling facilities under its jurisdiction as it deems appropriate have pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with Article 4 and approved in accordance with procedures established by the competent national authority.

5. Each Party shall require operators in charge of offshore installations under its jurisdiction to have a contingency plan to combat any pollution incident, which is coordinated with the national system established in accordance with Article 4 and in accordance with the procedures established by the competent national authority.

Article 12

Assistance

1. Any Party requiring assistance to deal with a pollution incident may call for assistance from other Parties, either directly or through the Regional Centre, starting with the Parties which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of the required specialised personnel, products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.

2. Where the Parties engaged in an operation to combat pollution cannot agree on the organisation of the operation, the Regional Centre may, with the approval of all the Parties involved, coordinate the activity of the facilities put into operation by these Parties.

3. In accordance with applicable international agreements, each Party shall take the necessary legal and administrative measures to facilitate:

- (a) the arrival and utilisation in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to a pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
- (b) the expeditious movement into, through and out of its territory of the personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 13

Reimbursement of costs of assistance

1. Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall bear the costs of their respective action in dealing with pollution in accordance with paragraph 2.

2. (a) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the costs of its action. If the request is cancelled, the requesting Party shall bear the costs already incurred or committed by the assisting Party;
 - (b) if the action was taken by a Party on its own initiative, that Party shall bear the cost of its action;
 - (c) the principles laid down in subparagraphs (a) and (b) above shall apply unless the Parties concerned otherwise agree in any individual case.
3. Unless otherwise agreed, the costs of the action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.
4. The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes.

Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph 3. It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of developing countries.

5. The provisions of this Article shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of national and international law applicable to one or to the other Party involved in the assistance.

Article 14

Port reception facilities

1. The Parties shall individually, bilaterally or multilaterally take all necessary steps to ensure that reception facilities meeting the needs of ships are available in their ports and terminals. They shall ensure that these facilities are used efficiently without causing undue delay to ships.

The Parties are invited to explore ways and means to charge reasonable costs for the use of these facilities.

2. The Parties shall also ensure the provision of adequate reception facilities for pleasure craft.

3. The Parties shall take all the necessary steps to ensure that reception facilities operate efficiently to limit any impact of their discharges to the marine environment.

4. The Parties shall take the necessary steps to provide ships using their ports with updated information relevant to the obligations arising from MARPOL 73/78 and from their legislation applicable in this field.

Article 15

Environmental risks of maritime traffic

In conformity with generally accepted international rules and standards and the global mandate of the International Maritime Organization, the Parties shall individually, bilaterally or multilaterally take the necessary steps to assess the environmental risks of the recognised routes used in maritime traffic and shall take the appropriate measures aimed at reducing the risks of accidents or the environmental consequences thereof.

Article 16

Reception of ships in distress in ports and places of refuge

The Parties shall define national, subregional or regional strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment. They shall cooperate to this end and inform the Regional Centre of the measures they have adopted.

Article 17

Subregional agreements

The Parties may negotiate, develop and maintain appropriate bilateral or multilateral subregional agreements in order to facilitate the implementation of this Protocol, or part of it. Upon request of the interested Parties, the Regional Centre shall assist them, within the framework of its functions, in the process of developing and implementing these subregional agreements.

Article 18

Meetings

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention, held pursuant to Article 18 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided in Article 18 of the Convention.

2. It shall be the function of the meetings of the Parties to this Protocol, in particular:

- (a) to examine and discuss reports from the Regional Centre on the implementation of this Protocol, and particularly of its Articles 4, 7 and 16;
- (b) to formulate and adopt strategies, action plans and programmes for the implementation of this Protocol;
- (c) to keep under review and consider the efficacy of these strategies, action plans and programmes, and the need to adopt any new strategies, action plans and programmes and to develop measures to that effect;
- (d) to discharge such other functions as may be appropriate for the implementation of this Protocol.

Article 19

Relationship with the convention

1. The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.
2. The rules of procedure and the financial rules adopted pursuant to Article 24 of the Convention shall apply with respect to this Protocol, unless the Parties agree otherwise.

FINAL PROVISIONS

Article 20

Effect of the protocol on domestic legislation

In implementing the provisions of this Protocol, the right of Parties to adopt relevant stricter domestic measures or other measures in conformity with international law, in the matters covered by this Protocol, shall not be affected.

Article 21

Relations with third parties

The Parties shall, where appropriate, invite States that are not Parties to the Protocol and international organisations to cooperate in the implementation of the Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Valletta, Malta, on 25 January 2002, in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authentic.

Article 22

Signature

This Protocol shall be open for signature at Valletta, Malta, on 25 January 2002 and in Madrid from 26 January 2002 to 25 January 2003 by any Contracting Party to the Convention.

Article 23

Ratification, acceptance or approval

This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

Article 24

Accession

As from 26 January 2003, this Protocol shall be open for accession by any Party to the Convention.

Article 25

Entry into force

1. This Protocol shall enter into force on the thirtieth day following the deposit of the sixth instrument of ratification, acceptance, approval or accession.
2. From the date of its entry into force, this Protocol shall replace the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency of 1976 in the relations between the Parties to both instruments.

COUNCIL DECISION
of 29 April 2004
concerning the conclusion of the Agreement on Scientific and Technical Cooperation between the
European Community and the State of Israel

(2004/576/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 170 thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Commission has negotiated, on behalf of the Community, the Agreement on Scientific and Technical Cooperation with the State of Israel (hereinafter the Agreement).
- (2) The Agreement was signed on behalf of the Community on 10 June 2003 in Brussels, subject to its conclusion.
- (3) The Agreement should be approved,

Article 1

The Agreement on Scientific and Technical Cooperation between the European Community and the State of Israel is hereby approved on behalf of the Community.

The text of the Agreement has already been published in the *Official Journal of the European Union* (*).

Article 2

The President of the Council shall, acting on behalf of the Community, give the notification provided for in Article 5 of the Agreement.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

⁽¹⁾ Opinion delivered on 11 March 2004 (not yet published in the Official Journal).

(*) OJ L 154, 21.6.2003, p. 80.

COUNCIL DECISION

of 29 April 2004

on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Kazakhstan establishing a double-checking system without quantitative limits in respect of the export of certain steel products from the Republic of Kazakhstan to the European Community

(2004/577/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part ⁽¹⁾, entered into force on 1 July 1999.
- (2) The European Community and the Republic of Kazakhstan agreed to establish a double-checking system in respect of certain steel products for the period from 1 January 2000 to 31 December 2001. This Agreement in the form of an Exchange of Letters was approved on behalf of the European Community by means of Decision 1999/865/EC ⁽²⁾. Regulation (EC) No 2743/1999 ⁽³⁾ established the corresponding implementing legislation for the Community.
- (3) The Commission has finalised negotiations for an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Kazakhstan establishing a double-checking system without quantitative limits in respect of the export of certain steel products from the Republic of Kazakhstan to the European Community,

Article 1

1. The Agreement in the form of an Exchange of Letters between the European Community and the Republic of Kazakhstan establishing a double-checking system without quantitative limits in respect of the export of certain steel products from the Republic of Kazakhstan to the European Community is hereby approved on behalf of the European Community.

2. The text of the Agreement ⁽⁴⁾ is annexed to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in the form of an Exchange of Letters referred to in Article 1 in order to bind the Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

⁽¹⁾ OJ L 196, 28.7.1999, p. 3.

⁽²⁾ OJ L 342, 31.12.1999, p. 37.

⁽³⁾ OJ L 342, 31.12.1999, p. 1.

⁽⁴⁾ See p. 49 of this Official Journal.

AGREEMENT

in the form of an Exchange of Letters between the European Community and the Republic of Kazakhstan establishing a double-checking system without quantitative limits in respect of the export of certain steel products from the Republic of Kazakhstan to the European Community

A. Letter from the European Community

Sir,

1. I have the honour to refer to the Agreement between the European Coal and Steel Community and the Government of the Republic of Kazakhstan on trade in certain steel products concluded on 22 July 2002. Furthermore, consultations took place with regard to problems concerning certain steel products which fall outside the scope of the abovementioned Agreement.
2. Following these consultations the Parties hereby agree to establish a double-checking system, without quantitative limits, in respect of certain steel products in order to improve transparency and to avoid possible diversions of trade. The details of the double-checking system are annexed to this letter.
3. This Exchange of Letters is without prejudice to the application of the relevant provisions of the bilateral agreements on trade and trade-related matters, in particular those relating to anti-dumping and safeguard measures.
4. Either Party may at any time propose amendments to the Annex or the Appendices thereto, which shall require the mutual consent of the Parties and shall take effect as agreed by them. Should anti-dumping or safeguard investigations be initiated or measures introduced in the European Community concerning a product under the double-checking system, Kazakhstan will decide whether to exclude the product in question from the double-checking system. Such a decision shall not affect the entry into free circulation of the product in question into the Community.
5. In conclusion, I have the honour to propose that if this letter, the Annex and the Appendices thereto are acceptable to your Government, this letter and your confirmation shall together constitute an agreement between the European Community and Kazakhstan, which shall enter into force on the date of your reply.

Please accept, Sir, the assurance of my highest consideration,

On behalf of the European Community



B. Letter from the Government of the Republic of Kazakhstan

Sir,

I have the honour to acknowledge receipt of your letter of which reads as follows:

1. I have the honour to refer to the Agreement between the European Coal and Steel Community and the Government of the Republic of Kazakhstan on trade in certain steel products concluded on 22 July 2002. Furthermore, consultations took place with regard to problems concerning certain steel products which fall outside the scope of the abovementioned Agreement.
2. Following these consultations the Parties hereby agree to establish a double-checking system, without quantitative limits, in respect of certain steel products in order to improve transparency and to avoid possible diversions of trade. The details of the double-checking system are annexed to this letter.
3. This Exchange of Letters is without prejudice to the application of the relevant provisions of the bilateral agreements on trade and trade-related matters, in particular those relating to anti-dumping and safeguard measures.
4. Either Party may at any time propose amendments to the Annex or the Appendices thereto, which shall require the mutual consent of the Parties and shall take effect as agreed by them. Should anti-dumping or safeguard investigations be initiated or measures introduced in the European Community concerning a product under the double-checking system, Kazakhstan will decide whether to exclude the product in question from the double-checking system. Such a decision shall not affect the entry into free circulation of the product in question into the Community.
5. In conclusion, I have the honour to propose that if this letter, the Annex and the Appendices thereto are acceptable to your Government, this letter and your confirmation shall together constitute an agreement between the European Community and Kazakhstan, which shall enter into force on the date of your reply.'

I have the honour to confirm that the above is acceptable to my Government and that your letter, this reply and the attached Annex and Appendices together constitute an agreement, in accordance with your proposal.

Please accept, Sir, the assurance of my highest consideration,

For the Government of the Republic of Kazakhstan



ANNEX

- 1.1. For the period running from the date on which this Agreement is applied between the Parties to 31 December 2004, unless both Parties agree to terminate the system earlier, imports into the Community of the products listed in Appendix I originating in Kazakhstan shall be subject to the presentation of a surveillance document conforming to the model shown in Appendix II issued by the authorities in the Community.
 - 1.2. For the period running from the date on which this Agreement is applied to 31 December 2004, unless both Parties agree to terminate the system earlier, imports into the Community of the products listed in Appendix I and which originate in Kazakhstan shall, in addition, be subject to the issue of an export document by the competent Kazakhstan authorities. The importer must present the original of the export document not later than 31 March of the year following that in which the goods covered by the document were shipped.
 - 1.3. Shipment is considered to have taken place on the date of loading on to the exporting means of transport.
 - 1.4. The export document shall conform to the model shown in Appendix III. It shall be valid for exports throughout the customs territory of the Community.
 - 1.5. Kazakhstan shall notify the Commission of the European Communities of the names and addresses of the appropriate Kazakhstan governmental authorities which are authorised to issue and verify export documents together with specimens of the stamps and signatures they use. Kazakhstan shall also notify the Commission of any change in these particulars.
 - 1.6. The classification of the products covered by this Agreement is based on the tariff and statistical nomenclature of the Community (hereinafter called CN). The origin of the products covered by this Agreement shall be determined in accordance with the rules in force in the Community.
 - 1.7. The competent authorities of the Community undertake to inform Kazakhstan of any changes in the CN in respect of products covered by this Agreement before their date of entry into force in the Community.
 - 1.8. Certain technical provisions on the implementation of the double-checking system are set out in Appendix IV.
 - 2.1. Kazakhstan undertakes to supply the Community with precise statistical information on the export documents issued by the Kazakhstan authorities pursuant to 1.2. Such information shall be transmitted to the Community by the end of the month following the month to which the statistics relate.
 - 2.2. The Community undertakes to supply the Kazakhstan authorities with precise statistical information on surveillance documents issued by Member States in respect of the export documents issued by the Kazakhstan authorities pursuant to 1.1. Such information shall be transmitted to the Kazakhstan authorities by the end of the month following the month to which the statistics relate.
 3. If necessary, at the request of either of the Parties, consultations shall be held on any problems arising from the operation of this Agreement. Such consultations shall be held promptly. Any consultations held under this paragraph shall be approached by both Parties in a spirit of cooperation and with a desire to reconcile the difference between them.
 4. Any notices to be given hereunder shall be given:
 - in respect of the Community, to the Commission of the European Communities,
 - in respect of Kazakhstan, to the Mission of the Republic of Kazakhstan to the European Communities.
-

*Appendix I***List of products subject to double-checking without quantitative limits**

KAZAKHSTAN

ex 7211 23 30 (TARIC code 7211 23 30 99)
ex 7211 23 80 (TARIC code 7211 23 80 99)
ex 7211 29 00 (TARIC code 7211 29 00 91)
ex 7211 29 00 (TARIC code 7211 29 00 99)
ex 7211 90 00 (TARIC code 7211 90 00 90)
ex 7211 23 20 (TARIC code 7211 23 20 90)
ex 7225 19 10 (TARIC code 7225 19 10 00)
ex 7225 19 90 (TARIC code 7225 19 90 00)
ex 7226 19 10 (TARIC code 7226 19 10 00)
ex 7226 19 80 (TARIC code 7226 19 80 10)
ex 7226 19 80 (TARIC code 7226 19 80 90)
ex 7226 11 00 (TARIC code 7226 11 00 90)

Appendix II

EUROPEAN COMMUNITY SURVEILLANCE DOCUMENT

1	1. Consignee (name, full address, country, VAT number)	2. Issue number	
Holder's copy		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
		5. Declarant/representative as applicable (name and full address)	
	1		6. Country of origin (and geonomenclature code)
		7. Country of consignment (and geonomenclature code)	
		8. Last day of validity	
9. Description of goods		10. CN code and category	
		11. Quantity in kilograms (net mass) or in additional units	
		12. Value in euro, cif at Community frontier	
13. Additional remarks			
14. Competent authority's endorsement Date : Signature: Stamp:			

15. ATTRIBUTIONS

Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof

16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto

EUROPEAN COMMUNITY SURVEILLANCE DOCUMENT

2	1. Consignee (name, full address, country, VAT number)	2. Issue number	
Copy for the issuing authority		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
	5. Declarant/representative as applicable (name and full address)	6. Country of origin (and geonomenclature code)	
		7. Country of consignment (and geonomenclature code)	
2		8. Last day of validity	
9. Description of goods		10. CN code and category	
		11. Quantity in kilograms (net mass) or in additional units	
		12. Value in euro, cif at Community frontier	
13. Additional remarks			
14. Competent authority's endorsement Date : Signature: Stamp:			

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto

Appendix III

1. Exporter (name, full address, country)	ORIGINAL		2. No	
	3. Year		4. Product group	
	EXPORT DOCUMENT (steel products)			
6. Country of origin				
5. Consignee (name, full address, country)	9. Supplementary details			
8. Place and date of shipment – means of transport				
10. Description of goods - manufacturer	11. CN code	12. Quantity ⁽¹⁾	13. Fob value ⁽²⁾	
14. CERTIFICATION BY THE COMPETENT AUTHORITY				
15. Competent authority (name, full address, country)	At on (Signature) (Stamp)			

⁽¹⁾ Show net weight (kg) and also quantity in the unit prescribed where other than net weight.
⁽²⁾ In the currency of the sale contract.

1. Exporter (name, full address, country)	COPY		2. No	
	3. Year		4. Product group	
5. Consignee (name, full address, country)	EXPORT DOCUMENT (steel products)			
	6. Country of origin		7. Country of destination	
8. Place and date of shipment – means of transport	9. Supplementary details			
10. Description of goods - manufacturer		11. CN code	12. Quantity ⁽¹⁾	13. Fob value ⁽²⁾
14. CERTIFICATION BY THE COMPETENT AUTHORITY				
15. Competent authority (name, full address, country)		At on		
		(Signature) (Stamp)		

⁽¹⁾ Show net weight (kg) and also quantity in the unit prescribed where other than net weight.

⁽²⁾ In the currency of the sale contract.

Appendix IV

KAZAKHSTAN

Technical provisions on the implementation of the double-checking system

1. The export documents shall measure 210 × 297 mm. The paper used shall be white writing paper, sized, not containing mechanical pulp, and weighing not less than 25 g/m². They shall be made out in English. If they are completed by hand, entries must be in ink and in printed script. These documents may comprise additional copies duly indicated as such. If the documents have several copies only the top copy is the original. This copy shall be clearly marked as 'original' and other copies as 'copies'. Only the original shall be accepted by the competent authorities of the Community as being valid for the control of export to the Community in accordance with the provisions of the double-checking system.
2. Each document shall bear a standardised serial number, whether or not printed, by which it can be identified. This number shall be composed of the following elements:
 - two letters identifying the exporting country as follows: KZ = Kazakhstan,
 - two letters identifying the intended Member State of customs clearance as follows:
 - BE = Belgium
 - DK = Denmark
 - DE = Germany
 - EL = Greece
 - ES = Spain
 - FR = France
 - IE = Ireland
 - IT = Italy
 - LU = Luxembourg
 - NL = Netherlands
 - AT = Austria
 - PT = Portugal
 - FI = Finland
 - SE = Sweden
 - GB = United Kingdom
 - CZ = Czech Republic (*)
 - EE = Estonia (*)
 - CY = Cyprus (*)
 - LV = Latvia (*)
 - LT = Lithuania (*)
 - HU = Hungary (*)
 - MT = Malta (*)
 - PL = Poland (*)
 - SI = Slovenia (*)
 - SK = Slovak Republic (*)
 - a one-digit number identifying the year, corresponding to the last figure in the respective year, e.g. '4' for 2004,
 - a two-digit number from 01 to 99, identifying the particular issuing office concerned in the exporting country,
 - a five-digit number running consecutively from 00001 to 99 999 allocated to the intended Member State of customs clearance.

(*) These references of these Member States and the associated codes shall apply as of their accession to the European community.

3. The export documents shall be valid for the calendar year during which they are issued, as shown in Box No 3 of the export document.
 4. Since the importer needs to present the original export document when requesting an import document, export documents should, as far as possible, be issued in respect of individual commercial transactions, not global contracts.
 5. Kazakhstan need not show price information on the export document, but that information is available to the Commission authorities on request.
 6. Export documents may be issued after the shipment of the products to which they relate. In such cases they must bear the endorsement 'issued retrospectively'.
 7. In the event of a theft, loss or destruction of an export document, the exporter may apply to the competent governmental authority which issued the document for a duplicate to be made out on the basis of the export documents in his possession. The duplicate of any such document so issued shall bear the endorsement 'duplicate'. The duplicate shall bear the date of the original export document.
 8. The competent authorities of the Community shall be informed immediately of the withdrawal or modification of any export documents already issued and, where relevant, of the basis for such action.
-

COUNCIL DECISION
of 29 April 2004
on the conclusion of the Framework Agreement between the European Community and the
European Space Agency
(2004/578/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 170, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Commission has negotiated on behalf of the Community an Agreement with the European Space Agency.
- (2) The Agreement was signed on behalf of the Community on 25 November 2003 subject to its possible conclusion at a later date.
- (3) This Agreement should be approved,

Article 1

The Agreement between the European Community and the European Space Agency is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the Community the act of approval, as provided for in Article 12(1) of the Framework Agreement, in order to express the consent of the Community to be bound.

Done at Luxembourg, 29 April 2004.

For the Council
The President
M. McDOWELL

⁽¹⁾ Opinion delivered on 20 April 2004 (not yet published in the Official Journal).

FRAMEWORK AGREEMENT

between the European Community and the European Space Agency

THE EUROPEAN COMMUNITY,

and

THE EUROPEAN SPACE AGENCY,

(hereafter also collectively referred to as the Parties)

WHEREAS the European Community and the European Space Agency (ESA) consider that closer cooperation between them will strengthen the peaceful use of space as an important tool to contribute to European cohesion and economic growth and will allow space-related activities to be brought to a wider political, economic, scientific, environmental and social framework more directly at the service of European citizens;

WHEREAS each Party is confident that such cooperation will create added value for the benefit of European citizens;

WHEREAS the Parties recognise that they have specific complementary and mutually reinforcing strengths and are committed to cooperating in an efficient and mutually beneficial manner and to avoiding any unnecessary duplication of effort;

WHEREAS space technology has become a unique and critical technology enabling the Community to address and achieve a large number of the goals of its policies, notably related to information society, transport and environmental protection;

HAVING REGARD TO the various Resolutions adopted by the Council of the European Union ⁽¹⁾ and by the Council of the European Space Agency ⁽²⁾ and to the Council of the European Union Conclusions of 10 December 2001, the said two Councils have encouraged the establishment of a framework for cooperation between the Parties, while maintaining their respective distinct tasks and responsibilities;

WHEREAS Decision No 676/2002 of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) is relevant, given that any space systems or applications will depend on the availability of radio frequencies,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose of the cooperation

The aim of this Framework Agreement is to address the following issues:

1. The coherent and progressive development of an overall European Space Policy. Specifically, this policy shall seek to link demand for services and applications using space systems in support of the Community policies with the supply of space systems and infrastructure necessary to meet that demand.
2. The establishment of a framework providing a common basis and appropriate operational arrangements for an efficient and mutually beneficial cooperation between the Parties with regard to space activities in accordance with their respective tasks and responsibilities and fully respecting their institutional settings and operational frameworks. The cooperation under this Framework Agreement between the Parties aims at:
 - (a) securing Europe's independent and cost-effective access to space and the development of other fields of strategic

interest necessary for the independent use and application of space technologies in Europe;

- (b) ensuring that the overall European Space Policy takes into particular account the general policies pursued by the European Community;
- (c) supporting Community policies by using space technologies and space infrastructures where appropriate and promoting the use of space systems in support of sustainable development, economic growth and employment;
- (d) optimising the use of expertise and available resources and contributing to the consolidation of the close cooperation between the European Community and ESA, thereby linking the demand and supply of space systems within a strategic partnership;
- (e) achieving greater coherence and synergy of research and development in order to optimise the use of resources available in Europe, including the network of technical centres.

⁽¹⁾ The EU Council Resolutions of 22 June 1998 (OJ C 224, 17.7.1998, p. 1), 2 December 1999 (OJ C 375, 24.12.1999, p. 1), 16 November 2000, (OJ C 371, 23.12. 2000, p. 2).

⁽²⁾ The ESA resolutions of: 23 June 1998: ESA/C/CXXXVI/Res.1 (Final), 11 May 1999: ESA/C-M/CXLI/Res. 1 (Final); ESA/C(2000)67; ESA/C-M/CXLVIII/Res. 1 (Final), 16 November 2000, referring to the European Strategy for Space; ESA/C-M/CLIV/Res. 1 (Final), 15 November 2001; ESA/C-M/CLXV/Res.3 (Final), 27 May 2003.

*Article 2***Principles of cooperation**

1. The cooperation between the Parties shall be pursued in the light of the common objectives as defined under Article 1, with due regard to their respective tasks and responsibilities and their respective institutional settings and operational frameworks.
2. Each Party shall take the decisions necessary for the implementation of this Agreement, as described in Article 4, in accordance with its own internal procedures.
3. Bearing in mind the nature of space technologies and infrastructures, both Parties, in implementing this Agreement, shall take into account their security dimension.

*Article 3***Fields of cooperation**

1. The Parties have identified the following specific fields of cooperation:
 - science,
 - technology,
 - earth observation,
 - navigation,
 - communication by satellite,
 - human space flight and micro-gravity,
 - launchers,
 - spectrum policy related to space.
2. The Parties may identify and develop new fields for cooperation.

*Article 4***Implementation**

1. For the implementation of this Agreement each Party shall undertake, in compliance with its own prerogatives, legal instruments and procedures, such actions as are required to achieve the purpose of the cooperation provided for in Article 1.
2. Such actions shall aim at fostering the utilisation of space research and development and space applications in the public and private sectors, the promotion of the adoption of legislative, regulatory and standardisation measures in this sector, the funding and carrying out of joint initiatives pursuant to Article 5.
3. Each Party shall refer to the competencies and capabilities of the other, whenever an action is necessary, to pursue the purpose of the cooperation, and shall provide the other Party with expertise and support in its own specific fields of competence.

*Article 5***Joint initiatives**

1. Subject to paragraph 3, the joint initiatives to be carried out by the Parties may take, without being limited to, the following forms:
 - (a) the management by the ESA of European Community space-related activities in accordance with the rules of the European Community;
 - (b) the participation by the European Community in an optional programme of the European Space Agency, in accordance with Article V.I.b of the ESA Convention;
 - (c) the carrying out of activities which are coordinated, implemented and funded by both Parties;
 - (d) the creation by the Parties of bodies charged with pursuing initiatives complementary to research and development activities, such as the provision of services, the promotion of operators formation and the management of infrastructures;
 - (e) the carrying out of studies, the organisation of scientific seminars, conferences, symposia and workshops, the training of scientists and technical experts, the exchange or sharing of equipment and materials, the access to facilities, and the support of visits and exchanges of scientists, engineers or other specialists.
2. When the implementation of a joint initiative requires a detailed definition, it shall be provided for in specific arrangements to be entered into between the Parties. Whenever applicable, such specific arrangements should include at least:
 - (a) the overall mission definition;
 - (b) a description of the objectives;
 - (c) a consolidated set of user requirements;
 - (d) a work plan;
 - (e) an appropriate management scheme;
 - (f) the role and financial implications of the Parties;
 - (g) an industrial policy scheme;
 - (h) budgetary aspects;
 - (i) rules of intellectual property rights, rules of ownership including the transfer of ownership, the implementation principles including voting rights, and the participation by third Parties.

Both Parties shall work out guiding principles in addition to these specific arrangements as soon as possible.

3. Any financial contribution made by one Party in accordance with a specific arrangement shall be governed by the financial provisions applicable to that Party. Under no circumstances shall the European Community be bound to apply the rule of 'geographical distribution' contained in the ESA Convention and specially in Annex V thereto. Compliance with the rules relating to financial control and auditing of the Party contributing to the joint initiatives, or of both Parties in case of joint contribution, shall apply to any joint activity.

*Article 6***Consultation and information**

1. The Parties shall consult each other regularly in order to coordinate their activities to the fullest extent. Each Party shall inform the other of any initiatives within its own decision-making process, in the fields of cooperation under Article 3, which may be of interest to the other Party.
2. The Parties shall exchange all information at their disposal which may be required for the implementation of this Agreement, subject to their respective rules.
3. Except when otherwise provided, the Parties shall not disclose any information exchanged in connection with this Agreement to any persons other than those employed by them or officially entitled to handle such information nor shall they use it for commercial purposes. Such disclosure shall extend only so far as may be necessary for the purpose of this Agreement set out in Article 1 and shall be in strict confidence.

*Article 7***External dimension of the cooperation**

1. Each Party shall inform the other of its activities of an international dimension which may be of interest to the other Party.
2. Whenever appropriate a Party may, in relation to any matters relevant to its international activities, consult the other Party.
3. Once a specific arrangement has been concluded between the parties in accordance with Article 5, the external aspects of this joint activity vis-à-vis third parties shall be pursued jointly by the parties in accordance with that specific arrangement.

*Article 8***Coordination and facilitation of cooperative activities**

1. The coordination and facilitation of cooperative activities under this Agreement shall be accomplished by regular joint and concomitant meetings of the Council of the European Union and of the Council of ESA at ministerial level (Space Council).
2. The objectives of the joint and concomitant meetings shall include the following:
 - (a) providing orientations supporting the achievement of the objectives of this Agreement and identifying actions required;
 - (b) making recommendations, in particular related to the main elements of the specific arrangements;
 - (c) advising the parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
 - (d) reviewing the effective and efficient functioning of this Agreement.

3. A Secretariat shall assist the concomitant meetings and shall elaborate the initiatives deriving from the implementation of this Agreement. The Secretariat shall implement the guidelines provided by the concomitant meetings of the two Councils. The Secretariat shall establish its own rules of procedure and be composed of officials of the Commission of the European Communities and of the ESA Executive. The Parties shall undertake, in accordance with their respective rules and procedures, to contribute to the required administrative support.

4. Without prejudice to the Parties' internal decision-making procedures, the Secretariat shall consult on a regular and informal basis high-level representatives of the Member States of the European Community and of the European Space Agency, with the purpose of reaching common understanding on issues related to the implementation of this Agreement.

*Article 9***Exchange of personnel**

1. The Parties may second members of their staff to each other for specified periods in order to share expertise and develop mutual understanding.
2. Rules for the implementation of this Article shall be established by the Secretariat, as referred to in Article 8, and be agreed to in the form of a specific arrangement under this Framework Agreement.

*Article 10***Public relations**

1. The Parties undertake to coordinate in advance their public-relations, press and media activities concerning any joint public activities relating to subjects covered by this Agreement.
2. In all relevant media activities, the role of each Party in this Agreement shall be clearly identified and mentioned.
3. The detailed arrangements for implementing public relations activities provided for in this Article shall be adopted jointly.

*Article 11***Settlement of disputes**

1. Any disputes which may arise between the Parties relating to the interpretation or application of this Agreement shall be submitted for direct negotiations within the Secretariat.
2. If it is not possible to settle the dispute in accordance with paragraph 1, either of the two Parties may notify the other of the appointment of an arbitrator. The other Party shall then appoint its own arbitrator within a period of two months. The arbitrators shall then appoint a third arbitrator within one month.

3. The arbitrators' decisions shall be taken by majority vote.
4. The award of the Arbitration Tribunal shall be final and binding on the Parties.
5. Each Party to the dispute shall take the appropriate steps required to implement the arbitrators' decisions.

Article 12

Entry into force, duration, amendments and termination

1. This Agreement shall enter into force on the date of the last written communication by which the Parties notify each other that their respective internal procedures necessary for its entry into force have been completed.
2. This Agreement shall remain in force for four years from the date of its entry into force. It shall be automatically extended for subsequent periods of four years unless either of the Parties notifies the other Party in writing, at least one year before the expiry of any of its periods of duration, of its intention to terminate it.

This Agreement shall terminate upon the expiry of twelve months after the receipt of written notification by one Party sent by the other Party.

3. The termination or expiry of this Agreement shall not affect the validity of the specific arrangements entered into between the Parties in accordance with Article 5, which shall remain in full force and effect until the terms for their execution or termination take place.

4. This Agreement shall be amended only by written agreement between the Parties.

5. This Agreement is not intended to modify or supersede any previous agreements entered into between the Parties, which shall remain in full force and effect in accordance with their own terms and provisions.

Article 13

Signature and authenticity

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Norwegian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

Hecho en Bruselas, el veinticinco de noviembre del dos mil tres.

Undærdiget i Bruxelles den femogtyvende november to tusind og tre.

Geschehen zu Brüssel am fünfundzwanzigsten November zweitausendunddrei.

Έγινε στις Βρυξέλλες, στις είκοσι πέντε Νοεμβρίου δύο χιλιάδες τρία.

Done at Brussels on the twenty-fifth day of November in the year two thousand and three.

Fait à Bruxelles, le vingt-cinq novembre deux mille trois.

Fatto a Bruxelles, addì venticinque novembre duemilatre.

Gedaan te Brussel, de vijfentwintigste november tweeduizenddrie.

Utferdiget i Brussel den tjuefemte november totusenogtre.

Feito em Bruxelas, em vinte e cinco de Novembro de dois mil e três.

Tehty Brysselissä kahdentenakymmenentenäviidentenä päivänä marraskuuta vuonna kaksituhattakolme.

Utferdiget i Brussel den tjuefemte november totusenogtre.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

Per la Comunità europea

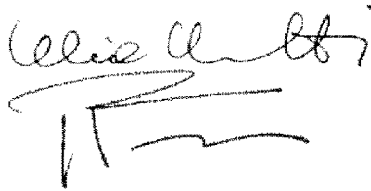
Voor de Europese Gemeenschap

For Den europeiske union

Pela Comunidade Europeia

Euroopan yhteisön puolesta

För Europeiska gemenskapen



Por la Agencia Espacial Europea

For Den Europæiske Rumorganisation

Für die Europäische Weltraumorganisation

Για την Ευρωπαϊκή Υπηρεσία Διαστήματος

For the European Space Agency

Euroopan avaruusjärjestön puolesta

Pour l'Agence spatiale européenne

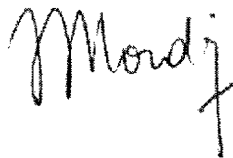
Per l'Agenzia spaziale europea

Voor het Europees Ruimteagentschap

For Den europeiske romorganisasjon

Pela Agência Espacial Europeia

För Europeiska rymdorganisationen



COUNCIL DECISION

of 29 April 2004

**on the conclusion, on behalf of the European Community, of the United Nations Convention
Against Transnational Organised Crime**

(2004/579/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47, 55, 95 and 179, in conjunction with Articles 300(2) first sentence and 300(3) first subparagraph thereof;

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The elements of the Convention which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community.
- (2) The Council instructed the Commission to negotiate the accession of the Community to the Convention in question.
- (3) Negotiations were successfully concluded and the resulting instrument has been signed by the Community on 12 December 2000 in accordance with Decision 2001/87/EC ⁽²⁾.
- (4) Some Member States are parties to the Convention while the ratification process is under way in other Member States.
- (5) The conditions permitting the Community to deposit the instrument of approval provided for in Article 36(3) of the Convention have been fulfilled.
- (6) The Convention should be approved to enable the Community to become a party to it within the limits of its competence.
- (7) The Community shall, when depositing the instrument of approval, also deposit a declaration on the extent of the European Community's competence with respect to matters governed by the Convention under Article 36(3) thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The United Nations Convention against transnational organised crime is hereby approved on behalf of the Community.

The text of the Convention is set out in Annex I.

Article 2

The President of the Council is authorised to designate the person(s) empowered to deposit the Community's instrument of formal confirmation in order to bind the Community. The instrument of formal confirmation shall comprise a declaration of competence according to Article 36(3) of the Convention, as set out in Annex II. It shall also contain a Statement as set out in Annex III.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 29 April 2004.

For the Council
The President
M. McDOWELL

⁽¹⁾ Opinion delivered on 13 January 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 30, 1.2.2001, p. 44.

ANNEX I

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME

Article 1

Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively.

Article 2

Use of terms

For the purposes of this Convention:

- (a) 'organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) 'serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) 'structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) 'property' shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) 'proceeds of crime' shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) 'freezing' or 'seizure' shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) 'confiscation', which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) 'predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) 'controlled delivery' shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authori-

ties, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

- (j) 'regional economic integration organisation' shall mean an organisation constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to 'States Parties' under this Convention shall apply to such organisations within the limits of their competence.

Article 3

Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

- (a) the offences established in accordance with Articles 5, 6, 8 and 23 of this Convention; and
- (b) serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organised criminal group.

2. For the purpose of paragraph 1 of this Article, an offence is transnational in nature if:

- (a) it is committed in more than one State;
- (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) it is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or
- (d) it is committed in one State but has substantial effects in another State.

Article 4

Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5

Criminalisation of participation in an organised criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - (i) agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organised criminal group;
 - (ii) conduct by a person who, with knowledge of either the aim and general criminal activity of an organised criminal group or its intention to commit the crimes in question, takes an active part in:
 - a. criminal activities of the organised criminal group;
 - b. other activities of the organised criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
- (b) organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organised criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this Article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organised criminal group for purposes of the offences established in accordance with paragraph 1(a)(i) of this article shall ensure that their domestic law covers all serious crimes involving organised criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1(a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6

Criminalisation of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - (b) subject to the basic concepts of its legal system:
 - (i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - (ii) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Article.
2. For purposes of implementing or applying paragraph 1 of this Article:
- (a) each State Party shall seek to apply paragraph 1 of this Article to the widest range of predicate offences;
 - (b) each State Party shall include as predicate offences all serious crime as defined in Article 2 of this Convention and the offences established in accordance with Articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organised criminal groups;
 - (c) for the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this Article had it been committed there;
 - (d) each State Party shall furnish copies of its laws that give effect to this Article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
 - (e) if required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this Article do not apply to the persons who committed the predicate offence;
 - (f) knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this Article may be inferred from objective factual circumstances.

*Article 7***Measures to combat money-laundering**

1. Each State Party:
 - (a) shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasise requirements for customer identification, record-keeping and the reporting of suspicious transactions;
 - (b) shall, without prejudice to Articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.
2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. In establishing a domestic regulatory and supervisory regime under the terms of this Article, and without prejudice to any other Article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organisations against money-laundering.
4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

*Article 8***Criminalisation of corruption**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 - (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself

or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this Article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this Article.
4. For the purposes of paragraph 1 of this Article and Article 9 of this Convention, 'public official' shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

*Article 9***Measures against corruption**

1. In addition to the measures set forth in Article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

*Article 10***Liability of legal persons**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organised criminal group and for the offences established in accordance with Articles 5, 6, 8 and 23 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with Articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximise the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. In the case of offences established in accordance with Articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12

Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
 - (b) property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this Article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this Article and Article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this Article shall not be construed to prejudice the rights of *bona fide* third parties.

9. Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 12(1), of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - (a) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - (b) submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with Article 12(1), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 12(1), situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 12(1), of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this Article, by the requested State Party.

3. The provisions of Article 18 of this Convention are applicable, *mutatis mutandis*, to this Article. In addition to the information specified in Article 18(15), requests made pursuant to this Article shall contain:

- (a) in the case of a request pertaining to paragraph 1(a) of this Article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
- (b) in the case of a request pertaining to paragraph 1(b) of this Article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
- (c) in the case of a request pertaining to paragraph 2 of this Article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this Article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this Article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this Article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this Article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to Articles 12 or 13(1), of this Convention shall be

disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with Article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with Articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

- (a) contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with Article 30(2)(c), of this Convention and to intergovernmental bodies specialising in the fight against organised crime;
- (b) sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with Articles 5, 6, 8 and 23 of this Convention when:

- (a) The offence is committed in the territory of that State Party; or
- (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to Article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) the offence is committed against a national of that State Party;
- (b) the offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
- (c) the offence is:
 - (i) one of those established in accordance with Article 5(1), of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
 - (ii) one of those established in accordance with Article 6(1)(b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with Article 6(1)(a)(i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of Article 16(10), of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this Article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16

Extradition

1. This Article shall apply to the offences covered by this Convention or in cases where an offence referred to in Article 3(1)(a) or (b), involves an organised criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this Article, the requested State Party may apply this Article also in respect of the latter offences.

3. Each of the offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this Article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) at the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) if they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this Article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognise offences to which this Article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this Article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this Article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17

Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in Article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in Article 3(1)(a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organised criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:

- (a) taking evidence or statements from persons;
- (b) effecting service of judicial documents;
- (c) executing searches and seizures, and freezing;
- (d) examining objects and sites;
- (e) providing information, evidentiary items and expert evaluations;
- (f) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) facilitating the voluntary appearance of persons in the requesting State Party;
- (i) any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this Article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this Article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this Article shall apply to requests made pursuant to this Article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this Article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this Article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) the person freely gives his or her informed consent;
- (b) the competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this Article:

- (a) the State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorised by the State Party from which the person was transferred;
- (b) the State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) the State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) the person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this Article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be

notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organisation, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) where possible, the identity, location and nationality of any person concerned; and
- (f) the purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) if the request is not made in conformity with the provisions of this Article;
- (b) if the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;
- (c) if the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) if it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this Article or postponing its execution pursuant to paragraph 25 of this Article, the requested State Party shall consult with the requesting State Party to consider whether assistance may

be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this Article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of 15 consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

- (a) shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
- (b) may, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this Article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organised crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this Article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21

Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22

Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23

Criminalisation of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24

Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this Article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

- (a) establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
- (b) providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this Article.

4. The provisions of this Article shall also apply to victims in so far as they are witnesses.

Article 25

Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

*Article 26***Measures to enhance cooperation with law enforcement authorities**

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organised criminal groups:

(a) to supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

- (i) the identity, nature, composition, structure, location or activities of organised criminal groups;
- (ii) links, including international links, with other organised criminal groups;
- (iii) offences that organised criminal groups have committed or may commit;

(b) to provide factual, concrete help to competent authorities that may contribute to depriving organised criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in Article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this Article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this Article.

*Article 27***Law enforcement cooperation**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

- (a) to enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
- (b) to cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

- (i) the identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
- (ii) the movement of proceeds of crime or property derived from the commission of such offences;
- (iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
- (c) to provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
- (d) to facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
- (e) to exchange information with other States Parties on specific means and methods used by organised criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
- (f) to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organisations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organised crime committed through the use of modern technology.

*Article 28***Collection, exchange and analysis of information on the nature of organised crime**

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organised crime in its territory, the circumstances in which organised crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organised criminal activities with each other and through international and regional organisations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organised crime and making assessments of their effectiveness and efficiency.

Article 29

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

- (a) methods used in the prevention, detection and control of the offences covered by this Convention;
- (b) routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
- (c) monitoring of the movement of contraband;
- (d) detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
- (e) collection of evidence;
- (f) control techniques in free trade zones and free ports;
- (g) modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
- (h) methods used in combating transnational organised crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
- (i) methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this Article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the

extent necessary, efforts to maximise operational and training activities within international and regional organisations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organised crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organisations:

- (a) to enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organised crime;
- (b) to enhance financial and material assistance to support the efforts of developing countries to fight transnational organised crime effectively and to help them implement this Convention successfully;
- (c) to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
- (d) to encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this Article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organised crime.

*Article 31***Prevention**

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organised crime.
2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organised criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:
 - (a) the strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
 - (b) the promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
 - (c) the prevention of the misuse by organised criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
 - (d) the prevention of the misuse of legal persons by organised criminal groups; such measures could include:
 - (i) the establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
 - (ii) the introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
 - (iii) the establishment of national records of persons disqualified from acting as directors of legal persons; and
 - (iv) the exchange of information contained in the records referred to in subparagraphs (d)(i) and (iii) of this paragraph with the competent authorities of other States Parties.
3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.
4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organised criminal groups.
5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organised crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organised crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organisations in promoting and developing the measures referred to in this Article. This includes participation in international projects aimed at the prevention of transnational organised crime, for example by alleviating the circumstances that render socially marginalised groups vulnerable to the action of transnational organised crime.

*Article 32***Conference of the Parties to the Convention**

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organised crime and to promote and review the implementation of this Convention.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this Article (including rules concerning payment of expenses incurred in carrying out those activities).
3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this Article, including:
 - (a) facilitating activities by States Parties under Articles 29, 30 and 31 of this Convention, including by encouraging the mobilisation of voluntary contributions;
 - (b) facilitating the exchange of information among States Parties on patterns and trends in transnational organised crime and on successful practices for combating it;
 - (c) cooperating with relevant international and regional organisations and non-governmental organisations;
 - (d) reviewing periodically the implementation of this Convention;
 - (e) making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3 (d) and (e) of this Article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

*Article 33***Secretariat**

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:
 - (a) assist the Conference of the Parties in carrying out the activities set forth in Article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
 - (b) upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in Article 32(5), of this Convention; and
 - (c) ensure the necessary coordination with the secretariats of relevant international and regional organisations.

*Article 34***Implementation of the Convention**

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. The offences established in accordance with Articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organised criminal group as described in Article 3(1), of this Convention, except to the extent that Article 5 of this Convention would require the involvement of an organised criminal group.
3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organised crime.

*Article 35***Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organisation of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this Article. The other States Parties shall not be bound by

paragraph 2 of this Article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 36***Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organisations provided that at least one Member State of such organisation has signed this Convention in accordance with paragraph 1 of this Article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organisation may deposit its instrument of ratification, acceptance or approval if at least one of its Member States has done likewise. In that instrument of ratification, acceptance or approval, such organisation shall declare the extent of its competence with respect to the matters governed by this Convention. Such organisation shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Convention is open for accession by any State or any regional economic integration organisation of which at least one Member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organisation shall declare the extent of its competence with respect to matters governed by this Convention. Such organisation shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 37***Relation with protocols**

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organisation must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

*Article 38***Entry into force**

1. This Convention shall enter into force on the 19th day after the date of deposit of the 40th instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by Member States of such organisation.

2. For each State or regional economic integration organisation ratifying, accepting, approving or acceding to this Convention after the deposit of the 40th instrument of such action, this Convention shall enter into force on the 30th day after the date of deposit by such State or organisation of the relevant instrument.

*Article 39***Amendment**

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organisations, in matters within their competence, shall exercise their right to vote under this Article with a number of votes equal to the number of their Member States that are Parties to this Convention. Such organisations shall not exercise their right to vote if their Member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this Article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this Article shall enter into force in respect of a State Party 90 days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

*Article 40***Denunciation**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organisation shall cease to be a Party to this Convention when all of its Member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this Article shall entail the denunciation of any protocols thereto.

*Article 41***Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed this Convention.

CONVENTION DES NATIONS UNIES CONTRE LA CRIMINALITÉ TRANSNATIONALE ORGANISÉE*Article premier***Objet**

L'objet de la présente convention est de promouvoir la coopération afin de prévenir et de combattre plus efficacement la criminalité transnationale organisée.

*Article 2***Terminologie**

Aux fins de la présente convention:

- a) l'expression 'groupe criminel organisé' désigne un groupe structuré de trois personnes ou plus existant depuis un certain temps et agissant de concert dans le but de commettre une ou plusieurs infractions graves ou infractions établies conformément à la présente convention, pour en tirer, directement ou indirectement, un avantage financier ou un autre avantage matériel;
- b) l'expression 'infraction grave' désigne un acte constituant une infraction passible d'une peine privative de liberté dont le maximum ne doit pas être inférieur à quatre ans ou d'une peine plus lourde;
- c) l'expression 'groupe structuré' désigne un groupe qui ne s'est pas constitué au hasard pour commettre immédiatement une infraction et qui n'a pas nécessairement de rôles formellement définis pour ses membres, de continuité dans sa composition ou de structure élaborée;
- d) le terme 'biens' désigne tous les types d'avoirs, corporels ou incorporels, meubles ou immeubles, tangibles ou intangibles, ainsi que les actes juridiques ou documents attestant la propriété de ces avoirs ou les droits y relatifs;
- e) l'expression 'produit du crime' désigne tout bien provenant directement ou indirectement de la commission d'une infraction ou obtenu directement ou indirectement en la commettant;
- f) les termes 'gel' ou 'saisie' désignent l'interdiction temporaire du transfert, de la conversion, de la disposition ou du mouvement de biens, ou le fait d'assumer temporairement la garde ou le contrôle de biens sur décision d'un tribunal ou d'une autre autorité compétente;
- g) le terme 'confiscation' désigne la dépossession permanente de biens sur décision d'un tribunal ou d'une autre autorité compétente;
- h) l'expression 'infraction principale' désigne toute infraction à la suite de laquelle un produit est généré, qui est susceptible de devenir l'objet d'une infraction définie à l'article 6 de la présente convention;
- i) l'expression 'livraison surveillée' désigne la méthode consistant à permettre le passage par le territoire d'un ou de plusieurs États d'expéditions illicites ou suspectées de l'être, au su et sous le contrôle des autorités compétentes de ces

États, en vue d'enquêter sur une infraction et d'identifier les personnes impliquées dans sa commission;

- j) l'expression 'organisation régionale d'intégration économique' désigne toute organisation constituée par des États souverains d'une région donnée, à laquelle ses États membres ont transféré des compétences en ce qui concerne les questions régies par la présente convention et qui a été dûment mandatée, conformément à ses procédures internes, pour signer, ratifier, accepter, approuver ladite convention ou y adhérer; les références dans la présente convention aux 'États parties' sont applicables à ces organisations dans la limite de leur compétence.

*Article 3***Champ d'application**

1. La présente convention s'applique, sauf disposition contraire, à la prévention, aux enquêtes et aux poursuites concernant:

- a) les infractions établies conformément aux articles 5, 6, 8 et 23 de la présente convention, et
- b) les infractions graves telles que définies à l'article 2 de la présente convention;

lorsque ces infractions sont de nature transnationale et qu'un groupe criminel organisé y est impliqué.

2. Aux fins du paragraphe 1, une infraction est de nature transnationale si:

- a) elle est commise dans plus d'un État;
- b) elle est commise dans un État mais qu'une partie substantielle de sa préparation, de sa planification, de sa conduite ou de son contrôle a lieu dans un autre État;
- c) elle est commise dans un État mais implique un groupe criminel organisé qui se livre à des activités criminelles dans plus d'un État, ou
- d) elle est commise dans un État mais a des effets substantiels dans un autre État.

*Article 4***Protection de la souveraineté**

1. Les États parties exécutent leurs obligations au titre de la présente convention d'une manière compatible avec les principes de l'égalité souveraine et de l'intégrité territoriale des États et avec celui de la non-intervention dans les affaires intérieures d'autres États.

2. Aucune disposition de la présente convention n'habilite un État partie à exercer sur le territoire d'un autre État une compétence et des fonctions qui sont exclusivement réservées aux autorités de cet autre État par son droit interne.

Article 5

Incrimination de la participation à un groupe criminel organisé

1. Chaque État partie adopte les mesures législatives et autres nécessaires pour conférer le caractère d'infraction pénale, lorsque commis intentionnellement:

a) à l'un ou l'autre des actes suivants, ou aux deux, en tant qu'infractions pénales distinctes de celles impliquant une tentative d'activité criminelle ou sa consommation:

i) au fait de s'entendre avec une ou plusieurs personnes en vue de commettre une infraction grave à une fin liée directement ou indirectement à l'obtention d'un avantage financier ou autre avantage matériel et, lorsque le droit interne l'exige, impliquant un acte commis par un des participants en vertu de cette entente ou impliquant un groupe criminel organisé;

ii) à la participation active d'une personne ayant connaissance, soit du but et de l'activité criminelle générale d'un groupe criminel organisé, soit de son intention de commettre les infractions en question:

a. aux activités criminelles du groupe criminel organisé;

b. à d'autres activités du groupe criminel organisé lorsque cette personne sait que sa participation contribuera à la réalisation du but criminel susmentionné;

b) au fait d'organiser, de diriger, de faciliter, d'encourager ou de favoriser au moyen d'une aide ou de conseils la commission d'une infraction grave impliquant un groupe criminel organisé.

2. La connaissance, l'intention, le but, la motivation ou l'entente visés au paragraphe 1 peuvent être déduits de circonstances factuelles objectives.

3. Les États parties dont le droit interne subordonne l'établissement des infractions visées au paragraphe 1, point a) i), à l'implication d'un groupe criminel organisé veillent à ce que leur droit interne couvre toutes les infractions graves impliquant des groupes criminels organisés. Ces États parties, de même que les États parties dont le droit interne subordonne l'établissement des infractions visées au paragraphe 1, point a) i), à la commission d'un acte en vertu de l'entente, portent cette information à la connaissance du secrétaire général de l'Organisation des Nations unies au moment où ils signent la présente convention ou déposent leurs instruments de ratification, d'acceptation ou d'approbation ou d'adhésion.

Article 6

Incrimination du blanchiment du produit du crime

1. Chaque État partie adopte, conformément aux principes fondamentaux de son droit interne, les mesures législatives et autres nécessaires pour conférer le caractère d'infraction pénale, lorsque l'acte a été commis intentionnellement:

a) i) à la conversion ou au transfert de biens dont celui qui s'y livre sait qu'ils sont le produit du crime, dans le but de

dissimuler ou de déguiser l'origine illicite desdits biens ou d'aider toute personne qui est impliquée dans la commission de l'infraction principale à échapper aux conséquences juridiques de ses actes;

ii) à la dissimulation ou au déguisement de la nature véritable, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété de biens ou de droits y relatifs dont l'auteur sait qu'ils sont le produit du crime;

b) et, sous réserve des concepts fondamentaux de son système juridique:

i) à l'acquisition, à la détention ou à l'utilisation de biens dont celui qui les acquiert, les détient ou les utilise sait, au moment où il les reçoit, qu'ils sont le produit du crime;

ii) à la participation à l'une des infractions établies conformément au présent article ou à toute autre association, entente, tentative ou complicité par fourniture d'une assistance, d'une aide ou de conseils en vue de sa commission.

2. Aux fins de l'application du paragraphe 1:

a) chaque État partie s'efforce d'appliquer le paragraphe 1 à l'éventail le plus large d'infractions principales;

b) chaque État partie inclut dans les infractions principales toutes les infractions graves telles que définies à l'article 2 de la présente convention et les infractions établies conformément à ses articles 5, 8 et 23. S'agissant des États parties dont la législation contient une liste d'infractions principales spécifiques, ceux-ci incluent dans cette liste, au minimum, un éventail complet d'infractions liées à des groupes criminels organisés;

c) aux fins du point b), les infractions principales incluent les infractions commises à l'intérieur et à l'extérieur du territoire relevant de la compétence de l'État partie en question. Toutefois, une infraction commise à l'extérieur du territoire relevant de la compétence d'un État partie ne constitue une infraction principale que lorsque l'acte correspondant est une infraction pénale en vertu du droit interne de l'État où il a été commis et constituerait une infraction pénale en vertu du droit interne de l'État partie appliquant le présent article s'il avait été commis sur son territoire;

d) chaque État partie remet au secrétaire général de l'Organisation des Nations unies une copie de ses lois qui donnent effet au présent article, ainsi qu'une copie de toute modification ultérieurement apportée à ces lois ou une description de ces lois et modifications ultérieures;

e) lorsque les principes fondamentaux du droit interne d'un État partie l'exigent, il peut être disposé que les infractions énoncées au paragraphe 1 ne s'appliquent pas aux personnes qui ont commis l'infraction principale;

f) la connaissance, l'intention ou la motivation, en tant qu'éléments constitutifs d'une infraction énoncée au paragraphe 1, peuvent être déduites de circonstances factuelles objectives.

*Article 7***Mesures de lutte contre le blanchiment d'argent**

1. Chaque État partie:
 - a) institue un régime interne complet de réglementation et de contrôle des banques et institutions financières non bancaires, ainsi que, le cas échéant, des autres entités particulièrement exposées au blanchiment d'argent, dans les limites de sa compétence, afin de prévenir et de détecter toutes formes de blanchiment d'argent, lequel régime met l'accent sur les exigences en matière d'identification des clients, d'enregistrement des opérations et de déclaration des opérations suspectes;
 - b) s'assure, sans préjudice des articles 18 et 27 de la présente convention, que les autorités administratives, de réglementation, de détection et de répression et autres, chargées de la lutte contre le blanchiment d'argent (y compris, quand son droit interne le prévoit, les autorités judiciaires) sont en mesure de coopérer et d'échanger des informations aux niveaux national et international, dans les conditions définies par son droit interne et, à cette fin, envisage la création d'un service de renseignement financier qui fera office de centre national de collecte, d'analyse et de diffusion d'informations concernant d'éventuelles opérations de blanchiment d'argent.
2. Les États parties envisagent de mettre en œuvre des mesures réalisables de détection et de surveillance du mouvement transfrontière d'espèces et de titres négociables appropriés, sous réserve de garanties permettant d'assurer une utilisation correcte des informations et sans entraver d'aucune façon la circulation des capitaux licites. Il peut être notamment fait obligation aux particuliers et aux entreprises de signaler les transferts transfrontières de quantités importantes d'espèces et de titres négociables appropriés.
3. Lorsqu'ils instituent un régime interne de réglementation et de contrôle aux termes du présent article, et sans préjudice de tout autre article de la présente convention, les États parties sont invités à prendre pour lignes directrices les initiatives pertinentes prises par les organisations régionales, interrégionales et multilatérales pour lutter contre le blanchiment d'argent.
4. Les États parties s'efforcent de développer et de promouvoir la coopération mondiale, régionale, sous-régionale et bilatérale entre les autorités judiciaires, les services de détection et de répression et les autorités de réglementation financière en vue de lutter contre le blanchiment d'argent.

*Article 8***Incrimination de la corruption**

1. Chaque État partie adopte les mesures législatives et autres nécessaires pour conférer le caractère d'infraction pénale, lorsque les actes ont été commis intentionnellement:
 - a) au fait de promettre, d'offrir ou d'accorder à un agent public, directement ou indirectement, un avantage indu, pour lui-même ou pour une autre personne ou entité, afin qu'il accomplisse ou s'abstienne d'accomplir un acte dans l'exercice de ses fonctions officielles;

- b) au fait pour un agent public de solliciter ou d'accepter, directement ou indirectement, un avantage indu pour lui-même ou pour une autre personne ou entité, afin d'accomplir ou de s'abstenir d'accomplir un acte dans l'exercice de ses fonctions officielles.

2. Chaque État partie envisage d'adopter les mesures législatives et autres nécessaires pour conférer le caractère d'infraction pénale aux actes visés au paragraphe 1, impliquant un agent public étranger ou un fonctionnaire international. De même, chaque État partie envisage de conférer le caractère d'infraction pénale à d'autres formes de corruption.

3. Chaque État partie adopte également les mesures nécessaires pour conférer le caractère d'infraction pénale au fait de se rendre complice d'une infraction établie conformément au présent article.

4. Aux fins du paragraphe 1 et de l'article 9 de la présente convention, le terme 'agent public' désigne un agent public ou une personne assurant un service public, tel que ce terme est défini dans le droit interne et appliqué dans le droit pénal de l'État partie où la personne en question exerce cette fonction.

*Article 9***Mesures contre la corruption**

1. Outre les mesures énoncées à l'article 8 de la présente convention, chaque État partie, selon qu'il convient et conformément à son système juridique, adopte des mesures efficaces d'ordre législatif, administratif ou autre pour promouvoir l'intégrité et prévenir, détecter et punir la corruption des agents publics.
2. Chaque État partie prend des mesures pour s'assurer que ses autorités agissent efficacement en matière de prévention, de détection et de répression de la corruption des agents publics, y compris en leur donnant une indépendance suffisante pour empêcher toute influence inappropriée sur leurs actions.

*Article 10***Responsabilité des personnes morales**

1. Chaque État partie adopte les mesures nécessaires, conformément à ses principes juridiques, pour établir la responsabilité des personnes morales qui participent à des infractions graves impliquant un groupe criminel organisé et qui commettent les infractions établies conformément aux articles 5, 6, 8 et 23 de la présente convention.

2. Sous réserve des principes juridiques de l'État partie, la responsabilité des personnes morales peut être pénale, civile ou administrative.

3. Cette responsabilité est sans préjudice de la responsabilité pénale des personnes physiques qui ont commis les infractions.

4. Chaque État partie veille, en particulier, à ce que les personnes morales tenues responsables conformément au présent article fassent l'objet de sanctions efficaces, proportionnées et dissuasives de nature pénale ou non pénale, y compris de sanctions pécuniaires.

*Article 11***Poursuites judiciaires, jugement et sanctions**

1. Chaque État partie rend la commission d'une infraction établie conformément aux articles 5, 6, 8 et 23 de la présente convention passible de sanctions qui tiennent compte de la gravité de cette infraction.

2. Chaque État partie s'efforce de faire en sorte que tout pouvoir judiciaire discrétionnaire conféré par son droit interne et afférent aux poursuites judiciaires engagées contre des individus pour des infractions visées par la présente convention soit exercé de façon à optimiser l'efficacité des mesures de détection et de répression de ces infractions, compte dûment tenu de la nécessité d'exercer un effet dissuasif en ce qui concerne leur commission.

3. S'agissant d'infractions établies conformément aux articles 5, 6, 8 et 23 de la présente convention, chaque État partie prend les mesures appropriées conformément à son droit interne et compte dûment tenu des droits de la défense, pour faire en sorte que les conditions auxquelles sont subordonnées les décisions de mise en liberté dans l'attente du jugement ou de la procédure d'appel tiennent compte de la nécessité d'assurer la présence du défendeur lors de la procédure pénale ultérieure.

4. Chaque État partie s'assure que ses tribunaux ou autres autorités compétentes ont à l'esprit la gravité des infractions visées par la présente convention lorsqu'ils envisagent l'éventualité d'une libération anticipée ou conditionnelle de personnes reconnues coupables de ces infractions.

5. Lorsqu'il y a lieu, chaque État partie détermine, dans le cadre de son droit interne, une période de prescription prolongée au cours de laquelle des poursuites peuvent être engagées du chef d'une des infractions visées par la présente convention, cette période étant plus longue lorsque l'auteur présumé de l'infraction s'est soustrait à la justice.

6. Aucune disposition de la présente convention ne porte atteinte au principe selon lequel la définition des infractions établies conformément à celle-ci et des moyens juridiques de défense applicables ainsi que d'autres principes juridiques régissant la légalité des incriminations relève exclusivement du droit interne d'un État partie et selon lequel lesdites infractions sont poursuivies et punies conformément au droit de cet État partie.

*Article 12***Confiscation et saisie**

1. Les États parties adoptent, dans toute la mesure possible dans le cadre de leurs systèmes juridiques nationaux, les mesures nécessaires pour permettre la confiscation:

- a) du produit du crime provenant d'infractions visées par la présente convention ou de biens dont la valeur correspond à celle de ce produit;
- b) des biens, des matériels et autres instruments utilisés ou destinés à être utilisés pour les infractions visées par la présente convention.

2. Les États parties adoptent les mesures nécessaires pour permettre l'identification, la localisation, le gel ou la saisie de

tout ce qui est mentionné au paragraphe 1 aux fins de confiscation éventuelle.

3. Si le produit du crime a été transformé ou converti, en partie ou en totalité, en d'autres biens, ces derniers peuvent faire l'objet des mesures visées au présent article en lieu et place dudit produit.

4. Si le produit du crime a été mêlé à des biens acquis légitimement, ces biens, sans préjudice de tous pouvoirs de gel ou de saisie, peuvent être confisqués à concurrence de la valeur estimée du produit qui y a été mêlé.

5. Les revenus ou autres avantages tirés du produit du crime, des biens en lesquels le produit a été transformé ou converti ou des biens auxquels il a été mêlé peuvent aussi faire l'objet des mesures visées au présent article, de la même manière et dans la même mesure que le produit du crime.

6. Aux fins du présent article et de l'article 13 de la présente convention, chaque État partie habilite ses tribunaux ou autres autorités compétentes à ordonner la production ou la saisie de documents bancaires, financiers ou commerciaux. Les États parties ne peuvent invoquer le secret bancaire pour refuser de donner effet aux dispositions du présent paragraphe.

7. Les États parties peuvent envisager d'exiger que l'auteur d'une infraction établisse l'origine licite du produit présumé du crime ou d'autres biens pouvant faire l'objet d'une confiscation, dans la mesure où cette exigence est conforme aux principes de leur droit interne et à la nature de la procédure judiciaire et des autres procédures.

8. L'interprétation des dispositions du présent article ne doit en aucun cas porter atteinte aux droits des tiers de bonne foi.

9. Aucune disposition du présent article ne porte atteinte au principe selon lequel les mesures qui y sont visées sont définies et exécutées conformément au droit interne de chaque État partie et selon les dispositions dudit droit.

*Article 13***Coopération internationale aux fins de confiscation**

1. Dans toute la mesure possible dans le cadre de son système juridique national, un État partie qui a reçu d'un autre État partie ayant compétence pour connaître d'une infraction visée par la présente convention une demande de confiscation du produit du crime, des biens, des matériels ou autres instruments visés au paragraphe 1 de l'article 12 de la présente convention, qui sont situés sur son territoire:

- a) transmet la demande à ses autorités compétentes en vue de faire prononcer une décision de confiscation et, si celle-ci intervient, la faire exécuter, ou
- b) transmet à ses autorités compétentes, afin qu'elle soit exécutée dans les limites de la demande, la décision de confiscation prise par un tribunal situé sur le territoire de l'État partie requérant conformément au paragraphe 1 de l'article 12 de la présente convention, pour ce qui est du produit du crime, des biens, des matériels ou autres instruments visés au paragraphe 1 de l'article 12 situés sur le territoire de l'État partie requis.

2. Lorsqu'une demande est faite par un autre État partie qui a compétence pour connaître d'une infraction visée par la présente convention, l'État partie requis prend des mesures pour identifier, localiser et geler ou saisir le produit du crime, les biens, les matériels ou les autres instruments visés au paragraphe 1 de l'article 12 de la présente convention, en vue d'une éventuelle confiscation à ordonner soit par l'État partie requérant, soit comme suite à une demande formulée en vertu du paragraphe 1 du présent article, par l'État partie requis.

3. Les dispositions de l'article 18 de la présente convention s'appliquent *mutatis mutandis* au présent article. Outre les informations visées à l'article 18, paragraphe 15, les demandes faites conformément au présent article contiennent:

- a) lorsque la demande relève du paragraphe 1, point a), une description des biens à confisquer et un exposé des faits sur lesquels se fonde l'État partie requérant qui permettent à l'État partie requis de faire prononcer une décision de confiscation dans le cadre de son droit interne;
- b) Lorsque la demande relève du paragraphe 1, point b), une copie légalement admissible de la décision de confiscation rendue par l'État partie requérant sur laquelle la demande est fondée, un exposé des faits et des informations indiquant dans quelles limites il est demandé d'exécuter la décision;
- c) lorsque la demande relève du paragraphe 2, un exposé des faits sur lesquels se fonde l'État partie requérant et une description des mesures demandées.

4. Les décisions ou mesures prévues aux paragraphes 1 et 2 sont prises par l'État partie requis conformément à son droit interne et selon les dispositions dudit droit, et conformément à ses règles de procédure ou à tout traité, accord ou arrangement bilatéral ou multilatéral le liant à l'État partie requérant.

5. Chaque État partie remet au secrétaire général de l'Organisation des Nations unies une copie de ses lois et règlements qui donnent effet au présent article ainsi qu'une copie de toute modification ultérieurement apportée à ces lois et règlements ou une description de ces lois, règlements et modifications ultérieures.

6. Si un État partie décide de subordonner l'adoption des mesures visées aux paragraphes 1 et 2 à l'existence d'un traité en la matière, il considère la présente convention comme une base conventionnelle nécessaire et suffisante.

7. Un État partie peut refuser de donner suite à une demande de coopération en vertu du présent article dans le cas où l'infraction à laquelle elle se rapporte n'est pas une infraction visée par la présente convention.

8. L'interprétation des dispositions du présent article ne doit en aucun cas porter atteinte aux droits des tiers de bonne foi.

9. Les États parties envisagent de conclure des traités, accords ou arrangements bilatéraux ou multilatéraux afin de renforcer l'efficacité de la coopération internationale instaurée aux fins du présent article.

Article 14

Disposition du produit du crime ou des biens confisqués

1. Un État partie qui confisque le produit du crime ou des biens en application de l'article 12 ou de l'article 13, para-

graphe 1, de la présente convention en dispose conformément à son droit interne et à ses procédures administratives.

2. Lorsque les États parties agissent à la demande d'un autre État partie en application de l'article 13 de la présente convention, ils doivent, dans la mesure où leur droit interne le leur permet et si la demande leur en est faite, envisager à titre prioritaire de restituer le produit du crime ou les biens confisqués à l'État partie requérant, afin que ce dernier puisse indemniser les victimes de l'infraction ou restituer ce produit du crime ou ces biens à leurs propriétaires légitimes.

3. Lorsqu'un État partie agit à la demande d'un autre État partie en application des articles 12 et 13 de la présente convention, il peut envisager spécialement de conclure des accords ou arrangements prévoyant:

- a) de verser la valeur de ce produit ou de ces biens, ou les fonds provenant de leur vente, ou une partie de ceux-ci, au compte établi en application de l'article 30, paragraphe 2, point c), de la présente convention et à des organismes intergouvernementaux spécialisés dans la lutte contre la criminalité organisée;
- b) de partager avec d'autres États parties, systématiquement ou au cas par cas, ce produit ou ces biens, ou les fonds provenant de leur vente, conformément à son droit interne ou à ses procédures administratives.

Article 15

Compétence

1. Chaque État partie adopte les mesures nécessaires pour établir sa compétence à l'égard des infractions établies conformément aux articles 5, 6, 8 et 23 de la présente convention dans les cas suivants:

- a) lorsque l'infraction est commise sur son territoire, ou
- b) lorsque l'infraction est commise à bord d'un navire qui bat son pavillon ou à bord d'un aéronef immatriculé conformément à son droit interne au moment où ladite infraction est commise.

2. Sous réserve de l'article 4 de la présente convention, un État partie peut également établir sa compétence à l'égard de l'une quelconque de ces infractions dans les cas suivants:

- a) lorsque l'infraction est commise à l'encontre d'un de ses ressortissants;
- b) lorsque l'infraction est commise par un de ses ressortissants ou par une personne apatride résidant habituellement sur son territoire, ou
- c) lorsque l'infraction est:
 - i) une de celles établies conformément à l'article 5, paragraphe 1, de la présente convention et est commise hors de son territoire en vue de la commission, sur son territoire, d'une infraction grave;
 - ii) une de celles établies conformément à l'article 6, paragraphe 1, point b) ii), de la présente convention et est commise hors de son territoire en vue de la commission, sur son territoire, d'une infraction établie conformément à l'article 6, paragraphe 1, points a) i) ou a) ii), ou b) i), de la présente convention.

3. Aux fins de l'article 16, paragraphe 10, de la présente convention, chaque État partie adopte les mesures nécessaires pour établir sa compétence à l'égard des infractions visées par la présente convention lorsque l'auteur présumé se trouve sur son territoire et qu'il n'extrade pas cette personne au seul motif qu'elle est l'un de ses ressortissants.

4. Chaque État partie peut également adopter les mesures nécessaires pour établir sa compétence à l'égard des infractions visées par la présente convention lorsque l'auteur présumé se trouve sur son territoire et qu'il ne l'extrade pas.

5. Si un État partie qui exerce sa compétence en vertu du paragraphe 1 ou 2 a été avisé, ou a appris de toute autre façon, qu'un ou plusieurs autres États parties mènent une enquête ou ont engagé des poursuites ou une procédure judiciaire concernant le même acte, les autorités compétentes de ces États parties se consultent, selon qu'il convient, pour coordonner leurs actions.

6. Sans préjudice des normes du droit international général, la présente convention n'exclut pas l'exercice de toute compétence pénale établie par un État partie conformément à son droit interne.

Article 16

Extradition

1. Le présent article s'applique aux infractions visées par la présente convention ou dans les cas où un groupe criminel organisé est impliqué dans une infraction visée à l'article 3, paragraphe 1, point a) ou b), et que la personne faisant l'objet de la demande d'extradition se trouve sur le territoire de l'État partie requis, à condition que l'infraction pour laquelle l'extradition est demandée soit punissable par le droit interne de l'État partie requérant et de l'État partie requis.

2. Si la demande d'extradition porte sur plusieurs infractions graves distinctes, dont certaines ne sont pas visées par le présent article, l'État partie requis peut appliquer également cet article à ces dernières infractions.

3. Chacune des infractions auxquelles s'applique le présent article est de plein droit incluse dans tout traité d'extradition en vigueur entre les États parties en tant qu'infraction dont l'auteur peut être extradé. Les États parties s'engagent à inclure ces infractions en tant qu'infractions dont l'auteur peut être extradé dans tout traité d'extradition qu'ils concluront entre eux.

4. Si un État partie qui subordonne l'extradition à l'existence d'un traité reçoit une demande d'extradition d'un État partie avec lequel il n'a pas conclu pareil traité, il peut considérer la présente convention comme la base légale de l'extradition pour les infractions auxquelles le présent article s'applique.

5. Les États parties qui subordonnent l'extradition à l'existence d'un traité:

a) au moment du dépôt de leur instrument de ratification, d'acceptation, d'approbation ou d'adhésion à la présente convention, indiquent au secrétaire général de l'Organisation des Nations unies s'ils considèrent la présente convention comme la base légale pour coopérer en matière d'extradition avec d'autres États parties, et

b) s'ils ne considèrent par la présente convention comme la base légale pour coopérer en matière d'extradition, s'efforcent, s'il y a lieu, de conclure des traités d'extradition avec d'autres États parties afin d'appliquer le présent article.

6. Les États parties qui ne subordonnent pas l'extradition à l'existence d'un traité reconnaissent entre eux aux infractions auxquelles le présent article s'applique le caractère d'infraction dont l'auteur peut être extradé.

7. L'extradition est subordonnée aux conditions prévues par le droit interne de l'État partie requis ou par les traités d'extradition applicables, y compris, notamment, aux conditions concernant la peine minimale requise pour extraditer et aux motifs pour lesquels l'État partie requis peut refuser l'extradition.

8. Les États parties s'efforcent, sous réserve de leur droit interne, d'accélérer les procédures d'extradition et de simplifier les exigences en matière de preuve y relatives en ce qui concerne les infractions auxquelles s'applique le présent article.

9. Sous réserve des dispositions de son droit interne et des traités d'extradition qu'il a conclus, l'État partie requis peut, à la demande de l'État partie requérant et s'il estime que les circonstances le justifient et qu'il y a urgence, placer en détention une personne présente sur son territoire dont l'extradition est demandée ou prendre à son égard toutes autres mesures appropriées pour assurer sa présence lors de la procédure d'extradition.

10. Un État partie sur le territoire duquel se trouve l'auteur présumé de l'infraction, s'il n'extrade pas cette personne au titre d'une infraction à laquelle s'applique le présent article au seul motif qu'elle est l'un de ses ressortissants, est tenu, à la demande de l'État partie requérant l'extradition, de soumettre l'affaire sans retard excessif à ses autorités compétentes aux fins de poursuites. Lesdites autorités prennent leur décision et mènent les poursuites de la même manière que pour toute autre infraction grave en vertu du droit interne de cet État partie. Les États parties intéressés coopèrent entre eux, notamment en matière de procédure et de preuve, afin d'assurer l'efficacité des poursuites.

11. Lorsqu'un État partie, en vertu de son droit interne, n'est autorisé à extraditer ou remettre de toute autre manière l'un de ses ressortissants que si cette personne est ensuite renvoyée dans cet État partie pour purger la peine prononcée à l'issue du procès ou de la procédure à l'origine de la demande d'extradition ou de remise, et lorsque cet État partie et l'État partie requérant s'accordent sur cette option et d'autres conditions qu'ils peuvent juger appropriées, cette extradition ou remise conditionnelle est suffisante aux fins de l'exécution de l'obligation énoncée au paragraphe 10.

12. Si l'extradition, demandée aux fins d'exécution d'une peine, est refusée parce que la personne faisant l'objet de cette demande est un ressortissant de l'État partie requis, celui-ci, si son droit interne le lui permet, en conformité avec les prescriptions de ce droit et à la demande de l'État partie requérant, envisage de faire exécuter lui-même la peine qui a été prononcée conformément au droit interne de l'État partie requérant, ou le reliquat de cette peine.

13. Toute personne faisant l'objet de poursuites en raison de l'une quelconque des infractions auxquelles le présent article s'applique se voit garantir un traitement équitable à tous les stades de la procédure, y compris la jouissance de tous les droits et de toutes les garanties prévus par le droit interne de l'État partie sur le territoire duquel elle se trouve.

14. Aucune disposition de la présente convention ne doit être interprétée comme faisant obligation à l'État partie requis d'extrader s'il a de sérieuses raisons de penser que la demande a été présentée aux fins de poursuivre ou de punir une personne en raison de son sexe, de sa race, de sa religion, de sa nationalité, de son origine ethnique ou de ses opinions politiques, ou que donner suite à cette demande causerait un préjudice à cette personne pour l'une quelconque de ces raisons.

15. Les États parties ne peuvent refuser une demande d'extradition au seul motif que l'infraction est considérée comme touchant aussi à des questions fiscales.

16. Avant de refuser l'extradition, l'État partie requis consulte, le cas échéant, l'État partie requérant afin de lui donner toute possibilité de présenter ses opinions et de donner des informations à l'appui de ses allégations.

17. Les États parties s'efforcent de conclure des accords ou arrangements bilatéraux et multilatéraux pour permettre l'extradition ou pour en accroître l'efficacité.

Article 17

Transfert des personnes condamnées

Les États parties peuvent envisager de conclure des accords ou arrangements bilatéraux ou multilatéraux relatifs au transfert sur leur territoire de personnes condamnées à des peines d'emprisonnement ou autres peines privatives de liberté du fait d'infractions visées par la présente convention afin qu'elles puissent y purger le reste de leur peine.

Article 18

Entraide judiciaire

1. Les États parties s'accordent mutuellement l'entraide judiciaire la plus large possible lors des enquêtes, poursuites et procédures judiciaires concernant les infractions visées par la présente convention, comme prévu à l'article 3, et s'accordent réciproquement une entraide similaire lorsque l'État partie requérant a des motifs raisonnables de soupçonner que l'infraction visée à l'article 3, paragraphe 1, point a) ou b), est de nature transnationale, y compris quand les victimes, les témoins, le produit, les instruments ou les éléments de preuve de ces infractions se trouvent dans l'État partie requis et qu'un groupe criminel organisé y est impliqué.

2. L'entraide judiciaire la plus large possible est accordée, autant que les lois, traités, accords et arrangements pertinents de l'État partie requis le permettent, lors des enquêtes, poursuites et procédures judiciaires concernant des infractions dont une personne morale peut être tenue responsable dans l'État partie requérant, conformément à l'article 10 de la présente convention.

3. L'entraide judiciaire qui est accordée en application du présent article peut être demandée aux fins suivantes:

- a) recueillir des témoignages ou des dépositions;
- b) signifier des actes judiciaires;
- c) effectuer des perquisitions et des saisies, ainsi que des gels;
- d) examiner des objets et visiter des lieux;
- e) fournir des informations, des pièces à conviction et des estimations d'experts;
- f) fournir des originaux ou des copies certifiées conformes de documents et dossiers pertinents, y compris des documents administratifs, bancaires, financiers ou commerciaux et des documents de sociétés;
- g) identifier ou localiser des produits du crime, des biens, des instruments ou d'autres choses afin de recueillir des éléments de preuve;
- h) faciliter la comparution volontaire de personnes dans l'État partie requérant;
- i) fournir tout autre type d'assistance compatible avec le droit interne de l'État partie requis.

4. Sans préjudice de son droit interne, les autorités compétentes d'un État partie peuvent, sans demande préalable, communiquer des informations concernant des affaires pénales à une autorité compétente d'un autre État partie, si elles pensent que ces informations pourraient l'aider à entreprendre ou à conclure des enquêtes et des poursuites pénales, ou amener ce dernier État partie à formuler une demande en vertu de la présente convention.

5. La communication d'informations conformément au paragraphe 4 se fait sans préjudice des enquêtes et poursuites pénales dans l'État dont les autorités compétentes fournissent les informations. Les autorités compétentes qui reçoivent ces informations accèdent à toute demande tendant à ce que lesdites informations restent confidentielles, même temporairement, ou à ce que leur utilisation soit assortie de restrictions. Toutefois, cela n'empêche pas l'État partie qui reçoit les informations de révéler, lors de la procédure judiciaire, des informations à la décharge d'un prévenu. Dans ce dernier cas, l'État partie qui reçoit les informations avise l'État partie qui les communique avant la révélation et, s'il lui en est fait la demande, consulte ce dernier. Si, dans un cas exceptionnel, une notification préalable n'est pas possible, l'État partie qui reçoit les informations informe sans retard de la révélation l'État partie qui les communique.

6. Les dispositions du présent article n'affectent en rien les obligations découlant de tout autre traité bilatéral ou multilatéral régissant ou devant régir, entièrement ou partiellement, l'entraide judiciaire.

7. Les paragraphes 9 à 29 sont applicables aux demandes faites conformément au présent article si les États parties en question ne sont pas liés par un traité d'entraide judiciaire. Si lesdits États parties sont liés par un tel traité, les dispositions correspondantes de ce traité sont applicables, à moins que les États parties ne conviennent d'appliquer à leur place les dispositions des paragraphes 9 à 29. Les États parties sont vivement encouragés à appliquer ces paragraphes s'ils facilitent la coopération.

8. Les États parties ne peuvent invoquer le secret bancaire pour refuser l'entraide judiciaire prévue au présent article.

9. Les États parties peuvent invoquer l'absence de double incrimination pour refuser de donner suite à une demande d'entraide judiciaire prévue au présent article. L'État partie requis peut néanmoins, lorsqu'il le juge approprié, fournir cette assistance, dans la mesure où il le décide à son gré, indépendamment du fait que l'acte constitue ou non une infraction conformément au droit interne de l'État partie requis.

10. Toute personne détenue ou purgeant une peine sur le territoire d'un État partie, dont la présence est requise dans un autre État partie à des fins d'identification ou de témoignage ou pour qu'elle apporte de toute autre manière son concours à l'obtention de preuves dans le cadre d'enquêtes, de poursuites ou de procédures judiciaires relatives aux infractions visées par la présente convention, peut faire l'objet d'un transfert si les conditions ci-après sont réunies:

- a) ladite personne y consent librement et en toute connaissance de cause;
- b) les autorités compétentes des deux États parties concernés y consentent, sous réserve des conditions que ces États parties peuvent juger appropriées.

11. Aux fins du paragraphe 10:

- a) l'État partie vers lequel le transfert est effectué a le pouvoir et l'obligation de garder l'intéressé en détention, sauf demande ou autorisation contraire de la part de l'État partie à partir duquel la personne a été transférée;
- b) l'État partie vers lequel le transfert est effectué s'acquitte sans retard de l'obligation de remettre l'intéressé à la garde de l'État partie à partir duquel le transfert a été effectué, conformément à ce qui aura été convenu au préalable ou à ce que les autorités compétentes des deux États parties auront autrement décidé;
- c) l'État partie vers lequel le transfert est effectué ne peut exiger de l'État partie à partir duquel le transfert est effectué qu'il engage une procédure d'extradition pour que l'intéressé lui soit remis;
- d) il est tenu compte de la période que l'intéressé a passée en détention dans l'État partie vers lequel il a été transféré aux fins du décompte de la peine à purger dans l'État partie à partir duquel il a été transféré.

12. À moins que l'État partie à partir duquel une personne doit être transférée en vertu des paragraphes 10 et 11 ne donne son accord, ladite personne, quelle que soit sa nationalité, ne sera pas poursuivie, détenue, punie ou soumise à d'autres restrictions à sa liberté de mouvement sur le territoire de l'État partie vers lequel elle est transférée à raison d'actes, d'omissions ou de condamnations antérieurs à son départ du territoire de l'État partie à partir duquel elle a été transférée.

13. Chaque État partie désigne une autorité centrale qui a la responsabilité et le pouvoir de recevoir les demandes d'entraide judiciaire et, soit de les exécuter, soit de les transmettre aux autorités compétentes pour exécution. Si un État partie a une région ou un territoire spécial doté d'un système d'entraide judiciaire différent, il peut désigner une autorité centrale distincte qui aura la même fonction pour ladite région ou ledit territoire. Les autorités centrales assurent l'exécution ou la transmission rapide et en bonne et due forme des demandes reçues. Si l'autorité centrale transmet la demande à une autorité compétente pour exécution, elle encourage l'exécution rapide et en bonne et due forme de la demande par l'autorité compétente. L'autorité centrale désignée à cette fin fait l'objet d'une

notification adressée au secrétaire général de l'Organisation des Nations unies au moment où chaque État partie dépose ses instruments de ratification, d'acceptation ou d'approbation ou d'adhésion à la présente convention. Les demandes d'entraide judiciaire et toute communication y relative sont transmises aux autorités centrales désignées par les États parties. La présente disposition s'entend sans préjudice du droit de tout État partie d'exiger que ces demandes et communications lui soient adressées par voie diplomatique et, en cas d'urgence, si les États parties en conviennent, par l'intermédiaire de l'Organisation internationale de police criminelle, si cela est possible.

14. Les demandes sont adressées par écrit ou, si possible, par tout autre moyen pouvant produire un document écrit, dans une langue acceptable pour l'État partie requis, dans des conditions permettant audit État partie d'en établir l'authenticité. La ou les langues acceptables pour chaque État partie sont notifiées au secrétaire général de l'Organisation des Nations unies au moment où ledit État partie dépose ses instruments de ratification, d'acceptation ou d'approbation ou d'adhésion à la présente convention. En cas d'urgence et si les États parties en conviennent, les demandes peuvent être faites oralement, mais doivent être confirmées sans délai par écrit.

15. Une demande d'entraide judiciaire doit contenir les renseignements suivants:

- a) la désignation de l'autorité dont émane la demande;
- b) l'objet et la nature de l'enquête, des poursuites ou de la procédure judiciaire auxquelles se rapporte la demande, ainsi que le nom et les fonctions de l'autorité qui en est chargée;
- c) un résumé des faits pertinents, sauf pour les demandes adressées aux fins de la signification d'actes judiciaires;
- d) une description de l'assistance requise et le détail de toute procédure particulière que l'État partie requérant souhaite voir appliquée;
- e) si possible, l'identité, l'adresse et la nationalité de toute personne visée, et
- f) le but dans lequel le témoignage, les informations ou les mesures sont demandés.

16. L'État partie requis peut demander un complément d'information lorsque cela apparaît nécessaire pour exécuter la demande conformément à son droit interne ou lorsque cela peut faciliter l'exécution de la demande.

17. Toute demande est exécutée conformément au droit interne de l'État partie requis et, dans la mesure où cela ne contrevient pas au droit interne de l'État partie requis et lorsque cela est possible, conformément aux procédures spécifiées dans la demande.

18. Lorsque cela est possible et conforme aux principes fondamentaux du droit interne, si une personne qui se trouve sur le territoire d'un État partie doit être entendue comme témoin ou comme expert par les autorités judiciaires d'un autre État partie, le premier État partie peut, à la demande de l'autre, autoriser son audition par vidéoconférence s'il n'est pas possible ou souhaitable qu'elle compareisse en personne sur le territoire de l'État partie requérant. Les États parties peuvent convenir que l'audition sera conduite par une autorité judiciaire de l'État partie requérant et qu'une autorité judiciaire de l'État partie requis y assistera.

19. L'État partie requérant ne communique ni n'utilise les informations ou les éléments de preuve fournis par l'État partie requis pour des enquêtes, poursuites ou procédures judiciaires autres que celles visées dans la demande sans le consentement préalable de l'État partie requis. Rien dans le présent paragraphe n'empêche l'État partie requérant de révéler, lors de la procédure, des informations ou des éléments de preuve à décharge. Dans ce dernier cas, l'État partie requérant avise l'État partie requis avant la révélation et, s'il lui en est fait la demande, consulte l'État partie requis. Si, dans un cas exceptionnel, une notification préalable n'est pas possible, l'État partie requérant informe sans retard l'État partie requis de la révélation.

20. L'État partie requérant peut exiger que l'État partie requis garde le secret sur la demande et sa teneur, sauf dans la mesure nécessaire pour l'exécuter. Si l'État partie requis ne peut satisfaire à cette exigence, il en informe sans délai l'État partie requérant.

21. L'entraide judiciaire peut être refusée:

- a) si la demande n'est pas faite conformément aux dispositions du présent article;
- b) si l'État partie requis estime que l'exécution de la demande est susceptible de porter atteinte à sa souveraineté, à sa sécurité, à son ordre public ou à d'autres intérêts essentiels;
- c) au cas où le droit interne de l'État partie requis interdirait à ses autorités de prendre les mesures demandées s'il s'agissait d'une infraction analogue ayant fait l'objet d'une enquête, de poursuites ou d'une procédure judiciaire dans le cadre de sa propre compétence;
- d) au cas où il serait contraire au système juridique de l'État partie requis concernant l'entraide judiciaire d'accepter la demande.

22. Les États parties ne peuvent refuser une demande d'entraide judiciaire au seul motif que l'infraction est considérée comme touchant aussi à des questions fiscales.

23. Tout refus d'entraide judiciaire doit être motivé.

24. L'État partie requis exécute la demande d'entraide judiciaire aussi promptement que possible et tient compte, dans toute la mesure possible, de tous les délais suggérés par l'État partie requérant et qui sont motivés, de préférence dans la demande. L'État partie requis répond aux demandes raisonnables de l'État partie requérant concernant les progrès faits dans l'exécution de la demande. Quand l'entraide demandée n'est plus nécessaire, l'État partie requérant en informe promptement l'État partie requis.

25. L'entraide judiciaire peut être différée par l'État partie requis au motif qu'elle entraverait une enquête, des poursuites ou une procédure judiciaire en cours.

26. Avant de refuser une demande en vertu du paragraphe 21 ou d'en différer l'exécution en vertu du paragraphe 25, l'État partie requis étudie avec l'État partie requérant la possibilité d'accorder l'entraide sous réserve des conditions qu'il juge nécessaires. Si l'État partie requérant accepte l'entraide sous réserve de ces conditions, il se conforme à ces dernières.

27. Sans préjudice de l'application du paragraphe 12, un témoin, un expert ou une autre personne qui, à la demande de l'État partie requérant, consent à déposer au cours d'une procédure ou à collaborer à une enquête, à des poursuites ou à une procédure judiciaire sur le territoire de l'État partie requérant ne sera pas poursuivi, détenu, puni ou soumis à d'autres restric-

tions à sa liberté personnelle sur ce territoire à raison d'actes, d'omissions ou de condamnations antérieurs à son départ du territoire de l'État partie requis. Cette immunité cesse lorsque le témoin, l'expert ou ladite personne ayant eu, pour une période de quinze jours consécutifs ou pour toute autre période convenue par les États parties, à compter de la date à laquelle ils ont été officiellement informés que leur présence n'était plus requise par les autorités judiciaires, la possibilité de quitter le territoire de l'État partie requérant, y sont néanmoins demeurés volontairement ou, l'ayant quitté, y sont revenus de leur plein gré.

28. Les frais ordinaires encourus pour exécuter une demande sont à la charge de l'État partie requis, à moins qu'il n'en soit convenu autrement entre les États parties concernés. Lorsque des dépenses importantes ou extraordinaires sont ou se révèlent ultérieurement nécessaires pour exécuter la demande, les États parties se consultent pour fixer les conditions selon lesquelles la demande sera exécutée, ainsi que la manière dont les frais seront assumés.

29. L'État partie requis:

- a) fournit à l'État partie requérant les copies des dossiers, documents ou renseignements administratifs en sa possession et auxquels, en vertu de son droit interne, le public a accès;
- b) peut, à son gré, fournir à l'État partie requérant intégralement, en partie ou aux conditions qu'il estime appropriées, les copies de tous les dossiers, documents ou renseignements administratifs en sa possession et auxquels, en vertu de son droit interne, le public n'a pas accès.

30. Les États parties envisagent, s'il y a lieu, la possibilité de conclure des accords ou des arrangements bilatéraux ou multilatéraux qui servent les objectifs et les dispositions du présent article, leur donnent un effet pratique ou les renforcent.

Article 19

Enquêtes conjointes

Les États parties envisagent de conclure des accords ou arrangements bilatéraux ou multilatéraux en vertu desquels, pour les affaires qui font l'objet d'enquêtes, de poursuites ou de procédures judiciaires dans un ou plusieurs États, les autorités compétentes concernées peuvent établir des instances d'enquêtes conjointes. En l'absence de tels accords ou arrangements, des enquêtes conjointes peuvent être décidées au cas par cas. Les États parties concernés veillent à ce que la souveraineté de l'État partie sur le territoire duquel l'enquête doit se dérouler soit pleinement respectée.

Article 20

Techniques d'enquête spéciales

1. Si les principes fondamentaux de son système juridique national le permettent, chaque État partie, compte tenu de ses possibilités et conformément aux conditions prescrites dans son droit interne, prend les mesures nécessaires pour permettre le recours approprié aux livraisons surveillées et, lorsqu'il le juge approprié, le recours à d'autres techniques d'enquête spéciales, telles que la surveillance électronique ou d'autres formes de surveillance et les opérations d'infiltration, par ses autorités compétentes sur son territoire en vue de combattre efficacement la criminalité organisée.

2. Aux fins des enquêtes sur les infractions visées par la présente convention, les États parties sont encouragés à conclure, si nécessaire, des accords ou arrangements bilatéraux ou multilatéraux appropriés pour recourir aux techniques d'enquête spéciales dans le cadre de la coopération internationale. Ces accords ou arrangements sont conclus et appliqués dans le plein respect du principe de l'égalité souveraine des États et ils sont mis en œuvre dans le strict respect des dispositions qu'ils contiennent.

3. En l'absence d'accords ou d'arrangements visés au paragraphe 2 du présent article, les décisions de recourir à des techniques d'enquête spéciales au niveau international sont prises au cas par cas et peuvent, si nécessaire, tenir compte d'ententes et d'arrangements financiers quant à l'exercice de leur compétence par les États parties intéressés.

4. Les livraisons surveillées auxquelles il est décidé de recourir au niveau international peuvent inclure, avec le consentement des États parties concernés, des méthodes telles que l'interception des marchandises et l'autorisation de la poursuite de leur acheminement, sans altération ou après soustraction ou remplacement de la totalité ou d'une partie de ces marchandises.

Article 21

Transfert des procédures pénales

Les États parties envisagent la possibilité de se transférer mutuellement les procédures relatives à la poursuite d'une infraction visée par la présente convention dans les cas où ce transfert est jugé nécessaire dans l'intérêt d'une bonne administration de la justice et, en particulier lorsque plusieurs juridictions sont concernées, en vue de centraliser les poursuites.

Article 22

Établissement des antécédents judiciaires

Chaque État partie peut adopter les mesures législatives ou autres qui sont nécessaires pour tenir compte, dans les conditions et aux fins qu'il juge appropriées, de toute condamnation dont l'auteur présumé d'une infraction aurait antérieurement fait l'objet dans un autre État, afin d'utiliser cette information dans le cadre d'une procédure pénale relative à une infraction visée par la présente convention.

Article 23

Incrimination de l'entrave au bon fonctionnement de la justice

Chaque État partie adopte les mesures législatives et autres qui sont nécessaires pour conférer le caractère d'infraction pénale, lorsque les actes ont été commis intentionnellement:

a) au fait de recourir à la force physique, à des menaces ou à l'intimidation ou de promettre, d'offrir ou d'accorder un avantage indu pour obtenir un faux témoignage ou empêcher un témoignage ou la présentation d'éléments de preuve dans une procédure en rapport avec la commission d'infractions visées par la présente convention;

b) au fait de recourir à la force physique, à des menaces ou à l'intimidation pour empêcher un agent de la justice ou un agent des services de détection et de répression d'exercer les devoirs de leur charge lors de la commission d'infractions visées par la présente convention. Rien dans le présent point ne porte atteinte au droit des États parties de disposer d'une législation destinée à protéger d'autres catégories d'agents publics.

Article 24

Protection des témoins

1. Chaque État partie prend, dans la limite de ses moyens, des mesures appropriées pour assurer une protection efficace contre des actes éventuels de représailles ou d'intimidation aux témoins qui, dans le cadre de procédures pénales, font un témoignage concernant les infractions visées par la présente convention et, le cas échéant, à leurs parents et à d'autres personnes qui leur sont proches.

2. Les mesures envisagées au paragraphe 1 peuvent consister notamment, sans préjudice des droits du défendeur, y compris du droit à une procédure régulière:

a) à établir, pour la protection physique de ces personnes, des procédures visant notamment, selon les besoins et dans la mesure du possible, à leur fournir un nouveau domicile et à permettre, le cas échéant, que les renseignements concernant leur identité et le lieu où elles se trouvent ne soient pas divulgués ou que leur divulgation soit limitée;

b) à prévoir des règles de preuve qui permettent aux témoins de déposer d'une manière qui garantisse leur sécurité, notamment à les autoriser à déposer en recourant à des techniques de communication telles que les liaisons vidéo ou à d'autres moyens adéquats.

3. Les États parties envisagent de conclure des arrangements avec d'autres États en vue de fournir un nouveau domicile aux personnes mentionnées au paragraphe 1.

4. Les dispositions du présent article s'appliquent également aux victimes lorsqu'elles sont témoins.

Article 25

Octroi d'une assistance et d'une protection aux victimes

1. Chaque État partie prend, dans la limite de ses moyens, des mesures appropriées pour prêter assistance et accorder protection aux victimes d'infractions visées par la présente convention, en particulier dans les cas de menace de représailles ou d'intimidation.

2. Chaque État partie établit des procédures appropriées pour permettre aux victimes d'infractions visées par la présente convention d'obtenir réparation.

3. Chaque État partie, sous réserve de son droit interne, fait en sorte que les avis et préoccupations des victimes soient présentés et pris en compte aux stades appropriés de la procédure pénale engagée contre les auteurs d'infractions, d'une manière qui ne porte pas préjudice aux droits de la défense.

Article 26

Mesures propres à renforcer la coopération avec les services de détection et de répression

1. Chaque État partie prend des mesures appropriées pour encourager les personnes qui participent ou ont participé à des groupes criminels organisés:

- a) à fournir des informations utiles aux autorités compétentes à des fins d'enquête et de recherche de preuves sur des questions telles que:
 - i) l'identité, la nature, la composition, la structure ou les activités des groupes criminels organisés, ou le lieu où ils se trouvent;
 - ii) les liens, y compris à l'échelon international, avec d'autres groupes criminels organisés;
 - iii) les infractions que les groupes criminels organisés ont commises ou pourraient commettre;
- b) à fournir une aide factuelle et concrète aux autorités compétentes, qui pourrait contribuer à priver les groupes criminels organisés de leurs ressources ou du produit du crime.

2. Chaque État partie envisage de prévoir la possibilité, dans les cas appropriés, d'alléger la peine dont est passible un prévenu qui coopère de manière substantielle à l'enquête ou aux poursuites relatives à une infraction visée par la présente convention.

3. Chaque État partie envisage de prévoir la possibilité, conformément aux principes fondamentaux de son droit interne, d'accorder l'immunité de poursuites à une personne qui coopère de manière substantielle à l'enquête ou aux poursuites relatives à une infraction visée par la présente convention.

4. La protection de ces personnes est assurée comme le prévoit l'article 24 de la présente convention.

5. Lorsqu'une personne qui est visée au paragraphe 1 et se trouve dans un État partie peut apporter une coopération substantielle aux autorités compétentes d'un autre État partie, les États parties concernés peuvent envisager de conclure des accords ou arrangements, conformément à leur droit interne, concernant l'éventuel octroi par l'autre État partie du traitement décrit aux paragraphes 2 et 3.

Article 27

Coopération entre les services de détection et de répression

1. Les États parties coopèrent étroitement, conformément à leurs systèmes juridiques et administratifs respectifs, en vue de renforcer l'efficacité de la détection et de la répression des infractions visées par la présente convention. En particulier, chaque État partie adopte des mesures efficaces pour:

- a) renforcer ou, si nécessaire, établir des voies de communication entre ses autorités, organismes et services compétents pour faciliter l'échange sûr et rapide d'informations concernant tous les aspects des infractions visées par la présente convention, y compris, si les États parties concernés le jugent approprié, les liens avec d'autres activités criminelles;
- b) coopérer avec d'autres États parties, s'agissant des infractions visées par la présente convention, dans la conduite d'enquêtes concernant les points suivants:

- i) identité et activités des personnes soupçonnées d'implication dans lesdites infractions, lieu où elles se trouvent ou lieu où se trouvent les autres personnes concernées;
- ii) mouvement du produit du crime ou des biens provenant de la commission de ces infractions;
- iii) mouvement des biens, des matériels ou d'autres instruments utilisés ou destinés à être utilisés dans la commission de ces infractions;
- c) fournir, lorsqu'il y a lieu, les pièces ou quantités de substances nécessaires à des fins d'analyse ou d'enquête;
- d) faciliter une coordination efficace entre les autorités, organismes et services compétents et favoriser l'échange de personnel et d'experts, y compris, sous réserve de l'existence d'accords ou d'arrangements bilatéraux entre les États parties concernés, le détachement d'agents de liaison;
- e) échanger, avec d'autres États parties, des informations sur les moyens et procédés spécifiques employés par les groupes criminels organisés, y compris, s'il y a lieu, sur les itinéraires et les moyens de transport ainsi que sur l'usage de fausses identités, de documents modifiés ou falsifiés ou d'autres moyens de dissimulation de leurs activités;
- f) échanger des informations et coordonner les mesures administratives et autres prises, comme il convient, pour détecter au plus tôt les infractions visées par la présente convention.

2. Afin de donner effet à la présente convention, les États parties envisagent de conclure des accords ou des arrangements bilatéraux ou multilatéraux prévoyant une coopération directe entre leurs services de détection et de répression et, lorsque de tels accords ou arrangements existent déjà, de les modifier. En l'absence de tels accords ou arrangements entre les États parties concernés, ces derniers peuvent se baser sur la présente convention pour instaurer une coopération en matière de détection et de répression concernant les infractions visées par la présente convention. Chaque fois que cela est approprié, les États parties utilisent pleinement les accords ou arrangements, y compris les organisations internationales ou régionales, pour renforcer la coopération entre leurs services de détection et de répression.

3. Les États parties s'efforcent de coopérer, dans la mesure de leurs moyens, pour faire face à la criminalité transnationale organisée perpétrée au moyen de techniques modernes.

Article 28

Collecte, échange et analyse d'informations sur la nature de la criminalité organisée

1. Chaque État partie envisage d'analyser, en consultation avec les milieux scientifiques et universitaires, les tendances de la criminalité organisée sur son territoire, les circonstances dans lesquelles elle opère, ainsi que les groupes professionnels et les techniques impliqués.

2. Les États parties envisagent de développer leurs capacités d'analyse des activités criminelles organisées et de les mettre en commun directement entre eux et par le biais des organisations internationales et régionales. À cet effet, des définitions, normes et méthodes communes devraient être élaborées et appliquées selon qu'il convient.

3. Chaque État partie envisage de suivre ses politiques et les mesures concrètes prises pour combattre la criminalité organisée et d'évaluer leur mise en œuvre et leur efficacité.

Article 29

Formation et assistance technique

1. Chaque État partie établit, développe ou améliore, dans la mesure des besoins, des programmes de formation spécifiques à l'intention du personnel de ses services de détection et de répression, y compris des magistrats du parquet, des juges d'instruction et des agents des douanes, ainsi que d'autres personnels chargés de prévenir, de détecter et de réprimer les infractions visées par la présente convention. Ces programmes peuvent prévoir des détachements et des échanges de personnel. Ils portent en particulier, dans la mesure où le droit interne l'autorise, sur les points suivants:

- a) méthodes employées pour prévenir, détecter et combattre les infractions visées par la présente convention;
- b) itinéraires empruntés et techniques employées par les personnes soupçonnées d'implication dans des infractions visées par la présente convention, y compris dans les États de transit, et mesures de lutte appropriées;
- c) surveillance du mouvement des produits de contrebande;
- d) détection et surveillance du mouvement du produit du crime, des biens, des matériels ou des autres instruments, et méthodes de transfert, de dissimulation ou de déguisement de ce produit, de ces biens, de ces matériels ou de ces autres instruments, ainsi que les méthodes de lutte contre le blanchiment d'argent et contre d'autres infractions financières;
- e) rassemblement des éléments de preuve;
- f) techniques de contrôle dans les zones franches et les ports francs;
- g) matériels et techniques modernes de détection et de répression, y compris la surveillance électronique, les livraisons surveillées et les opérations d'infiltration;
- h) méthodes utilisées pour combattre la criminalité transnationale organisée perpétrée au moyen d'ordinateurs, de réseaux de télécommunication ou d'autres techniques modernes, et
- i) méthodes utilisées pour la protection des victimes et des témoins.

2. Les États parties s'entraident pour planifier et exécuter des programmes de recherche et de formation conçus pour échanger des connaissances spécialisées dans les domaines visés au paragraphe 1 et, à cette fin, mettent aussi à profit, lorsqu'il y a lieu, des conférences et séminaires régionaux et internationaux pour favoriser la coopération et stimuler les échanges de vues sur les problèmes communs, y compris les problèmes et besoins particuliers des États de transit.

3. Les États parties encouragent les activités de formation et d'assistance technique de nature à faciliter l'extradition et l'entraide judiciaire. Ces activités de formation et d'assistance technique peuvent inclure une formation linguistique, des détachements et des échanges entre les personnels des autorités centrales ou des organismes ayant des responsabilités dans les domaines visés.

4. Lorsqu'il existe des accords ou arrangements bilatéraux et multilatéraux en vigueur, les États parties renforcent, autant qu'il est nécessaire, les mesures prises pour optimiser les acti-

vités opérationnelles et de formation au sein des organisations internationales et régionales et dans le cadre d'autres accords ou arrangements bilatéraux et multilatéraux en la matière.

Article 30

Autres mesures: application de la convention par le développement économique et l'assistance technique

1. Les États parties prennent des mesures propres à assurer la meilleure application possible de la présente convention par la coopération internationale, compte tenu des effets négatifs de la criminalité organisée sur la société en général, et sur le développement durable en particulier.

2. Les États parties font des efforts concrets, dans la mesure du possible, et en coordination les uns avec les autres ainsi qu'avec les organisations régionales et internationales:

- a) pour développer leur coopération à différents niveaux avec les pays en développement, en vue de renforcer la capacité de ces derniers à prévenir et combattre la criminalité transnationale organisée;
- b) pour accroître l'assistance financière et matérielle à fournir aux pays en développement afin d'appuyer les efforts qu'ils déploient pour lutter efficacement contre la criminalité transnationale organisée et de les aider à appliquer la présente convention avec succès;
- c) pour fournir une assistance technique aux pays en développement et aux pays à économie en transition afin de les aider à répondre à leurs besoins aux fins de l'application de la présente convention. Pour ce faire, les États parties s'efforcent de verser volontairement des contributions adéquates et régulières à un compte établi à cet effet dans le cadre d'un mécanisme de financement des Nations unies. Les États parties peuvent aussi envisager spécialement, conformément à leur droit interne et aux dispositions de la présente convention, de verser au compte susvisé un pourcentage des fonds ou de la valeur correspondante du produit du crime ou des biens confisqués en application des dispositions de la présente convention;
- d) pour encourager et convaincre d'autres États et des institutions financières, selon qu'il convient, de s'associer aux efforts faits conformément au présent article, notamment en fournissant aux pays en développement davantage de programmes de formation et de matériel moderne afin de les aider à atteindre les objectifs de la présente convention.

3. Autant que possible, ces mesures sont prises sans préjudice des engagements existants en matière d'assistance étrangère ou d'autres arrangements de coopération financière aux niveaux bilatéral, régional ou international.

4. Les États parties peuvent conclure des accords ou des arrangements bilatéraux ou multilatéraux sur l'assistance matérielle et logistique, en tenant compte des arrangements financiers nécessaires pour assurer l'efficacité des moyens de coopération internationale prévus par la présente convention et pour prévenir, détecter et combattre la criminalité transnationale organisée.

*Article 31***Prévention**

1. Les États parties s'efforcent d'élaborer et d'évaluer des projets nationaux ainsi que de mettre en place et de promouvoir les meilleures pratiques et politiques pour prévenir la criminalité transnationale organisée.

2. Conformément aux principes fondamentaux de leur droit interne, les États parties s'efforcent de réduire, par des mesures législatives, administratives ou autres appropriées, les possibilités actuelles ou futures des groupes criminels organisés de participer à l'activité des marchés licites en utilisant le produit du crime. Ces mesures devraient être axées sur:

- a) le renforcement de la coopération entre les services de détection et de répression ou les magistrats du parquet et entités privées concernées, notamment dans l'industrie;
- b) la promotion de l'élaboration de normes et procédures visant à préserver l'intégrité des entités publiques et des entités privées concernées, ainsi que de codes de déontologie pour les professions concernées, notamment celles de juriste, de notaire, de conseiller fiscal et de comptable;
- c) la prévention de l'usage improprie par les groupes criminels organisés des procédures d'appel d'offres menées par des autorités publiques ainsi que des subventions et licences accordées par des autorités publiques pour une activité commerciale;
- d) la prévention de l'usage improprie par des groupes criminels organisés de personnes morales; ces mesures pourraient inclure:
 - i) l'établissement de registres publics des personnes morales et physiques impliquées dans la création, la gestion et le financement de personnes morales;
 - ii) la possibilité de déchoir les personnes reconnues coupables d'infractions visées par la présente convention, par décision de justice ou par tout moyen approprié, pour une période raisonnable, du droit de diriger des personnes morales constituées sur leur territoire;
 - iii) l'établissement de registres nationaux des personnes déchues du droit de diriger des personnes morales, et
 - iv) l'échange d'informations contenues dans les registres mentionnés aux points d) i) et d) iii) avec les autorités compétentes des autres États parties.

3. Les États parties s'efforcent de promouvoir la réinsertion dans la société des personnes reconnues coupables d'infractions visées par la présente convention.

4. Les États parties s'efforcent d'évaluer périodiquement les instruments juridiques et les pratiques administratives pertinents en vue de déterminer s'ils comportent des lacunes permettant aux groupes criminels organisés d'en faire un usage improprie.

5. Les États parties s'efforcent de mieux sensibiliser le public à l'existence, aux causes et à la gravité de la criminalité transnationale organisée et à la menace qu'elle représente. Ils peuvent le faire, selon qu'il convient, par l'intermédiaire des médias et en adoptant des mesures destinées à promouvoir la participation du public aux activités de prévention et de lutte.

6. Chaque État partie communique au secrétaire général de l'Organisation des Nations unies le nom et l'adresse de l'autorité ou des autorités susceptibles d'aider les autres États parties à mettre au point des mesures de prévention de la criminalité transnationale organisée.

7. Les États parties collaborent, selon qu'il convient, entre eux et avec les organisations régionales et internationales compétentes en vue de promouvoir et de mettre au point les mesures visées dans le présent article. À ce titre, ils participent à des projets internationaux visant à prévenir la criminalité transnationale organisée, par exemple en agissant sur les facteurs qui rendent les groupes socialement marginalisés vulnérables à l'action de cette criminalité.

*Article 32***Conférence des parties à la convention**

1. Une conférence des parties à la convention est instituée pour améliorer la capacité des États parties à combattre la criminalité transnationale organisée et pour promouvoir et examiner l'application de la présente convention.

2. Le secrétaire général de l'Organisation des Nations unies convoquera la conférence des parties au plus tard un an après l'entrée en vigueur de la présente convention. La conférence des parties adoptera un règlement intérieur et des règles régissant les activités énoncées aux paragraphes 3 et 4 (y compris des règles relatives au financement des dépenses encourues au titre de ces activités).

3. La conférence des parties arrête des mécanismes en vue d'atteindre les objectifs visés au paragraphe 1, notamment:

- a) elle facilite les activités menées par les États parties en application des articles 29, 30 et 31 de la présente convention, y compris en encourageant la mobilisation de contributions volontaires;
- b) elle facilite l'échange d'informations entre États parties sur les caractéristiques et tendances de la criminalité transnationale organisée et les pratiques efficaces pour la combattre;
- c) elle coopère avec les organisations régionales et internationales et les organisations non gouvernementales compétentes;
- d) elle examine à intervalles réguliers l'application de la présente convention;
- e) elle formule des recommandations en vue d'améliorer la présente convention et son application;

4. Aux fins du paragraphe 3, points d) et e), la conférence des parties s'enquiert des mesures adoptées et des difficultés rencontrées par les États parties pour appliquer la présente convention en utilisant les informations que ceux-ci lui communiquent ainsi que les mécanismes complémentaires d'examen qu'elle pourra établir.

5. Chaque État partie communique à la conférence des parties, comme celle-ci le requiert, des informations sur ses programmes, plans et pratiques ainsi que sur ses mesures législatives et administratives visant à appliquer la présente convention.

*Article 33***Secrétariat**

1. Le secrétaire général de l'Organisation des Nations unies fournit les services de secrétariat nécessaires à la conférence des parties à la convention.
2. Le secrétariat:
 - a) aide la conférence des parties à réaliser les activités énoncées à l'article 32 de la présente convention, prend des dispositions et fournit les services nécessaires pour les sessions de la conférence des parties;
 - b) aide les États parties, sur leur demande, à fournir des informations à la conférence des parties comme le prévoit l'article 32, paragraphe 5, de la présente convention, et
 - c) assure la coordination nécessaire avec le secrétariat des organisations régionales et internationales compétentes.

*Article 34***Application de la convention**

1. Chaque État partie prend les mesures nécessaires, y compris législatives et administratives, conformément aux principes fondamentaux de son droit interne, pour assurer l'exécution de ses obligations en vertu de la présente convention.
2. Les infractions établies conformément aux articles 5, 6, 8 et 23 de la présente convention sont établies dans le droit interne de chaque État partie indépendamment de leur nature transnationale ou de l'implication d'un groupe criminel organisé comme énoncé à l'article 3, paragraphe 1, de la présente convention, sauf dans la mesure où, conformément à l'article 5 de la présente convention, serait requise l'implication d'un groupe criminel organisé.
3. Chaque État partie peut adopter des mesures plus strictes ou plus sévères que celles qui sont prévues par la présente convention afin de prévenir et de combattre la criminalité transnationale organisée.

*Article 35***Règlement des différends**

1. Les États parties s'efforcent de régler les différends concernant l'interprétation ou l'application de la présente convention par voie de négociation.
2. Tout différend entre deux États parties ou plus concernant l'interprétation ou l'application de la présente convention qui ne peut être réglé par voie de négociation dans un délai raisonnable est, à la demande de l'un de ces États parties, soumis à l'arbitrage. Si, dans un délai de six mois à compter de la date de la demande d'arbitrage, les États parties ne peuvent s'entendre sur l'organisation de l'arbitrage, l'un quelconque d'entre eux peut soumettre le différend à la Cour internationale de justice en adressant une requête conformément au statut de la Cour.
3. Chaque État partie peut, au moment de la signature, de la ratification, de l'acceptation ou de l'approbation de la présente convention ou de l'adhésion à celle-ci, déclarer qu'il ne se considère pas lié par le paragraphe 2. Les autres États parties

ne sont pas liés par le paragraphe 2 envers tout État partie ayant émis une telle réserve.

4. Tout État partie qui a émis une réserve en vertu du paragraphe 3 peut la retirer à tout moment en adressant une notification au secrétaire général de l'Organisation des Nations unies.

*Article 36***Signature, ratification, acceptation, approbation et adhésion**

1. La présente convention sera ouverte à la signature de tous les États du 12 au 15 décembre 2000 à Palerme (Italie) et, par la suite, au siège de l'Organisation des Nations unies, à New York, jusqu'au 12 décembre 2002.
2. La présente convention est également ouverte à la signature des organisations régionales d'intégration économique à la condition qu'au moins un État membre d'une telle organisation ait signé la présente convention conformément au paragraphe 1.
3. La présente convention est soumise à ratification, acceptation ou approbation. Les instruments de ratification, d'acceptation ou d'approbation seront déposés auprès du secrétaire général de l'Organisation des Nations unies. Une organisation régionale d'intégration économique peut déposer ses instruments de ratification, d'acceptation ou d'approbation si au moins un de ses États membres l'a fait. Dans cet instrument de ratification, d'acceptation ou d'approbation, cette organisation déclare l'étendue de sa compétence concernant les questions régies par la présente convention. Elle informe également le dépositaire de toute modification pertinente de l'étendue de sa compétence.
4. La présente convention est ouverte à l'adhésion de tout État ou de toute organisation régionale d'intégration économique dont au moins un État membre est partie à la présente convention. Les instruments d'adhésion sont déposés auprès du secrétaire général de l'Organisation des Nations unies. Au moment de son adhésion, une organisation régionale d'intégration économique déclare l'étendue de sa compétence concernant les questions régies par la présente convention. Elle informe également le dépositaire de toute modification pertinente de l'étendue de sa compétence.

*Article 37***Relation avec les protocoles**

1. La présente convention peut être complétée par un ou plusieurs protocoles.
2. Pour devenir partie à un protocole, un État ou une organisation régionale d'intégration économique doit être également partie à la présente convention.
3. Un État partie à la présente convention n'est pas lié par un protocole, à moins qu'il ne devienne partie audit protocole conformément aux dispositions de ce dernier.
4. Tout protocole à la présente convention est interprété conjointement avec la présente convention, compte tenu de l'objet de ce protocole.

*Article 38***Entrée en vigueur**

1. La présente convention entrera en vigueur le quatre-vingt-dixième jour suivant la date de dépôt du quarantième instrument de ratification, d'acceptation, d'approbation ou d'adhésion. Aux fins du présent paragraphe, aucun des instruments déposés par une organisation régionale d'intégration économique n'est considéré comme un instrument venant s'ajouter aux instruments déjà déposés par les États membres de cette organisation.

2. Pour chaque État ou organisation régionale d'intégration économique qui ratifiera, acceptera ou approuvera la présente convention ou y adhèrera après le dépôt du quarantième instrument pertinent, la présente convention entrera en vigueur le trentième jour suivant la date de dépôt de l'instrument pertinent par ledit État ou ladite organisation.

*Article 39***Amendement**

1. À l'expiration d'un délai de cinq ans à compter de l'entrée en vigueur de la présente convention, un État partie peut proposer un amendement et en déposer le texte auprès du secrétaire général de l'Organisation des Nations unies. Ce dernier communique alors la proposition d'amendement aux États parties et à la conférence des parties à la convention en vue de l'examen de la proposition et de l'adoption d'une décision. La conférence des parties n'épargne aucun effort pour parvenir à un consensus sur tout amendement. Si tous les efforts en ce sens ont été épuisés sans qu'un accord soit intervenu, il faudra, en dernier recours, pour que l'amendement soit adopté, un vote à la majorité des deux tiers des États parties présents à la conférence des parties et exprimant leur vote.

2. Les organisations régionales d'intégration économique disposent, pour exercer, en vertu du présent article, leur droit de vote dans les domaines qui relèvent de leur compétence, d'un nombre de voix égal au nombre de leurs États membres parties à la présente convention. Elles n'exercent pas leur droit de vote si leurs États membres exercent le leur, et inversement.

3. Un amendement adopté conformément au paragraphe 1 est soumis à ratification, acceptation ou approbation des États parties.

4. Un amendement adopté conformément au paragraphe 1 entrera en vigueur pour un État partie quatre-vingt-dix jours après la date de dépôt par ledit État partie auprès du secrétaire général de l'Organisation des Nations unies d'un instrument de ratification, d'acceptation ou d'approbation dudit amendement.

5. Un amendement entré en vigueur a force obligatoire à l'égard des États parties qui ont exprimé leur consentement à être liés par lui. Les autres États parties restent liés par les dispositions de la présente convention et tous amendements antérieurs qu'ils ont ratifiés, acceptés ou approuvés.

*Article 40***Dénonciation**

1. Un État partie peut dénoncer la présente convention par notification écrite adressée au secrétaire général de l'Organisation des Nations unies. Une telle dénonciation prend effet un an après la date de réception de la notification par le secrétaire général.

2. Une organisation régionale d'intégration économique cesse d'être partie à la présente convention lorsque tous ses États membres l'ont dénoncée.

3. La dénonciation de la présente convention conformément au paragraphe 1 entraîne la dénonciation de tout protocole y relatif.

*Article 41***Dépositaire et langues**

1. Le secrétaire général de l'Organisation des Nations unies est le dépositaire de la présente convention.

2. L'original de la présente convention, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé auprès du secrétaire général de l'Organisation des Nations unies.

EN FOI DE QUOI, les plénipotentiaires soussignés, à ce dûment autorisés par leurs gouvernements respectifs, ont signé la présente convention.

CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA DELINCUENCIA ORGANIZADA TRANSNACIONAL

Artículo 1

Finalidad

El propósito de la presente Convención es promover la cooperación para prevenir y combatir más eficazmente la delincuencia organizada transnacional.

Artículo 2

Definiciones

Para los fines de la presente Convención:

- a) por 'grupo delictivo organizado' se entenderá un grupo estructurado de tres o más personas que exista durante cierto tiempo y que actúe concertadamente con el propósito de cometer uno o más delitos graves o delitos tipificados con arreglo a la presente Convención con miras a obtener, directa o indirectamente, un beneficio económico u otro beneficio de orden material;
- b) por 'delito grave' se entenderá la conducta que constituya un delito punible con una privación de libertad máxima de al menos cuatro años o con una pena más grave;
- c) por 'grupo estructurado' se entenderá un grupo no formado fortuitamente para la comisión inmediata de un delito y en el que no necesariamente se haya asignado a sus miembros funciones formalmente definidas ni haya continuidad en la condición de miembro o exista una estructura desarrollada;
- d) por 'bienes' se entenderá los activos de cualquier tipo, corporales o incorporeales, muebles o inmuebles, tangibles o intangibles, y los documentos o instrumentos legales que acrediten la propiedad u otros derechos sobre dichos activos;
- e) por 'producto del delito' se entenderá los bienes de cualquier índole derivados u obtenidos directa o indirectamente de la comisión de un delito;
- f) por 'embargo preventivo' o 'incautación' se entenderá la prohibición temporal de transferir, convertir, enajenar o mover bienes, o la custodia o el control temporales de bienes por mandamiento expedido por un tribunal u otra autoridad competente;
- g) por 'decomiso' se entenderá la privación con carácter definitivo de bienes por decisión de un tribunal o de otra autoridad competente;
- h) por 'delito determinante' se entenderá todo delito del que se derive un producto que pueda pasar a constituir materia de un delito definido en el artículo 6 de la presente Convención;
- i) por 'entrega vigilada' se entenderá la técnica consistente en dejar que remesas ilícitas o sospechosas salgan del territorio de uno o más Estados, lo atraviesen o entren en él, con el conocimiento y bajo la supervisión de sus autoridades

competentes, con el fin de investigar delitos e identificar a las personas involucradas en la comisión de éstos;

- j) por 'organización regional de integración económica' se entenderá una organización constituida por Estados soberanos de una región determinada, a la que sus Estados miembros han transferido competencia en las cuestiones regidas por la presente Convención y que ha sido debidamente facultada, de conformidad con sus procedimientos internos, para firmar, ratificar, aceptar o aprobar la Convención o adherirse a ella; las referencias a los 'Estados Parte' con arreglo a la presente Convención se aplicarán a esas organizaciones dentro de los límites de su competencia.

Artículo 3

Ámbito de aplicación

1. A menos que contenga una disposición en contrario, la presente Convención se aplicará a la prevención, la investigación y el enjuiciamiento de:
 - a) los delitos tipificados con arreglo a los artículos 5, 6, 8 y 23 de la presente Convención, y
 - b) los delitos graves que se definen en el artículo 2 de la presente Convención; cuando esos delitos sean de carácter transnacional y entrañen la participación de un grupo delictivo organizado.
2. A los efectos del párrafo 1 del presente artículo, el delito será de carácter transnacional si:
 - a) se comete en más de un Estado;
 - b) se comete dentro de un solo Estado pero una parte sustancial de su preparación, planificación, dirección o control se realiza en otro Estado;
 - c) se comete dentro de un solo Estado pero entraña la participación de un grupo delictivo organizado que realiza actividades delictivas en más de un Estado, o
 - d) se comete en un solo Estado pero tiene efectos sustanciales en otro Estado.

Artículo 4

Protección de la soberanía

1. Los Estados Parte cumplirán sus obligaciones con arreglo a la presente Convención en consonancia con los principios de igualdad soberana e integridad territorial de los Estados, así como de no intervención en los asuntos internos de otros Estados.
2. Nada de lo dispuesto en la presente Convención facultará a un Estado Parte para ejercer, en el territorio de otro Estado, jurisdicción o funciones que el derecho interno de ese Estado reserve exclusivamente a sus autoridades.

*Artículo 5***Penalización de la participación en un grupo delictivo organizado**

1. Cada Estado Parte adoptará las medidas legislativas y de otra índole que sean necesarias para tipificar como delito, cuando se cometan intencionalmente:

a) una de las conductas siguientes, o ambas, como delitos distintos de los que entrañen el intento o la consumación de la actividad delictiva:

i) el acuerdo con una o más personas de cometer un delito grave con un propósito que guarde relación directa o indirecta con la obtención de un beneficio económico u otro beneficio de orden material y, cuando así lo prescriba el derecho interno, que entrañe un acto perpetrado por uno de los participantes para llevar adelante ese acuerdo o que entrañe la participación de un grupo delictivo organizado,

ii) la conducta de toda persona que, a sabiendas de la finalidad y actividad delictiva general de un grupo delictivo organizado o de su intención de cometer los delitos en cuestión, participe activamente en:

a. actividades ilícitas del grupo delictivo organizado,

b. otras actividades del grupo delictivo organizado, a sabiendas de que su participación contribuirá al logro de la finalidad delictiva antes descrita;

b) la organización, dirección, ayuda, incitación, facilitación o asesoramiento en aras de la comisión de un delito grave que entrañe la participación de un grupo delictivo organizado.

2. El conocimiento, la intención, la finalidad, el propósito o el acuerdo a que se refiere el párrafo 1 del presente artículo podrán inferirse de circunstancias fácticas objetivas.

3. Los Estados Parte cuyo derecho interno requiera la participación de un grupo delictivo organizado para la penalización de los delitos tipificados con arreglo al inciso i) del apartado a) del párrafo 1 del presente artículo velarán por que su derecho interno comprenda todos los delitos graves que entrañen la participación de grupos delictivos organizados. Esos Estados Parte, así como los Estados Parte cuyo derecho interno requiera la comisión de un acto que tenga por objeto llevar adelante el acuerdo concertado con el propósito de cometer los delitos tipificados con arreglo al inciso i) del apartado a) del párrafo 1 del presente artículo, lo notificarán al Secretario General de las Naciones Unidas en el momento de la firma o del depósito de su instrumento de ratificación, aceptación o aprobación de la presente Convención o de adhesión a ella.

*Artículo 6***Penalización del blanqueo del producto del delito**

1. Cada Estado Parte adoptará, de conformidad con los principios fundamentales de su derecho interno, las medidas legislativas y de otra índole que sean necesarias para tipificar como delito, cuando se cometan intencionalmente:

a) i) la conversión o la transferencia de bienes, a sabiendas de que esos bienes son producto del delito, con el propósito

de ocultar o disimular el origen ilícito de los bienes o ayudar a cualquier persona involucrada en la comisión del delito determinante a eludir las consecuencias jurídicas de sus actos,

ii) la ocultación o disimulación de la verdadera naturaleza, origen, ubicación, disposición, movimiento o propiedad de bienes o del legítimo derecho a éstos, a sabiendas de que dichos bienes son producto del delito;

b) con sujeción a los conceptos básicos de su ordenamiento jurídico:

i) la adquisición, posesión o utilización de bienes, a sabiendas, en el momento de su recepción, de que son producto del delito,

ii) la participación en la comisión de cualesquiera de los delitos tipificados con arreglo al presente artículo, así como la asociación y la confabulación para cometerlos, el intento de cometerlos, y la ayuda, la incitación, la facilitación y el asesoramiento en aras de su comisión.

2. Para los fines de la aplicación o puesta en práctica del párrafo 1 del presente artículo:

a) cada Estado Parte velará por aplicar el párrafo 1 del presente artículo a la gama más amplia posible de delitos determinantes;

b) cada Estado Parte incluirá como delitos determinantes todos los delitos graves definidos en el artículo 2 de la presente Convención y los delitos tipificados con arreglo a los artículos 5, 8 y 23 de la presente Convención. Los Estados Parte cuya legislación establezca una lista de delitos determinantes incluirán entre éstos, como mínimo, una amplia gama de delitos relacionados con grupos delictivos organizados;

c) a los efectos del apartado b), los delitos determinantes incluirán los delitos cometidos tanto dentro como fuera de la jurisdicción del Estado Parte interesado. No obstante, los delitos cometidos fuera de la jurisdicción de un Estado Parte constituirán delito determinante siempre y cuando el acto correspondiente sea delito con arreglo al derecho interno del Estado en que se haya cometido y constituyese asimismo delito con arreglo al derecho interno del Estado Parte que aplique o ponga en práctica el presente artículo si el delito se hubiese cometido allí;

d) cada Estado Parte proporcionará al Secretario General de las Naciones Unidas una copia de sus leyes destinadas a dar aplicación al presente artículo y de cualquier enmienda ulterior que se haga a tales leyes o una descripción de ésta;

e) si así lo requieren los principios fundamentales del derecho interno de un Estado Parte, podrá disponerse que los delitos tipificados en el párrafo 1 del presente artículo no se aplicarán a las personas que hayan cometido el delito determinante;

f) el conocimiento, la intención o la finalidad que se requieren como elemento de un delito tipificado en el párrafo 1 del presente artículo podrán inferirse de circunstancias fácticas objetivas.

*Artículo 7***Medidas para combatir el blanqueo de dinero**

1. Cada Estado Parte:
 - a) establecerá un amplio régimen interno de reglamentación y supervisión de los bancos y las instituciones financieras no bancarias y, cuando proceda, de otros órganos situados dentro de su jurisdicción que sean particularmente susceptibles de utilizarse para el blanqueo de dinero a fin de prevenir y detectar todas las formas de blanqueo de dinero, y en ese régimen se hará hincapié en los requisitos relativos a la identificación del cliente, el establecimiento de registros y la denuncia de las transacciones sospechosas;
 - b) garantizará, sin perjuicio de la aplicación de los artículos 18 y 27 de la presente Convención, que las autoridades de administración, reglamentación y cumplimiento de la ley y demás autoridades encargadas de combatir el blanqueo de dinero (incluidas, cuando sea pertinente con arreglo al derecho interno, las autoridades judiciales), sean capaces de cooperar e intercambiar información a nivel nacional e internacional de conformidad con las condiciones prescritas en el derecho interno y, a tal fin, considerará la posibilidad de establecer una dependencia de inteligencia financiera que sirva de centro nacional de recopilación, análisis y difusión de información sobre posibles actividades de blanqueo de dinero.
2. Los Estados Parte considerarán la posibilidad de aplicar medidas viables para detectar y vigilar el movimiento transfronterizo de efectivo y de títulos negociables pertinentes, con sujeción a salvaguardias que garanticen la debida utilización de la información y sin restringir en modo alguno la circulación de capitales lícitos. Esas medidas podrán incluir la exigencia de que los particulares y las entidades comerciales notifiquen las transferencias transfronterizas de cantidades elevadas de efectivo y de títulos negociables pertinentes.
3. Al establecer un régimen interno de reglamentación y supervisión con arreglo al presente artículo y sin perjuicio de lo dispuesto en cualquier otro artículo de la presente Convención, se insta a los Estados Parte a que utilicen como guía las iniciativas pertinentes de las organizaciones regionales, interregionales y multilaterales de lucha contra el blanqueo de dinero.
4. Los Estados Parte se esforzarán por establecer y promover la cooperación a escala mundial, regional, subregional y bilateral entre las autoridades judiciales, de cumplimiento de la ley y de reglamentación financiera a fin de combatir el blanqueo de dinero.

*Artículo 8***Penalización de la corrupción**

1. Cada Estado Parte adoptará las medidas legislativas y de otra índole que sean necesarias para tipificar como delito, cuando se cometan intencionalmente:
 - a) la promesa, el ofrecimiento o la concesión a un funcionario público, directa o indirectamente, de un beneficio indebido que redunde en su propio provecho o en el de otra persona o entidad, con el fin de que dicho funcionario actúe o se abstenga de actuar en el cumplimiento de sus funciones oficiales;
 - b) la solicitud o aceptación por un funcionario público, directa o indirectamente, de un beneficio indebido que redunde en

su propio provecho o en el de otra persona o entidad, con el fin de que dicho funcionario actúe o se abstenga de actuar en el cumplimiento de sus funciones oficiales.

2. Cada Estado Parte considerará la posibilidad de adoptar las medidas legislativas y de otra índole que sean necesarias para tipificar como delito los actos a que se refiere el párrafo 1 del presente artículo cuando esté involucrado en ellos un funcionario público extranjero o un funcionario internacional. Del mismo modo, cada Estado Parte considerará la posibilidad de tipificar como delito otras formas de corrupción.
3. Cada Estado Parte adoptará también las medidas que sean necesarias para tipificar como delito la participación como cómplice en un delito tipificado con arreglo al presente artículo.
4. A los efectos del párrafo 1 del presente artículo y del artículo 9 de la presente Convención, por 'funcionario público' se entenderá todo funcionario público o persona que preste un servicio público conforme a la definición prevista en el derecho interno y a su aplicación con arreglo al derecho penal del Estado Parte en el que dicha persona desempeña esa función.

*Artículo 9***Medidas contra la corrupción**

1. Además de las medidas previstas en el artículo 8 de la presente Convención, cada Estado Parte, en la medida en que proceda y sea compatible con su ordenamiento jurídico, adoptará medidas eficaces de carácter legislativo, administrativo o de otra índole para promover la integridad y para prevenir, detectar y castigar la corrupción de funcionarios públicos.
2. Cada Estado Parte adoptará medidas encaminadas a garantizar la intervención eficaz de sus autoridades con miras a prevenir, detectar y castigar la corrupción de funcionarios públicos, incluso dotando a dichas autoridades de suficiente independencia para disuadir del ejercicio de cualquier influencia indebida en su actuación.

*Artículo 10***Responsabilidad de las personas jurídicas**

1. Cada Estado Parte adoptará las medidas que sean necesarias, de conformidad con sus principios jurídicos, a fin de establecer la responsabilidad de personas jurídicas por participación en delitos graves en que esté involucrado un grupo delictivo organizado, así como por los delitos tipificados con arreglo a los artículos 5, 6, 8 y 23 de la presente Convención.
2. Con sujeción a los principios jurídicos del Estado Parte, la responsabilidad de las personas jurídicas podrá ser de índole penal, civil o administrativa.
3. Dicha responsabilidad existirá sin perjuicio de la responsabilidad penal que incumba a las personas naturales que hayan perpetrado los delitos.
4. Cada Estado Parte velará en particular por que se impongan sanciones penales o no penales eficaces, proporcionadas y disuasivas, incluidas sanciones monetarias, a las personas jurídicas consideradas responsables con arreglo al presente artículo.

Artículo 11

Proceso, fallo y sanciones

1. Cada Estado Parte penalizará la comisión de los delitos tipificados con arreglo a los artículos 5, 6, 8 y 23 de la presente Convención con sanciones que tengan en cuenta la gravedad de esos delitos.

2. Cada Estado Parte velará por que se ejerzan cualesquiera facultades legales discrecionales de que disponga conforme a su derecho interno en relación con el enjuiciamiento de personas por los delitos comprendidos en la presente Convención a fin de dar máxima eficacia a las medidas adoptadas para hacer cumplir la ley respecto de esos delitos, teniendo debidamente en cuenta la necesidad de prevenir su comisión.

3. Cuando se trate de delitos tipificados con arreglo a los artículos 5, 6, 8 y 23 de la presente Convención, cada Estado Parte adoptará medidas apropiadas, de conformidad con su derecho interno y tomando debidamente en consideración los derechos de la defensa, con miras a procurar que al imponer condiciones en relación con la decisión de conceder la libertad en espera de juicio o la apelación se tenga presente la necesidad de garantizar la comparecencia del acusado en todo procedimiento penal ulterior.

4. Cada Estado Parte velará por que sus tribunales u otras autoridades competentes tengan presente la naturaleza grave de los delitos comprendidos en la presente Convención al considerar la eventualidad de conceder la libertad anticipada o la libertad condicional a personas que hayan sido declaradas culpables de tales delitos.

5. Cada Estado Parte establecerá, cuando proceda, con arreglo a su derecho interno, un plazo de prescripción prolongado dentro del cual pueda iniciarse el proceso por cualquiera de los delitos comprendidos en la presente Convención y un plazo mayor cuando el presunto delincuente haya eludido la administración de justicia.

6. Nada de lo dispuesto en la presente Convención afectará al principio de que la descripción de los delitos tipificados con arreglo a ella y de los medios jurídicos de defensa aplicables o demás principios jurídicos que informan la legalidad de una conducta queda reservada al derecho interno de los Estados Parte y de que esos delitos han de ser perseguidos y sancionados de conformidad con ese derecho.

Artículo 12

Decomiso e incautación

1. Los Estados Parte adoptarán, en la medida en que lo permita su ordenamiento jurídico interno, las medidas que sean necesarias para autorizar el decomiso:

- a) del producto de los delitos comprendidos en la presente Convención o de bienes cuyo valor corresponda al de dicho producto;
- b) de los bienes, equipo u otros instrumentos utilizados o destinados a ser utilizados en la comisión de los delitos comprendidos en la presente Convención.

2. Los Estados Parte adoptarán las medidas que sean necesarias para permitir la identificación, la localización, el embargo preventivo o la incautación de cualquier bien a que se refiera el párrafo 1 del presente artículo con miras a su eventual decomiso.

3. Cuando el producto del delito se haya transformado o convertido parcial o totalmente en otros bienes, esos bienes podrán ser objeto de las medidas aplicables a dicho producto a tenor del presente artículo.

4. Cuando el producto del delito se haya mezclado con bienes adquiridos de fuentes lícitas, esos bienes podrán, sin menoscabo de cualquier otra facultad de embargo preventivo o incautación, ser objeto de decomiso hasta el valor estimado del producto entremezclado.

5. Los ingresos u otros beneficios derivados del producto del delito, de bienes en los que se haya transformado o convertido el producto del delito o de bienes con los que se haya entremezclado el producto del delito también podrán ser objeto de las medidas previstas en el presente artículo, de la misma manera y en el mismo grado que el producto del delito.

6. Para los fines del presente artículo y del artículo 13 de la presente Convención, cada Estado Parte facultará a sus tribunales u otras autoridades competentes para ordenar la presentación o la incautación de documentos bancarios, financieros o comerciales. Los Estados Parte no podrán negarse a aplicar las disposiciones del presente párrafo amparándose en el secreto bancario.

7. Los Estados Parte podrán considerar la posibilidad de exigir a un delincuente que demuestre el origen lícito del presunto producto del delito o de otros bienes expuestos a decomiso, en la medida en que ello sea conforme con los principios de su derecho interno y con la índole del proceso judicial u otras actuaciones conexas.

8. Las disposiciones del presente artículo no se interpretarán en perjuicio de los derechos de terceros de buena fe.

9. Nada de lo dispuesto en el presente artículo afectará al principio de que las medidas en él previstas se definirán y aplicarán de conformidad con el derecho interno de los Estados Parte y con sujeción a éste.

Artículo 13

Cooperación internacional para fines de decomiso

1. Los Estados Parte que reciban una solicitud de otro Estado Parte que tenga jurisdicción para conocer de un delito comprendido en la presente Convención con miras al decomiso del producto del delito, los bienes, el equipo u otros instrumentos mencionados en el párrafo 1 del artículo 12 de la presente Convención que se encuentren en su territorio deberán, en la mayor medida en que lo permita su ordenamiento jurídico interno:

- a) remitir la solicitud a sus autoridades competentes para obtener una orden de decomiso a la que, en caso de concederse, darán cumplimiento; o
- b) presentar a sus autoridades competentes, a fin de que se le dé cumplimiento en el grado solicitado, la orden de decomiso expedida por un tribunal situado en el territorio del Estado Parte requirente de conformidad con lo dispuesto en el párrafo 1 del artículo 12 de la presente Convención en la medida en que guarde relación con el producto del delito, los bienes, el equipo u otros instrumentos mencionados en el párrafo 1 del artículo 12 que se encuentren en el territorio del Estado Parte requerido.

2. A raíz de una solicitud presentada por otro Estado Parte que tenga jurisdicción para conocer de un delito comprendido en la presente Convención, el Estado Parte requerido adoptará medidas encaminadas a la identificación, la localización y el embargo preventivo o la incautación del producto del delito, los bienes, el equipo u otros instrumentos mencionados en el párrafo 1 del artículo 12 de la presente Convención con miras a su eventual decomiso, que habrá de ordenar el Estado Parte requirente o, en caso de que medie una solicitud presentada con arreglo al párrafo 1 del presente artículo, el Estado Parte requerido.

3. Las disposiciones del artículo 18 de la presente Convención serán aplicables *mutatis mutandis* al presente artículo. Además de la información indicada en el párrafo 15 del artículo 18, las solicitudes presentadas de conformidad con el presente artículo contendrán lo siguiente:

- a) cuando se trate de una solicitud relativa al apartado a) del párrafo 1 del presente artículo, una descripción de los bienes susceptibles de decomiso y una exposición de los hechos en que se basa la solicitud del Estado Parte requirente que sean lo suficientemente explícitas para que el Estado Parte requerido pueda tramitar la orden con arreglo a su derecho interno;
- b) cuando se trate de una solicitud relativa al apartado b) del párrafo 1 del presente artículo, una copia admisible en derecho de la orden de decomiso expedida por el Estado Parte requirente en la que se basa la solicitud, una exposición de los hechos y la información que proceda sobre el grado de ejecución que se solicita dar a la orden;
- c) cuando se trate de una solicitud relativa al párrafo 2 del presente artículo, una exposición de los hechos en que se basa el Estado Parte requirente y una descripción de las medidas solicitadas.

4. El Estado Parte requerido adoptará las decisiones o medidas previstas en los párrafos 1 y 2 del presente artículo conforme y con sujeción a lo dispuesto en su derecho interno y en sus reglas de procedimiento o en los tratados, acuerdos o arreglos bilaterales o multilaterales por los que pudiera estar vinculado al Estado Parte requirente.

5. Cada Estado Parte proporcionará al Secretario General de las Naciones Unidas una copia de sus leyes y reglamentos destinados a dar aplicación al presente artículo y de cualquier enmienda ulterior que se haga a tales leyes y reglamentos o una descripción de ésta.

6. Si un Estado Parte opta por supeditar la adopción de las medidas mencionadas en los párrafos 1 y 2 del presente artículo a la existencia de un tratado pertinente, ese Estado Parte considerará la presente Convención como la base de derecho necesaria y suficiente para cumplir ese requisito.

7. Los Estados Parte podrán denegar la cooperación solicitada con arreglo al presente artículo si el delito al que se refiere la solicitud no es un delito comprendido en la presente Convención.

8. Las disposiciones del presente artículo no se interpretarán en perjuicio de los derechos de terceros de buena fe.

9. Los Estados Parte considerarán la posibilidad de celebrar tratados, acuerdos o arreglos bilaterales o multilaterales con

miras a aumentar la eficacia de la cooperación internacional prestada con arreglo al presente artículo.

Artículo 14

Disposición del producto del delito o de los bienes decomisados

1. Los Estados Parte dispondrán del producto del delito o de los bienes que hayan decomisado con arreglo al artículo 12 o al párrafo 1 del artículo 13 de la presente Convención de conformidad con su derecho interno y sus procedimientos administrativos.

2. Al dar curso a una solicitud presentada por otro Estado Parte con arreglo al artículo 13 de la presente Convención, los Estados Parte, en la medida en que lo permita su derecho interno y de ser requeridos a hacerlo, darán consideración prioritaria a la devolución del producto del delito o de los bienes decomisados al Estado Parte requirente a fin de que éste pueda indemnizar a las víctimas del delito o devolver ese producto del delito o esos bienes a sus propietarios legítimos.

3. Al dar curso a una solicitud presentada por otro Estado Parte con arreglo a los artículos 12 y 13 de la presente Convención, los Estados Parte podrán considerar en particular la posibilidad de celebrar acuerdos o arreglos en el sentido de:

- a) aportar el valor de dicho producto del delito o de dichos bienes, o los fondos derivados de la venta de dicho producto o de dichos bienes o una parte de esos fondos, a la cuenta designada de conformidad con lo dispuesto en el apartado c) del párrafo 2 del artículo 30 de la presente Convención y a organismos intergubernamentales especializados en la lucha contra la delincuencia organizada;
- b) repartirse con otros Estados Parte, sobre la base de un criterio general o definido para cada caso, ese producto del delito o esos bienes, o los fondos derivados de la venta de ese producto o de esos bienes, de conformidad con su derecho interno o sus procedimientos administrativos.

Artículo 15

Jurisdicción

1. Cada Estado Parte adoptará las medidas que sean necesarias para establecer su jurisdicción respecto de los delitos tipificados con arreglo a los artículos 5, 6, 8 y 23 de la presente Convención cuando:

- a) el delito se cometa en su territorio, o
- b) el delito se cometa a bordo de un buque que enarbole su pabellón o de una aeronave registrada conforme a sus leyes en el momento de la comisión del delito.

2. Con sujeción a lo dispuesto en el artículo 4 de la presente Convención, un Estado Parte también podrá establecer su jurisdicción para conocer de tales delitos cuando:

- a) el delito se cometa contra uno de sus nacionales;
- b) el delito sea cometido por uno de sus nacionales o por una persona apátrida que tenga residencia habitual en su territorio, o

c) el delito:

- i) sea uno de los delitos tipificados con arreglo al párrafo 1 del artículo 5 de la presente Convención y se cometa fuera de su territorio con miras a la comisión de un delito grave dentro de su territorio,
- ii) sea uno de los delitos tipificados con arreglo al inciso ii) del apartado b) del párrafo 1 del artículo 6 de la presente Convención y se cometa fuera de su territorio con miras a la comisión, dentro de su territorio, de un delito tipificado con arreglo a los incisos i) o ii) del apartado a) o al inciso i) del apartado b) del párrafo 1 del artículo 6 de la presente Convención.

3. A los efectos del párrafo 10 del artículo 16 de la presente Convención, cada Estado Parte adoptará las medidas que sean necesarias para establecer su jurisdicción respecto de los delitos comprendidos en la presente Convención cuando el presunto delincuente se encuentre en su territorio y el Estado Parte no lo extradite por el solo hecho de ser uno de sus nacionales.

4. Cada Estado Parte podrá también adoptar las medidas que sean necesarias para establecer su jurisdicción respecto de los delitos comprendidos en la presente Convención cuando el presunto delincuente se encuentre en su territorio y el Estado Parte no lo extradite.

5. Si un Estado Parte que ejerce su jurisdicción con arreglo a los párrafos 1 o 2 del presente artículo ha recibido notificación, o tomado conocimiento por otro conducto, de que otro u otros Estados Parte están realizando una investigación, un proceso o una actuación judicial respecto de los mismos hechos, las autoridades competentes de esos Estados Parte se consultarán, según proceda, a fin de coordinar sus medidas.

6. Sin perjuicio de las normas del derecho internacional general, la presente Convención no excluirá el ejercicio de las competencias penales establecidas por los Estados Parte de conformidad con su derecho interno.

Artículo 16

Extradición

1. El presente artículo se aplicará a los delitos comprendidos en la presente Convención o a los casos en que un delito al que se hace referencia en los apartados a) o b) del párrafo 1 del artículo 3 entrañe la participación de un grupo delictivo organizado y la persona que es objeto de la solicitud de extradición se encuentre en el territorio del Estado Parte requerido, siempre y cuando el delito por el que se pide la extradición sea punible con arreglo al derecho interno del Estado Parte requiriente y del Estado Parte requerido.

2. Cuando la solicitud de extradición se base en varios delitos graves distintos, algunos de los cuales no estén comprendidos en el ámbito del presente artículo, el Estado Parte requerido podrá aplicar el presente artículo también respecto de estos últimos delitos.

3. Cada uno de los delitos a los que se aplica el presente artículo se considerará incluido entre los delitos que dan lugar a extradición en todo tratado de extradición vigente entre los Estados Parte. Los Estados Parte se comprometen a incluir tales delitos como casos de extradición en todo tratado de extradición que celebren entre sí.

4. Si un Estado Parte que supedita la extradición a la existencia de un tratado recibe una solicitud de extradición de otro Estado Parte con el que no lo vincula ningún tratado de extradición, podrá considerar la presente Convención como la base jurídica de la extradición respecto de los delitos a los que se aplica el presente artículo.

5. Los Estados Parte que supediten la extradición a la existencia de un tratado deberán:

a) en el momento de depositar su instrumento de ratificación, aceptación o aprobación de la presente Convención o de adhesión a ella, informar al Secretario General de las Naciones Unidas de si considerarán o no la presente Convención como la base jurídica de la cooperación en materia de extradición en sus relaciones con otros Estados Parte en la presente Convención, y

b) si no consideran la presente Convención como la base jurídica de la cooperación en materia de extradición, esforzarse, cuando proceda, por celebrar tratados de extradición con otros Estados Parte en la presente Convención a fin de aplicar el presente artículo.

6. Los Estados Parte que no supediten la extradición a la existencia de un tratado reconocerán los delitos a los que se aplica el presente artículo como casos de extradición entre ellos.

7. La extradición estará sujeta a las condiciones previstas en el derecho interno del Estado Parte requerido o en los tratados de extradición aplicables, incluidas, entre otras, las relativas al requisito de una pena mínima para la extradición y a los motivos por los que el Estado Parte requerido puede denegar la extradición.

8. Los Estados Parte, de conformidad con su derecho interno, procurarán agilizar los procedimientos de extradición y simplificar los requisitos probatorios correspondientes con respecto a cualquiera de los delitos a los que se aplica el presente artículo.

9. A reserva de lo dispuesto en su derecho interno y en sus tratados de extradición, el Estado Parte requerido podrá, tras haberse cerciorado de que las circunstancias lo justifican y tienen carácter urgente, y a solicitud del Estado Parte requiriente, proceder a la detención de la persona presente en su territorio cuya extradición se pide o adoptar otras medidas adecuadas para garantizar la comparecencia de esa persona en los procedimientos de extradición.

10. El Estado Parte en cuyo territorio se encuentre un presunto delincuente, si no lo extradita respecto de un delito al que se aplica el presente artículo por el solo hecho de ser uno de sus nacionales, estará obligado, previa solicitud del Estado Parte que pide la extradición, a someter el caso sin demora injustificada a sus autoridades competentes a efectos de enjuiciamiento. Dichas autoridades adoptarán su decisión y llevarán a cabo sus actuaciones judiciales de la misma manera en que lo harían respecto de cualquier otro delito de carácter grave con arreglo al derecho interno de ese Estado Parte. Los Estados Parte interesados cooperarán entre sí, en particular en lo que respecta a los aspectos procesales y probatorios, con miras a garantizar la eficiencia de dichas actuaciones.

11. Cuando el derecho interno de un Estado Parte le permita conceder la extradición o, de algún otro modo, la entrega de uno de sus nacionales sólo a condición de que esa persona sea devuelta a ese Estado Parte para cumplir la condena que le haya sido impuesta como resultado del juicio o proceso por el que se haya solicitado la extradición o la entrega, y cuando ese Estado Parte y el Estado Parte que solicite la extradición acepten esa opción, así como otras condiciones que estimen apropiadas, esa extradición o entrega condicional será suficiente para que quede cumplida la obligación enunciada en el párrafo 10 del presente artículo.

12. Si la extradición solicitada con el propósito de que se cumpla una condena es denegada por el hecho de que la persona buscada es nacional del Estado Parte requerido, éste, si su derecho interno lo permite y de conformidad con los requisitos de dicho derecho, considerará, previa solicitud del Estado Parte requirente, la posibilidad de hacer cumplir la condena impuesta o el resto pendiente de dicha condena con arreglo al derecho interno del Estado Parte requirente.

13. En todas las etapas de las actuaciones se garantizará un trato justo a toda persona contra la que se haya iniciado una instrucción en relación con cualquiera de los delitos a los que se aplica el presente artículo, incluido el goce de todos los derechos y garantías previstos por el derecho interno del Estado Parte en cuyo territorio se encuentre esa persona.

14. Nada de lo dispuesto en la presente Convención podrá interpretarse como la imposición de una obligación de extraditar si el Estado Parte requerido tiene motivos justificados para presumir que la solicitud se ha presentado con el fin de perseguir o castigar a una persona por razón de su sexo, raza, religión, nacionalidad, origen étnico u opiniones políticas o que su cumplimiento ocasionaría perjuicios a la posición de esa persona por cualquiera de estas razones.

15. Los Estados Parte no podrán denegar una solicitud de extradición únicamente porque se considere que el delito también entraña cuestiones tributarias.

16. Antes de denegar la extradición, el Estado Parte requerido, cuando proceda, consultará al Estado Parte requirente para darle amplia oportunidad de presentar sus opiniones y de proporcionar información pertinente a su alegato.

17. Los Estados Parte procurarán celebrar acuerdos o arreglos bilaterales y multilaterales para llevar a cabo la extradición o aumentar su eficacia.

Artículo 17

Traslado de personas condenadas a cumplir una pena

Los Estados Parte podrán considerar la posibilidad de celebrar acuerdos o arreglos bilaterales o multilaterales sobre el traslado a su territorio de toda persona que haya sido condenada a pena de prisión o a otra pena de privación de libertad por algún delito comprendido en la presente Convención a fin de que complete allí su condena.

Artículo 18

Asistencia judicial recíproca

1. Los Estados Parte se prestarán la más amplia asistencia judicial recíproca respecto de investigaciones, procesos y actuaciones judiciales relacionados con los delitos comprendidos en la presente Convención con arreglo a lo dispuesto en el artículo

3 y se prestarán también asistencia de esa índole cuando el Estado Parte requirente tenga motivos razonables para sospechar que el delito a que se hace referencia en los apartados a) o b) del párrafo 1 del artículo 3 es de carácter transnacional, así como que las víctimas, los testigos, el producto, los instrumentos o las pruebas de esos delitos se encuentran en el Estado Parte requerido y que el delito entraña la participación de un grupo delictivo organizado.

2. Se prestará asistencia judicial recíproca en la mayor medida posible conforme a las leyes, tratados, acuerdos y arreglos pertinentes del Estado Parte requerido con respecto a investigaciones, procesos y actuaciones judiciales relacionados con los delitos de los que una persona jurídica pueda ser considerada responsable de conformidad con el artículo 10 de la presente Convención en el Estado Parte requirente.

3. La asistencia judicial recíproca que se preste de conformidad con el presente artículo podrá solicitarse para cualquiera de los fines siguientes:

- a) recibir testimonios o tomar declaración a personas;
- b) presentar documentos judiciales;
- c) efectuar inspecciones e incautaciones y embargos preventivos;
- d) examinar objetos y lugares;
- e) facilitar información, elementos de prueba y evaluaciones de peritos;
- f) entregar originales o copias certificadas de los documentos y expedientes pertinentes, incluida la documentación pública, bancaria y financiera, así como la documentación social o comercial de sociedades mercantiles;
- g) identificar o localizar el producto del delito, los bienes, los instrumentos u otros elementos con fines probatorios;
- h) facilitar la comparecencia voluntaria de personas en el Estado Parte requirente;
- i) cualquier otro tipo de asistencia autorizada por el derecho interno del Estado Parte requerido.

4. Sin menoscabo del derecho interno, las autoridades competentes de un Estado Parte podrán, sin que se les solicite previamente, transmitir información relativa a cuestiones penales a una autoridad competente de otro Estado Parte si creen que esa información podría ayudar a la autoridad a emprender o concluir con éxito indagaciones y procesos penales o podría dar lugar a una petición formulada por este último Estado Parte con arreglo a la presente Convención.

5. La transmisión de información con arreglo al párrafo 4 del presente artículo se hará sin perjuicio de las indagaciones y procesos penales que tengan lugar en el Estado de las autoridades competentes que facilitan la información. Las autoridades competentes que reciben la información deberán acceder a toda solicitud de que se respete su carácter confidencial, incluso temporalmente, o de que se impongan restricciones a su utilización. Sin embargo, ello no obstará para que el Estado Parte receptor revele, en sus actuaciones, información que sea exculpatoria de una persona acusada. En tal caso, el Estado Parte receptor notificará al Estado Parte transmisor antes de revelar dicha información y, si así se le solicita, consultará al Estado Parte transmisor. Si, en un caso excepcional, no es posible notificar con antelación, el Estado Parte receptor informará sin demora al Estado Parte transmisor de dicha revelación.

6. Lo dispuesto en el presente artículo no afectará a las obligaciones dimanantes de otros tratados bilaterales o multilaterales vigentes o futuros que rijan, total o parcialmente, la asistencia judicial recíproca.

7. Los párrafos 9 a 29 del presente artículo se aplicarán a las solicitudes que se formulen con arreglo al presente artículo siempre que no medie entre los Estados Parte interesados un tratado de asistencia judicial recíproca. Cuando esos Estados Parte estén vinculados por un tratado de esa índole se aplicarán las disposiciones correspondientes de dicho tratado, salvo que los Estados Parte convengan en aplicar, en su lugar, los párrafos 9 a 29 del presente artículo. Se insta encarecidamente a los Estados Parte a que apliquen estos párrafos si facilitan la cooperación.

8. Los Estados Parte no invocarán el secreto bancario para denegar la asistencia judicial recíproca con arreglo al presente artículo.

9. Los Estados Parte podrán negarse a prestar la asistencia judicial recíproca con arreglo al presente artículo invocando la ausencia de doble incriminación. Sin embargo, de estimarlo necesario, el Estado Parte requerido podrá prestar asistencia, en la medida en que decida hacerlo a discreción propia, independientemente de que la conducta esté o no tipificada como delito en el derecho interno del Estado Parte requerido.

10. La persona que se encuentre detenida o cumpliendo una condena en el territorio de un Estado Parte y cuya presencia se solicite en otro Estado Parte para fines de identificación, para prestar testimonio o para que ayude de alguna otra forma a obtener pruebas necesarias para investigaciones, procesos o actuaciones judiciales respecto de delitos comprendidos en la presente Convención podrá ser trasladada si se cumplen las condiciones siguientes:

- a) la persona, debidamente informada, da su libre consentimiento;
- b) las autoridades competentes de ambos Estados Parte están de acuerdo, con sujeción a las condiciones que éstos consideren apropiadas.

11. A los efectos del párrafo 10 del presente artículo:

- a) el Estado Parte al que se traslade a la persona tendrá la competencia y la obligación de mantenerla detenida, salvo que el Estado Parte del que ha sido trasladada solicite o autorice otra cosa;
- b) el Estado Parte al que se traslade a la persona cumplirá sin dilación su obligación de devolverla a la custodia del Estado Parte del que ha sido trasladada, según convengan de antemano o de otro modo las autoridades competentes de ambos Estados Parte;
- c) el Estado Parte al que se traslade a la persona no podrá exigir al Estado Parte del que ha sido trasladada que inicie procedimientos de extradición para su devolución;
- d) el tiempo que la persona haya permanecido detenida en el Estado Parte al que ha sido trasladada se computará como parte de la pena que ha de cumplir en el Estado del que ha sido trasladada.

12. A menos que el Estado Parte desde el cual se ha de trasladar a una persona de conformidad con los párrafos 10 y 11 del presente artículo esté de acuerdo, dicha persona, cual-

quiera que sea su nacionalidad, no podrá ser enjuiciada, detenida, condenada ni sometida a ninguna otra restricción de su libertad personal en el territorio del Estado al que sea trasladada en relación con actos, omisiones o condenas anteriores a su salida del territorio del Estado del que ha sido trasladada.

13. Cada Estado Parte designará a una autoridad central encargada de recibir solicitudes de asistencia judicial recíproca y facultada para darles cumplimiento o para transmitir las a las autoridades competentes para su ejecución. Cuando alguna región o algún territorio especial de un Estado Parte disponga de un régimen distinto de asistencia judicial recíproca, el Estado Parte podrá designar a otra autoridad central que desempeñará la misma función para dicha región o dicho territorio. Las autoridades centrales velarán por el rápido y adecuado cumplimiento o transmisión de las solicitudes recibidas. Cuando la autoridad central transmita la solicitud a una autoridad competente para su ejecución, alentará la rápida y adecuada ejecución de la solicitud por parte de dicha autoridad. Cada Estado Parte notificará al Secretario General de las Naciones Unidas, en el momento de depositar su instrumento de ratificación, aceptación o aprobación de la presente Convención o de adhesión a ella, el nombre de la autoridad central que haya sido designada a tal fin. Las solicitudes de asistencia judicial recíproca y cualquier otra comunicación pertinente serán transmitidas a las autoridades centrales designadas por los Estados Parte. La presente disposición no afectará al derecho de cualquiera de los Estados Parte a exigir que estas solicitudes y comunicaciones le sean enviadas por vía diplomática y, en circunstancias urgentes, cuando los Estados Parte convengan en ello, por conducto de la Organización Internacional de Policía Criminal, de ser posible.

14. Las solicitudes se presentarán por escrito o, cuando sea posible, por cualquier medio capaz de registrar un texto escrito, en un idioma aceptable para el Estado Parte requerido, en condiciones que permitan a dicho Estado Parte determinar la autenticidad. Cada Estado Parte notificará al Secretario General de las Naciones Unidas, en el momento de depositar su instrumento de ratificación, aceptación o aprobación de la presente Convención o de adhesión a ella, el idioma o idiomas que sean aceptables para cada Estado Parte. En situaciones de urgencia, y cuando los Estados Parte convengan en ello, las solicitudes podrán hacerse oralmente, debiendo ser confirmadas sin demora por escrito.

15. Toda solicitud de asistencia judicial recíproca contendrá lo siguiente:

- a) la identidad de la autoridad que hace la solicitud;
- b) el objeto y la índole de las investigaciones, los procesos o las actuaciones judiciales a que se refiere la solicitud y el nombre y las funciones de la autoridad encargada de efectuar dichas investigaciones, procesos o actuaciones;
- c) un resumen de los hechos pertinentes, salvo cuando se trate de solicitudes de presentación de documentos judiciales;
- d) una descripción de la asistencia solicitada y pormenores sobre cualquier procedimiento particular que el Estado Parte requirente desee que se aplique;
- e) de ser posible, la identidad, ubicación y nacionalidad de toda persona interesada, y
- f) la finalidad para la que se solicita la prueba, información o actuación.

16. El Estado Parte requerido podrá pedir información complementaria cuando sea necesaria para dar cumplimiento a la solicitud de conformidad con su derecho interno o para facilitar dicho cumplimiento.

17. Se dará cumplimiento a toda solicitud con arreglo al derecho interno del Estado Parte requerido y en la medida en que ello no lo contravenga y sea factible, de conformidad con los procedimientos especificados en la solicitud.

18. Siempre que sea posible y compatible con los principios fundamentales del derecho interno, cuando una persona se encuentre en el territorio de un Estado Parte y tenga que prestar declaración como testigo o perito ante autoridades judiciales de otro Estado Parte, el primer Estado Parte, a solicitud del otro, podrá permitir que la audiencia se celebre por videoconferencia si no es posible o conveniente que la persona en cuestión comparezca personalmente en el territorio del Estado Parte requirente. Los Estados Parte podrán convenir en que la audiencia esté a cargo de una autoridad judicial del Estado Parte requirente y en que asista a ella una autoridad judicial del Estado Parte requerido.

19. El Estado Parte requirente no transmitirá ni utilizará, sin previo consentimiento del Estado Parte requerido, la información o las pruebas proporcionadas por el Estado Parte requerido para investigaciones, procesos o actuaciones judiciales distintos de los indicados en la solicitud. Nada de lo dispuesto en el presente párrafo impedirá que el Estado Parte requirente revele, en sus actuaciones, información o pruebas que sean exculpatorias de una persona acusada. En este último caso, el Estado Parte requirente notificará al Estado Parte requerido antes de revelar la información o las pruebas y, si así se le solicita, consultará al Estado Parte requerido. Si, en un caso excepcional, no es posible notificar con antelación, el Estado Parte requirente informará sin demora al Estado Parte requerido de dicha revelación.

20. El Estado Parte requirente podrá exigir que el Estado Parte requerido mantenga reserva acerca de la existencia y el contenido de la solicitud, salvo en la medida necesaria para darle cumplimiento. Si el Estado Parte requerido no puede mantener esa reserva, lo hará saber de inmediato al Estado Parte requirente.

21. La asistencia judicial recíproca podrá ser denegada:

- a) cuando la solicitud no se haga de conformidad con lo dispuesto en el presente artículo;
- b) cuando el Estado Parte requerido considere que el cumplimiento de lo solicitado podría menoscabar su soberanía, su seguridad, su orden público u otros intereses fundamentales;
- c) cuando el derecho interno del Estado Parte requerido prohíba a sus autoridades actuar en la forma solicitada con respecto a un delito análogo, si éste hubiera sido objeto de investigaciones, procesos o actuaciones judiciales en el ejercicio de su propia competencia;
- d) cuando acceder a la solicitud sea contrario al ordenamiento jurídico del Estado Parte requerido en lo relativo a la asistencia judicial recíproca.

22. Los Estados Parte no podrán denegar una solicitud de asistencia judicial recíproca únicamente porque se considere que el delito también entraña asuntos fiscales.

23. Toda denegación de asistencia judicial recíproca deberá fundamentarse debidamente.

24. El Estado Parte requerido cumplirá la solicitud de asistencia judicial recíproca lo antes posible y tendrá plenamente en cuenta, en la medida de sus posibilidades, los plazos que sugiera el Estado Parte requirente y que estén debidamente fundamentados, de preferencia en la solicitud. El Estado Parte requerido responderá a las solicitudes razonables que formule el Estado Parte requirente respecto de la evolución del trámite de la solicitud. El Estado Parte requirente informará con prontitud cuando ya no necesite la asistencia solicitada.

25. La asistencia judicial recíproca podrá ser diferida por el Estado Parte requerido si perturbase investigaciones, procesos o actuaciones judiciales en curso.

26. Antes de denegar una solicitud presentada con arreglo al párrafo 21 del presente artículo o de diferir su cumplimiento con arreglo al párrafo 25 del presente artículo, el Estado Parte requerido consultará al Estado Parte requirente para considerar si es posible prestar la asistencia solicitada supeditándola a las condiciones que estime necesarias. Si el Estado Parte requirente acepta la asistencia con arreglo a esas condiciones, ese Estado Parte deberá observar las condiciones impuestas.

27. Sin perjuicio de la aplicación del párrafo 12 del presente artículo, el testigo, perito u otra persona que, a instancias del Estado Parte requirente, consienta en prestar testimonio en un juicio o en colaborar en una investigación, proceso o actuación judicial en el territorio del Estado Parte requirente no podrá ser enjuiciado, detenido, condenado ni sometido a ninguna otra restricción de su libertad personal en ese territorio por actos, omisiones o declaraciones de culpabilidad anteriores a la fecha en que abandonó el territorio del Estado Parte requerido. Ese salvoconducto cesará cuando el testigo, perito u otra persona haya tenido, durante quince días consecutivos o durante el período acordado por los Estados Parte después de la fecha en que se le haya informado oficialmente de que las autoridades judiciales ya no requerían su presencia, la oportunidad de salir del país y no obstante permanezca voluntariamente en ese territorio o regrese libremente a él después de haberlo abandonado.

28. Los gastos ordinarios que ocasione el cumplimiento de una solicitud serán sufragados por el Estado Parte requerido, a menos que los Estados Parte interesados hayan acordado otra cosa. Cuando se requieran a este fin gastos cuantiosos o de carácter extraordinario, los Estados Parte se consultarán para determinar las condiciones en que se dará cumplimiento a la solicitud, así como la manera en que se sufragarán los gastos.

29. El Estado Parte requerido:

- a) facilitará al Estado Parte requirente una copia de los documentos oficiales y otros documentos o datos que obren en su poder y a los que, conforme a su derecho interno, tenga acceso el público en general;
- b) podrá, a su arbitrio y con sujeción a las condiciones que juzgue apropiadas, proporcionar al Estado Parte requirente una copia total o parcial de los documentos oficiales o de otros documentos o datos que obren en su poder y que, conforme a su derecho interno, no estén al alcance del público en general.

30. Cuando sea necesario, los Estados Parte considerarán la posibilidad de celebrar acuerdos o arreglos bilaterales o multilaterales que sirvan a los fines del presente artículo y que, en la práctica, hagan efectivas sus disposiciones o las refuercen.

*Artículo 19***Investigaciones conjuntas**

Los Estados Parte considerarán la posibilidad de celebrar acuerdos o arreglos bilaterales o multilaterales en virtud de los cuales, en relación con cuestiones que son objeto de investigaciones, procesos o actuaciones judiciales en uno o más Estados, las autoridades competentes puedan establecer órganos mixtos de investigación. A falta de acuerdos o arreglos de esa índole, las investigaciones conjuntas podrán llevarse a cabo mediante acuerdos concertados caso por caso. Los Estados Parte participantes velarán por que la soberanía del Estado Parte en cuyo territorio haya de efectuarse la investigación sea plenamente respetada.

*Artículo 20***Técnicas especiales de investigación**

1. Siempre que lo permitan los principios fundamentales de su ordenamiento jurídico interno, cada Estado Parte adoptará, dentro de sus posibilidades y en las condiciones prescritas por su derecho interno, las medidas que sean necesarias para permitir el adecuado recurso a la entrega vigilada y, cuando lo considere apropiado, la utilización de otras técnicas especiales de investigación, como la vigilancia electrónica o de otra índole y las operaciones encubiertas, por sus autoridades competentes en su territorio con objeto de combatir eficazmente la delincuencia organizada.

2. A los efectos de investigar los delitos comprendidos en la presente Convención, se alienta a los Estados Parte a que celebren, cuando proceda, acuerdos o arreglos bilaterales o multilaterales apropiados para utilizar esas técnicas especiales de investigación en el contexto de la cooperación en el plano internacional. Esos acuerdos o arreglos se concertarán y ejecutarán respetando plenamente el principio de la igualdad soberana de los Estados y al ponerlos en práctica se cumplirán estrictamente las condiciones en ellos contenidas.

3. De no existir los acuerdos o arreglos mencionados en el párrafo 2 del presente artículo, toda decisión de recurrir a esas técnicas especiales de investigación en el plano internacional se adoptará sobre la base de cada caso particular y podrá, cuando sea necesario, tener en cuenta los arreglos financieros y los entendimientos relativos al ejercicio de jurisdicción por los Estados Parte interesados.

4. Toda decisión de recurrir a la entrega vigilada en el plano internacional podrá, con el consentimiento de los Estados Parte interesados, incluir la aplicación de métodos tales como interceptar los bienes, autorizarlos a proseguir intactos o retirarlos o sustituirlos total o parcialmente.

*Artículo 21***Remisión de actuaciones penales**

Los Estados Parte considerarán la posibilidad de remitirse actuaciones penales para el enjuiciamiento por un delito comprendido en la presente Convención cuando se estime que esa remisión obrará en beneficio de la debida administración de justicia,

en particular en casos en que intervengan varias jurisdicciones, con miras a concentrar las actuaciones del proceso.

*Artículo 22***Establecimiento de antecedentes penales**

Cada Estado Parte podrá adoptar las medidas legislativas o de otra índole que sean necesarias para tener en cuenta, en las condiciones y para los fines que estime apropiados, toda previa declaración de culpabilidad, en otro Estado, de un presunto delincuente a fin de utilizar esa información en actuaciones penales relativas a un delito comprendido en la presente Convención.

*Artículo 23***Penalización de la obstrucción de la justicia**

Cada Estado Parte adoptará las medidas legislativas y de otra índole que sean necesarias para tipificar como delito, cuando se cometan intencionalmente:

- a) el uso de fuerza física, amenazas o intimidación, o la promesa, el ofrecimiento o la concesión de un beneficio indebido para inducir a falso testimonio u obstaculizar la prestación de testimonio o la aportación de pruebas en un proceso en relación con la comisión de uno de los delitos comprendidos en la presente Convención;
- b) el uso de fuerza física, amenazas o intimidación para obstaculizar el cumplimiento de las funciones oficiales de un funcionario de la justicia o de los servicios encargados de hacer cumplir la ley en relación con la comisión de los delitos comprendidos en la presente Convención. Nada de lo previsto en el presente apartado menoscabará el derecho de los Estados Parte a disponer de legislación que proteja a otras categorías de funcionarios públicos.

*Artículo 24***Protección de los testigos**

1. Cada Estado Parte adoptará medidas apropiadas dentro de sus posibilidades para proteger de manera eficaz contra eventuales actos de represalia o intimidación a los testigos que participen en actuaciones penales y que presten testimonio sobre delitos comprendidos en la presente Convención, así como, cuando proceda, a sus familiares y demás personas cercanas.

2. Las medidas previstas en el párrafo 1 del presente artículo podrán consistir, entre otras, sin perjuicio de los derechos del acusado, incluido el derecho a las garantías procesales, en:

- a) establecer procedimientos para la protección física de esas personas, incluida, en la medida de lo necesario y lo posible, su reubicación, y permitir, cuando proceda, la prohibición total o parcial de revelar información relativa a su identidad y paradero;
- b) establecer normas probatorias que permitan que el testimonio de los testigos se preste de modo que no se ponga en peligro su seguridad, por ejemplo aceptando el testimonio por conducto de tecnologías de comunicación como videoconferencias u otros medios adecuados.

3. Los Estados Parte considerarán la posibilidad de celebrar acuerdos o arreglos con otros Estados para la reubicación de las personas mencionadas en el párrafo 1 del presente artículo.

4. Las disposiciones del presente artículo también serán aplicables a las víctimas en el caso de que actúen como testigos.

Artículo 25

Asistencia y protección a las víctimas

1. Cada Estado Parte adoptará medidas apropiadas dentro de sus posibilidades para prestar asistencia y protección a las víctimas de los delitos comprendidos en la presente Convención, en particular en casos de amenaza de represalia o intimidación.

2. Cada Estado Parte establecerá procedimientos adecuados que permitan a las víctimas de los delitos comprendidos en la presente Convención obtener indemnización y restitución.

3. Cada Estado Parte permitirá, con sujeción a su derecho interno, que se presenten y examinen las opiniones y preocupaciones de las víctimas en las etapas apropiadas de las actuaciones penales contra los delincuentes sin que ello menoscabe los derechos de la defensa.

Artículo 26

Medidas para intensificar la cooperación con las autoridades encargadas de hacer cumplir la ley

1. Cada Estado Parte adoptará medidas apropiadas para alentar a las personas que participen o hayan participado en grupos delictivos organizados a:

- a) proporcionar información útil a las autoridades competentes con fines investigativos y probatorios sobre cuestiones como:
 - i) la identidad, la naturaleza, la composición, la estructura, la ubicación o las actividades de los grupos delictivos organizados;
 - ii) los vínculos, incluidos los vínculos internacionales, con otros grupos delictivos organizados;
 - iii) los delitos que los grupos delictivos organizados hayan cometido o puedan cometer;
- b) prestar ayuda efectiva y concreta a las autoridades competentes que pueda contribuir a privar a los grupos delictivos organizados de sus recursos o del producto del delito.

2. Cada Estado Parte considerará la posibilidad de prever, en los casos apropiados, la mitigación de la pena de las personas acusadas que presten una cooperación sustancial en la investigación o el enjuiciamiento respecto de los delitos comprendidos en la presente Convención.

3. Cada Estado Parte considerará la posibilidad de prever, de conformidad con los principios fundamentales de su derecho interno, la concesión de inmunidad judicial a las personas que presten una cooperación sustancial en la investigación o el enjuiciamiento respecto de los delitos comprendidos en la presente Convención.

4. La protección de esas personas será la prevista en el artículo 24 de la presente Convención.

5. Cuando una de las personas mencionadas en el párrafo 1 del presente artículo que se encuentre en un Estado Parte pueda prestar una cooperación sustancial a las autoridades competentes de otro Estado Parte, los Estados Parte interesados podrán considerar la posibilidad de celebrar acuerdos o arreglos, de conformidad con su derecho interno, con respecto a la eventual concesión, por el otro Estado Parte, del trato enunciado en los párrafos 2 y 3 del presente artículo.

Artículo 27

Cooperación en materia de cumplimiento de la ley

1. Los Estados Parte colaborarán estrechamente, en consonancia con sus respectivos ordenamientos jurídicos y administrativos, con miras a aumentar la eficacia de las medidas de cumplimiento de la ley orientadas a combatir los delitos comprendidos en la presente Convención. En particular, cada Estado Parte adoptará medidas eficaces para:

- a) mejorar los canales de comunicación entre sus autoridades, organismos y servicios competentes y, de ser necesario, establecerlos, a fin de facilitar el intercambio seguro y rápido de información sobre todos los aspectos de los delitos comprendidos en la presente Convención, así como, si los Estados Parte interesados lo estiman oportuno, sobre sus vinculaciones con otras actividades delictivas;
- b) cooperar con otros Estados Parte en la realización de indagaciones con respecto a delitos comprendidos en la presente Convención acerca de:
 - i) la identidad, el paradero y las actividades de personas presuntamente implicadas en tales delitos o la ubicación de otras personas interesadas,
 - ii) el movimiento del producto del delito o de bienes derivados de la comisión de esos delitos,
 - iii) el movimiento de bienes, equipo u otros instrumentos utilizados o destinados a utilizarse en la comisión de esos delitos;
- c) proporcionar, cuando proceda, los elementos o las cantidades de sustancias que se requieran para fines de análisis o investigación;
- d) facilitar una coordinación eficaz entre sus organismos, autoridades y servicios competentes y promover el intercambio de personal y otros expertos, incluida la designación de oficiales de enlace, con sujeción a acuerdos o arreglos bilaterales entre los Estados Parte interesados;
- e) intercambiar información con otros Estados Parte sobre los medios y métodos concretos empleados por los grupos delictivos organizados, así como, cuando proceda, sobre las rutas y los medios de transporte y el uso de identidades falsas, documentos alterados o falsificados u otros medios de encubrir sus actividades;
- f) intercambiar información y coordinar las medidas administrativas y de otra índole adoptadas con miras a la pronta detección de los delitos comprendidos en la presente Convención.

2. Los Estados Parte, con miras a dar efecto a la presente Convención, considerarán la posibilidad de celebrar acuerdos o arreglos bilaterales o multilaterales en materia de cooperación directa entre sus respectivos organismos encargados de hacer cumplir la ley y, cuando tales acuerdos o arreglos ya existan, de enmendarlos. A falta de tales acuerdos o arreglos entre los Estados Parte interesados, las Partes podrán considerar la presente Convención como la base para la cooperación en materia de cumplimiento de la ley respecto de los delitos comprendidos en la presente Convención. Cuando proceda, los Estados Parte recurrirán plenamente a la celebración de acuerdos y arreglos, incluso con organizaciones internacionales o regionales, con miras a aumentar la cooperación entre sus respectivos organismos encargados de hacer cumplir la ley.

3. Los Estados Parte se esforzarán por colaborar en la medida de sus posibilidades para hacer frente a la delincuencia organizada transnacional cometida mediante el recurso a la tecnología moderna.

Artículo 28

Recopilación, intercambio y análisis de información sobre la naturaleza de la delincuencia organizada

1. Los Estados Parte considerarán la posibilidad de analizar, en consulta con los círculos científicos y académicos, las tendencias de la delincuencia organizada en su territorio, las circunstancias en que actúa la delincuencia organizada, así como los grupos profesionales y las tecnologías involucrados.

2. Los Estados Parte considerarán la posibilidad de desarrollar y compartir experiencia analítica acerca de las actividades de la delincuencia organizada, tanto a nivel bilateral como por conducto de organizaciones internacionales y regionales. A tal fin, se establecerán y aplicarán, según proceda, definiciones, normas y metodologías comunes.

3. Los Estados Parte considerarán la posibilidad de vigilar sus políticas y las medidas en vigor encaminadas a combatir la delincuencia organizada y evaluarán su eficacia y eficiencia.

Artículo 29

Capacitación y asistencia técnica

1. Cada Estado Parte, en la medida necesaria, formulará, desarrollará o perfeccionará programas de capacitación específicamente concebidos para el personal de sus servicios encargados de hacer cumplir la ley, incluidos fiscales, jueces de instrucción y personal de aduanas, así como para el personal de otra índole encargado de la prevención, la detección y el control de los delitos comprendidos en la presente Convención. Esos programas podrán incluir adscripciones e intercambios de personal. En particular y en la medida en que lo permita el derecho interno, guardarán relación con:

- a) los métodos empleados en la prevención, la detección y el control de los delitos comprendidos en la presente Convención;
- b) las rutas y técnicas utilizadas por personas presuntamente implicadas en delitos comprendidos en la presente Convención, incluso en los Estados de tránsito, y las medidas de lucha pertinentes;
- c) la vigilancia del movimiento de bienes de contrabando;

d) la detección y vigilancia de los movimientos del producto del delito o de los bienes, el equipo u otros instrumentos utilizados para cometer tales delitos y los métodos empleados para la transferencia, ocultación o disimulación de dicho producto, bienes, equipo u otros instrumentos, así como los métodos utilizados para combatir el blanqueo de dinero y otros delitos financieros;

e) el acopio de pruebas;

f) las técnicas de control en zonas y puertos francos;

g) el equipo y las técnicas modernos utilizados para hacer cumplir la ley, incluidas la vigilancia electrónica, la entrega vigilada y las operaciones encubiertas;

h) los métodos utilizados para combatir la delincuencia organizada transnacional mediante computadoras, redes de telecomunicaciones u otras formas de la tecnología moderna, y

i) los métodos utilizados para proteger a las víctimas y los testigos.

2. Los Estados Parte se prestarán asistencia en la planificación y ejecución de programas de investigación y capacitación encaminados a intercambiar conocimientos especializados en las esferas mencionadas en el párrafo 1 del presente artículo y, a tal fin, también recurrirán, cuando proceda, a conferencias y seminarios regionales e internacionales para promover la cooperación y fomentar el examen de los problemas de interés común, incluidos los problemas y necesidades especiales de los Estados de tránsito.

3. Los Estados Parte promoverán actividades de capacitación y asistencia técnica que faciliten la extradición y la asistencia judicial recíproca. Dicha capacitación y asistencia técnica podrán incluir la enseñanza de idiomas, adscripciones e intercambios de personal entre autoridades centrales u organismos con responsabilidades pertinentes.

4. Cuando haya acuerdos o arreglos bilaterales y multilaterales vigentes, los Estados Parte intensificarán, en la medida necesaria, sus esfuerzos por optimizar las actividades operacionales y de capacitación en las organizaciones internacionales y regionales, así como en el marco de otros acuerdos o arreglos bilaterales y multilaterales pertinentes.

Artículo 30

Otras medidas: aplicación de la Convención mediante el desarrollo económico y la asistencia técnica

1. Los Estados Parte adoptarán disposiciones conducentes a la aplicación óptima de la presente Convención en la medida de lo posible, mediante la cooperación internacional, teniendo en cuenta los efectos adversos de la delincuencia organizada en la sociedad en general y en el desarrollo sostenible en particular.

2. Los Estados Parte harán esfuerzos concretos, en la medida de lo posible y en forma coordinada entre sí, así como con organizaciones internacionales y regionales, por:

- a) intensificar su cooperación en los diversos niveles con los países en desarrollo con miras a fortalecer las capacidades de esos países para prevenir y combatir la delincuencia organizada transnacional;

- b) aumentar la asistencia financiera y material a fin de apoyar los esfuerzos de los países en desarrollo para combatir con eficacia la delincuencia organizada transnacional y ayudarles a aplicar satisfactoriamente la presente Convención;
- c) prestar asistencia técnica a los países en desarrollo y a los países con economías en transición para ayudarles a satisfacer sus necesidades relacionadas con la aplicación de la presente Convención. A tal fin, los Estados Parte procurarán hacer contribuciones voluntarias adecuadas y periódicas a una cuenta específicamente designada a esos efectos en un mecanismo de financiación de las Naciones Unidas. Los Estados Parte también podrán considerar en particular la posibilidad, conforme a su derecho interno y a las disposiciones de la presente Convención, de aportar a la cuenta antes mencionada un porcentaje del dinero o del valor correspondiente del producto del delito o de los bienes ilícitos decomisados con arreglo a lo dispuesto en la presente Convención;
- d) alentar y persuadir a otros Estados e instituciones financieras, según proceda, para que se sumen a los esfuerzos desplegados con arreglo al presente artículo, en particular proporcionando un mayor número de programas de capacitación y equipo moderno a los países en desarrollo a fin de ayudarles a lograr los objetivos de la presente Convención.

3. En lo posible, estas medidas no menoscabarán los compromisos existentes en materia de asistencia externa ni otros arreglos de cooperación financiera en los planos bilateral, regional o internacional.

4. Los Estados Parte podrán celebrar acuerdos o arreglos bilaterales o multilaterales sobre asistencia material y logística, teniendo en cuenta los arreglos financieros necesarios para hacer efectiva la cooperación internacional prevista en la presente Convención y para prevenir, detectar y combatir la delincuencia organizada transnacional.

Artículo 31

Prevención

1. Los Estados Parte procurarán formular y evaluar proyectos nacionales y establecer y promover prácticas y políticas óptimas para la prevención de la delincuencia organizada transnacional.

2. Los Estados Parte procurarán, de conformidad con los principios fundamentales de su derecho interno, reducir las oportunidades actuales o futuras de que dispongan los grupos delictivos organizados para participar en mercados lícitos con el producto del delito adoptando oportunamente medidas legislativas, administrativas o de otra índole. Estas medidas deberían centrarse en:

- a) el fortalecimiento de la cooperación entre los organismos encargados de hacer cumplir la ley o el ministerio público y las entidades privadas pertinentes, incluida la industria;
- b) la promoción de la elaboración de normas y procedimientos concebidos para salvaguardar la integridad de las entidades públicas y de las entidades privadas interesadas, así como

códigos de conducta para profesiones pertinentes, en particular para los abogados, notarios públicos, asesores fiscales y contadores;

c) la prevención de la utilización indebida por parte de grupos delictivos organizados de licitaciones públicas y de subsidios y licencias concedidos por autoridades públicas para realizar actividades comerciales;

d) la prevención de la utilización indebida de personas jurídicas por parte de grupos delictivos organizados; a este respecto, dichas medidas podrían incluir las siguientes:

- i) el establecimiento de registros públicos de personas jurídicas y naturales involucradas en la constitución, la gestión y la financiación de personas jurídicas,
- ii) la posibilidad de inhabilitar por mandato judicial o cualquier medio apropiado durante un período razonable a las personas condenadas por delitos comprendidos en la presente Convención para actuar como directores de personas jurídicas constituidas en sus respectivas jurisdicciones,
- iii) el establecimiento de registros nacionales de personas inhabilitadas para actuar como directores de personas jurídicas, y
- iv) el intercambio de información contenida en los registros mencionados en los incisos i) y iii) del presente apartado con las autoridades competentes de otros Estados Parte.

3. Los Estados Parte procurarán promover la reintegración social de las personas condenadas por delitos comprendidos en la presente Convención.

4. Los Estados Parte procurarán evaluar periódicamente los instrumentos jurídicos y las prácticas administrativas pertinentes vigentes a fin de detectar si existe el peligro de que sean utilizados indebidamente por grupos delictivos organizados.

5. Los Estados Parte procurarán sensibilizar a la opinión pública con respecto a la existencia, las causas y la gravedad de la delincuencia organizada transnacional y la amenaza que representa. Cuando proceda, podrá difundirse información a través de los medios de comunicación y se adoptarán medidas para fomentar la participación pública en los esfuerzos por prevenir y combatir dicha delincuencia.

6. Cada Estado Parte comunicará al Secretario General de las Naciones Unidas el nombre y la dirección de la autoridad o las autoridades que pueden ayudar a otros Estados Parte a formular medidas para prevenir la delincuencia organizada transnacional.

7. Los Estados Parte colaborarán entre sí y con las organizaciones internacionales y regionales pertinentes, según proceda, con miras a promover y formular las medidas mencionadas en el presente artículo. Ello incluye la participación en proyectos internacionales para la prevención de la delincuencia organizada transnacional, por ejemplo mediante la mitigación de las circunstancias que hacen vulnerables a los grupos socialmente marginados a las actividades de la delincuencia organizada transnacional.

Artículo 32

Conferencia de las Partes en la Convención

1. Se establecerá una Conferencia de las Partes en la Convención con objeto de mejorar la capacidad de los Estados Parte para combatir la delincuencia organizada transnacional y para promover y examinar la aplicación de la presente Convención.
2. El Secretario General de las Naciones Unidas convocará la Conferencia de las Partes a más tardar un año después de la entrada en vigor de la presente Convención. La Conferencia de las Partes aprobará reglas de procedimiento y normas que rijan las actividades enunciadas en los párrafos 3 y 4 del presente artículo (incluidas normas relativas al pago de los gastos resultantes de la puesta en marcha de esas actividades).
3. La Conferencia de las Partes concertará mecanismos con miras a lograr los objetivos mencionados en el párrafo 1 del presente artículo, en particular a:
 - a) facilitar las actividades que realicen los Estados Parte con arreglo a los artículos 29, 30 y 31 de la presente Convención, alentando inclusive la movilización de contribuciones voluntarias;
 - b) facilitar el intercambio de información entre Estados Parte sobre las modalidades y tendencias de la delincuencia organizada transnacional y sobre prácticas eficaces para combatirla;
 - c) cooperar con las organizaciones internacionales y regionales y las organizaciones no gubernamentales pertinentes;
 - d) examinar periódicamente la aplicación de la presente Convención;
 - e) formular recomendaciones para mejorar la presente Convención y su aplicación.
4. A los efectos de los apartados d) y e) del párrafo 3 del presente artículo, la Conferencia de las Partes obtendrá el necesario conocimiento de las medidas adoptadas y de las dificultades encontradas por los Estados Parte en aplicación de la presente Convención mediante la información que ellos le faciliten y mediante los demás mecanismos de examen que establezca la Conferencia de las Partes.
5. Cada Estado Parte facilitará a la Conferencia de las Partes información sobre sus programas, planes y prácticas, así como sobre las medidas legislativas y administrativas adoptadas para aplicar la presente Convención, según lo requiera la Conferencia de las Partes.

Artículo 33

Secretaría

1. El Secretario General de las Naciones Unidas prestará los servicios de secretaría necesarios a la Conferencia de las Partes en la Convención.
2. La secretaría:
 - a) prestará asistencia a la Conferencia de las Partes en la realización de las actividades enunciadas en el artículo 32 de la presente Convención y organizará los períodos de sesiones de la Conferencia de las Partes y les prestará los servicios necesarios;
 - b) prestará asistencia a los Estados Parte que la soliciten en el suministro de información a la Conferencia de las Partes

según lo previsto en el párrafo 5 del artículo 32 de la presente Convención, y

- c) velará por la coordinación necesaria con la secretaría de otras organizaciones internacionales y regionales pertinentes.

Artículo 34

Aplicación de la Convención

1. Cada Estado Parte adoptará, de conformidad con los principios fundamentales de su derecho interno, las medidas que sean necesarias, incluidas medidas legislativas y administrativas, para garantizar el cumplimiento de sus obligaciones con arreglo a la presente Convención.
2. Los Estados Parte tipificarán en su derecho interno los delitos tipificados de conformidad con los artículos 5, 6, 8 y 23 de la presente Convención independientemente del carácter transnacional o la participación de un grupo delictivo organizado según la definición contenida en el párrafo 1 del artículo 3 de la presente Convención, salvo en la medida en que el artículo 5 de la presente Convención exija la participación de un grupo delictivo organizado.
3. Cada Estado Parte podrá adoptar medidas más estrictas o severas que las previstas en la presente Convención a fin de prevenir y combatir la delincuencia organizada transnacional.

Artículo 35

Solución de controversias

1. Los Estados Parte procurarán solucionar toda controversia relacionada con la interpretación o aplicación de la presente Convención mediante la negociación.
2. Toda controversia entre dos o más Estados Parte acerca de la interpretación o la aplicación de la presente Convención que no pueda resolverse mediante la negociación dentro de un plazo razonable deberá, a solicitud de uno de esos Estados Parte, someterse a arbitraje. Si, seis meses después de la fecha de la solicitud de arbitraje, esos Estados Parte no han podido ponerse de acuerdo sobre la organización del arbitraje, cualquiera de esos Estados Parte podrá remitir la controversia a la Corte Internacional de Justicia mediante solicitud conforme al Estatuto de la Corte.
3. Cada Estado Parte podrá, en el momento de la firma, ratificación, aceptación o aprobación de la presente Convención o adhesión a ella, declarar que no se considera vinculado por el párrafo 2 del presente artículo. Los demás Estados Parte no quedarán vinculados por el párrafo 2 del presente artículo respecto de todo Estado Parte que haya hecho esa reserva.
4. El Estado Parte que haya hecho una reserva de conformidad con el párrafo 3 del presente artículo podrá en cualquier momento retirar esa reserva notificándolo al Secretario General de las Naciones Unidas.

Artículo 36

Firma, ratificación, aceptación, aprobación y adhesión

1. La presente Convención estará abierta a la firma de todos los Estados del 12 al 15 de diciembre de 2000 en Palermo (Italia) y después de esa fecha en la sede de las Naciones Unidas en Nueva York hasta el 12 de diciembre de 2002.

2. La presente Convención también estará abierta a la firma de las organizaciones regionales de integración económica siempre que al menos uno de los Estados miembros de tales organizaciones haya firmado la presente Convención de conformidad con lo dispuesto en el párrafo 1 del presente artículo.

3. La presente Convención estará sujeta a ratificación, aceptación o aprobación. Los instrumentos de ratificación, aceptación o aprobación se depositarán en poder del Secretario General de las Naciones Unidas. Las organizaciones regionales de integración económica podrán depositar su instrumento de ratificación, aceptación o aprobación si por lo menos uno de sus Estados miembros ha procedido de igual manera. En ese instrumento de ratificación, aceptación o aprobación, esas organizaciones declararán el alcance de su competencia con respecto a las cuestiones regidas por la presente Convención. Dichas organizaciones comunicarán también al depositario cualquier modificación pertinente del alcance de su competencia.

4. La presente Convención estará abierta a la adhesión de todos los Estados u organizaciones regionales de integración económica que cuenten por lo menos con un Estado miembro que sea Parte en la presente Convención. Los instrumentos de adhesión se depositarán en poder del Secretario General de las Naciones Unidas. En el momento de su adhesión, las organizaciones regionales de integración económica declararán el alcance de su competencia con respecto a las cuestiones regidas por la presente Convención. Dichas organizaciones comunicarán también al depositario cualquier modificación pertinente del alcance de su competencia.

Artículo 37

Relación con los protocolos

1. La presente Convención podrá complementarse con uno o más protocolos.
2. Para pasar a ser parte en un protocolo, los Estados o las organizaciones regionales de integración económica también deberán ser parte en la presente Convención.
3. Los Estados Parte en la presente Convención no quedarán vinculados por un protocolo a menos que pasen a ser parte en el protocolo de conformidad con sus disposiciones.
4. Los protocolos de la presente Convención se interpretarán juntamente con ésta, teniendo en cuenta la finalidad de esos protocolos.

Artículo 38

Entrada en vigor

1. La presente Convención entrará en vigor el nonagésimo día después de la fecha en que se haya depositado el cuadragésimo instrumento de ratificación, aceptación, aprobación o adhesión. A los efectos del presente párrafo, los instrumentos depositados por una organización regional de integración económica no se considerarán adicionales a los depositados por los Estados miembros de tal organización.
2. Para cada Estado u organización regional de integración económica que ratifique, acepte o apruebe la presente Convención o se adhiera a ella después de haberse depositado el

cuadragésimo instrumento de ratificación, aceptación, aprobación o adhesión, la presente Convención entrará en vigor el trigésimo día después de la fecha en que ese Estado u organización haya depositado el instrumento pertinente.

Artículo 39

Enmienda

1. Cuando hayan transcurrido cinco años desde la entrada en vigor de la presente Convención, los Estados Parte podrán proponer enmiendas por escrito al Secretario General de las Naciones Unidas, quien a continuación comunicará toda enmienda propuesta a los Estados Parte y a la Conferencia de las Partes en la Convención para que la examinen y decidan al respecto. La Conferencia de las Partes hará todo lo posible por lograr un consenso sobre cada enmienda. Si se han agotado todas las posibilidades de lograr un consenso y no se ha llegado a un acuerdo, la aprobación de la enmienda exigirá, en última instancia, una mayoría de dos tercios de los Estados Parte presentes y votantes en la sesión de la Conferencia de las Partes.
2. Las organizaciones regionales de integración económica, en asuntos de su competencia, ejercerán su derecho de voto con arreglo al presente artículo con un número de votos igual al número de sus Estados miembros que sean Partes en la presente Convención. Dichas organizaciones no ejercerán su derecho de voto si sus Estados miembros ejercen el suyo, y viceversa.
3. Toda enmienda aprobada de conformidad con el párrafo 1 del presente artículo estará sujeta a ratificación, aceptación o aprobación por los Estados Parte.
4. Toda enmienda refrendada de conformidad con el párrafo 1 del presente artículo entrará en vigor respecto de un Estado Parte noventa días después de la fecha en que éste deposite en poder del Secretario General de las Naciones Unidas un instrumento de ratificación, aceptación o aprobación de esa enmienda.
5. Cuando una enmienda entre en vigor, será vinculante para los Estados Parte que hayan expresado su consentimiento al respecto. Los demás Estados Parte quedarán sujetos a las disposiciones de la presente Convención, así como a cualquier otra enmienda anterior que hubiesen ratificado, aceptado o aprobado.

Artículo 40

Denuncia

1. Los Estados Parte podrán denunciar la presente Convención mediante notificación escrita al Secretario General de las Naciones Unidas. La denuncia surtirá efecto un año después de la fecha en que el Secretario General haya recibido la notificación.
2. Las organizaciones regionales de integración económica dejarán de ser Partes en la presente Convención cuando la hayan denunciado todos sus Estados miembros.
3. La denuncia de la presente Convención con arreglo al párrafo 1 del presente artículo entrañará la denuncia de sus protocolos.

*Artículo 41***Depositario e idiomas**

1. El Secretario General de las Naciones Unidas será el depositario de la presente Convención.
2. El original de la presente Convención, cuyos textos en árabe, chino, español, francés, inglés y ruso son igualmente auténticos, se depositará en poder del Secretario General de las Naciones Unidas.

EN FE DE LO CUAL, los plenipotenciarios infrascritos, debidamente autorizados por sus respectivos Gobiernos, han firmado la presente Convención.

ANNEX II**DECLARATION****concerning the competence of the European Community with regards to matters governed by the United Nations Convention Against Transnational Organised Crime**

Article 36(3) of the United Nations Convention against transnational organised crime provides that the instrument of ratification, acceptance or approval of a regional economic integration organisation shall contain a declaration on the extent of its competence.

1. The Community points out that it has competence with regard to progressively establishing the internal market, comprising an area without internal frontiers in which the free movement of goods and services is ensured in accordance with the provisions of the Treaty establishing the European Community. For this purpose, the Community has adopted measures to combat money laundering. They do, however, at present not include measures concerning cooperation between Financial Intelligence Units, detection and monitoring the movement of cash across the borders between the Member States or cooperation among judicial and law enforcement authorities. The Community also has adopted measures to ensure transparency and the equal access of all candidates for the public contracts and services markets which contributes to preventing corruption. Where the Community has adopted measures, it is for the Community alone to enter into external undertakings with third States or competent international organisations which affect those measures or alter their scope. This competence relates to Articles 7, 9 and 31(2)(c) of the Convention. Moreover, Community policy in the sphere of development cooperation complements policies pursued by Member States and includes provisions to combat corruption. This competency relates to Article 30 of the Convention. Moreover, the Community considers itself bound by other provisions of the Convention to the extent that they are related to the application of Articles 7, 9, 30 and 31(2)(c), in particular the articles concerning its purpose and definitions and its final provisions.

The scope and the exercise of Community competence are, by their nature, subject to continuous development and the Community will complete or amend this declaration, if necessary, in accordance with Article 36(3) of the Convention.

2. The United Nations Convention against transnational organised crime shall apply, with regard to the competence of the Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof.

Pursuant to Article 299, this declaration is not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories.

ANNEX III**STATEMENT**

With respect to Article 35, paragraph 2, the Community points out that, according to Article 34, paragraph 1, of the Statute of the International Court of Justice, only States may be parties before that Court. Therefore, under Article 35, paragraph 2, of the Convention, in disputes involving the Community only dispute settlement by way of arbitration will be available.

COUNCIL DECISION

of 29 April 2004

providing macro-financial assistance to Albania and repealing Decision 1999/282/EC

(2004/580/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Commission consulted the Economic and Financial Committee before submitting its proposal.
- (2) The Council, by Decision 1999/282/EC ⁽²⁾, approved, in the aftermath of the Kosovo crisis, macro-financial assistance for Albania of up to EUR 20 million in the form of a long-term loan facility. In the light of a better-than-expected balance of payments situation, the Albanian authorities did not request the release of this assistance; therefore, the Commission deprogrammed it in 2001.
- (3) Within the Stabilisation and Association process, the framework for EU relations with the region, it is desirable to support efforts to sustain political and economic stabilisation in Albania, with a view to evolving towards the development of a full cooperation relationship with the Community; this is also the aim of the Stabilisation and Association Agreement which is currently under negotiation between Albania and the EU.
- (4) The International Monetary Fund (IMF) approved on 21 June 2002 in favour of Albania a three-year programme supported by a Poverty Reduction and Growth Facility (PRGF) for an amount of about USD 36 million, to support the authorities' economic programme over the period from June 2002 to June 2005; out of this amount, USD 11 million are projected to be disbursed in 2004.
- (5) In the framework of the new three-year Country Assistance Strategy (CAS) adopted by the World Bank Board on 20 June 2002, USD 8 million are projected to be disbursed in 2004 under the Poverty Reduction Support Credit.
- (6) Over and above these estimated financial supports projected to be provided by the International Monetary Fund and the World Bank, a significant residual financing gap remains in 2004, to be covered to support the policy objectives attached to the authorities' reform efforts.
- (7) The Community already provided macro-financial assistance to Albania; the authorities of Albania have requested further financial assistance from the international financial institutions, the Community, and other bilateral donors.
- (8) Community macro-financial assistance to Albania is an appropriate measure to help the country meet its external financing needs, including through a reinforcement of its reserves and budget support.
- (9) Financial assistance from the Community in the form of a combination of a long-term loan and a straight grant is an appropriate measure to support the sustainability of Albania's external financial position, given the country's relatively low level of development.
- (10) This financial support, in particular the grant component, should be provided after verifying whether the financial and economic conditions lay down can be fulfilled.
- (11) In order to ensure efficient protection of the Community's financial interests linked to the present macro-financial assistance, it is necessary to provide for appropriate measures by Albania related to the prevention of fraud and other irregularities linked to this assistance, as well as for controls by the Commission and audits by the Court of Auditors.
- (12) The inclusion of a grant component in this assistance is without prejudice to the powers of the budgetary authority.
- (13) This assistance should be managed by the Commission in consultation with the Economic and Financial Committee.
- (14) The Treaty does not provide, for the adoption of this Decision, powers other than those of Article 308,

⁽¹⁾ Opinion issued on 31 March 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 110, 28.4.1999, p. 13.

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to Albania a macro-financial assistance in the form of a long-term loan and a straight grant with a view to helping the country meet its external financing needs, including through a reinforcement of its reserves and budget support.

2. The loan component of this assistance shall amount to a maximum principal of EUR 9 million with a maximum maturity of 15 years. To this end, the Commission is empowered to borrow, on behalf of the Community, the necessary resources that will be placed at the disposal of Albania in the form of a loan.

3. The grant component of this assistance shall amount to a maximum of EUR 16 million.

4. This Community financial assistance shall be managed by the Commission in close consultation with the Economic and Financial Committee and in a manner consistent with the agreements reached between the IMF and Albania.

5. The Community financial assistance shall be made available for two years starting from the first day after the entry into force of this decision. However, if circumstances so require, the Commission, after consultation of the Economic and Financial Committee, may decide to extend the availability period by a maximum of one year.

Article 2

1. The Commission is empowered to agree with the authorities of Albania, after consultation with the Economic and Financial Committee the economic policy and financial conditions attached to this assistance to be laid down in a Memorandum of Understanding. These conditions shall be consistent with the agreements referred to in Article 1(4).

2. Before proceeding with the actual implementation of the Community assistance, the Commission shall check the reliability of Albania's financial circuits, administrative procedures, internal and external control mechanisms which are relevant for this Community macro-financial assistance.

3. The Commission shall verify at regular intervals, in collaboration with the Economic and Financial Committee and in coordination with the IMF, that economic policies in Albania are in accordance with the objectives of this assistance and that its economic policy and financial conditions are being fulfilled.

Article 3

1. The loan and grant components of this assistance shall be made available by the Commission to Albania in at least two instalments. Subject to the provisions of Article 2 and a satis-

factory assessment in accordance with Article 2(2), the first instalment shall be released on the basis of a satisfactory track record of the macro-economic programme of Albania under the present Poverty Reduction and Growth Facility with the IMF.

2. Subject to the provisions of Article 2, the second and any further instalments shall be released on the basis of a satisfactory implementation of the abovementioned programme, and not before one quarter after the release of the previous instalment.

3. The funds shall be paid to the Central Bank of Albania. The final recipient of the funds will be the Central Bank of Albania, to the extent that the assistance is intended to reinforce the country's reserves, or the Ministry of Finance if it is intended for budgetary support purposes.

Article 4

The implementation of this assistance shall take place in accordance with the provisions of the Financial Regulation applicable to the General Budget of the European Communities and its implementing rules. In particular, the memorandum of understanding to be agreed with the authorities of Albania shall provide for appropriate measures by Albania related to the prevention of fraud and other irregularities linked to this assistance. It will also provide for controls by the Commission, including the European Anti-Fraud Office (OLAF), with the right to perform on-the-spot checks and inspections and for audits by the Court of Auditors, where appropriate, to be carried out on the spot.

Article 5

1. The borrowing and lending operations referred to in Article 1(2) shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest rate risks, or in any other commercial risk.

2. The Commission shall take the necessary steps, if Albania so requests, to ensure that an early repayment clause is included in the loan terms and conditions and that it may be exercised.

3. At the request of Albania, and where circumstances permit an improvement in the interest rate of the loan, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

4. All costs incurred by the Community which are directly related to the borrowing and lending operations under this Decision shall be borne by Albania.

5. The Economic and Financial Committee shall be kept informed of developments in the operations referred to in paragraphs 2 and 3.

Article 6

At least once a year, and before September, the Commission shall address to the European Parliament and to the Council a report, which will include an evaluation on the implementation of this Decision in the previous year.

Article 7

Council Decision 1999/282/EC is hereby repealed.

Article 8

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

COUNCIL DECISION

of 29 April 2004

determining the minimum indications to be used on signs at external border crossing points

(2004/581/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) thereof

Having regard to the initiative of the Hellenic Republic ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) It is necessary to update the existing indications on signs at external air border crossing points marking the channels for persons entering the territory of the Member States contained in Schengen Executive Committee Decision SCH/COM-EX (94) 17, rev 4 of 22 December 1994 introducing and applying the Schengen arrangements in airports and aerodromes ⁽³⁾ in order to take account of the Agreement on the European Economic Area and of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons.
- (2) It is also necessary to determine, in a uniform manner, the indications for new signs marking the passenger channels at external land and sea borders, where such channels are used.
- (3) In order to avoid a disproportionate financial burden on Member States, it is appropriate to provide for a transitional period of five years during which the provisions of this Decision only apply where Member States set up new signs or replace existing ones.
- (4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part III of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law.

- (5) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁵⁾.

- (6) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁶⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (7) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁷⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (8) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

HAS ADOPTED THIS DECISION:

Article 1

Member States shall provide separate lanes at authorised air border crossing points at their external borders in order to carry out the necessary border checks on persons entering their territory. The lanes shall be differentiated by means of the signs referred to in Article 2.

⁽¹⁾ OJ C 125, 27.3.2003, p. 6.

⁽²⁾ Opinion delivered on 18 November 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 239, 22.9.2000, p. 168.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁶⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁷⁾ OJ L 64, 7.3.2002, p. 20.

The same signs shall be used if Member States provide separate lanes at land and sea border crossing points at their external borders.

Article 2

The indications on the signs, which may be displayed electronically, shall be set out in the Annexes.

These indications may be displayed in such language or languages as each Member State considers appropriate.

Article 3

1. The following persons:

- (a) citizens of the EU;
- (b) nationals of States parties to the Agreement on the European Economic Area;
- (c) nationals of the Swiss Confederation; and
- (d) members of the families of persons mentioned in (a), (b) and (c) above who are not nationals of one of those States, and who benefit from the provisions of Community law on the free movement of citizens of the European Union

are entitled to use the lane indicated by the sign in Annex I. They may also use the lane indicated by the sign in Annex II.

2. All other third-country nationals shall use the lane indicated by the sign in Annex II.

3. However, in the event of a temporary imbalance in the traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

Article 4

At land and seaport border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses, by using signs as shown in Annex III.

Member States may vary the indications on these signs where appropriate in the light of local circumstances.

Article 5

Point 2 of the Annex (SCH/I-Front (94) 39 rev. 9) to Schengen Executive Committee Decision SCH/COM-EX(94) 17, rev 4 of 22 December 1994, together with point 2 of the Decision attached to that Annex on introducing and applying the Schengen arrangements in airports and aerodromes (secondary airports), shall be repealed.

Article 6

This Decision shall apply from 1 June 2004 in so far as Member States set up new signs or replace existing signs at border crossing points covered by this Decision. In all other cases, this Decision shall apply from 1 June 2009.

Article 7

This Decision shall not apply to borders between Member States governed by Article 3(2) of the 2003 Act of Accession.

Article 8

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

ANNEX I

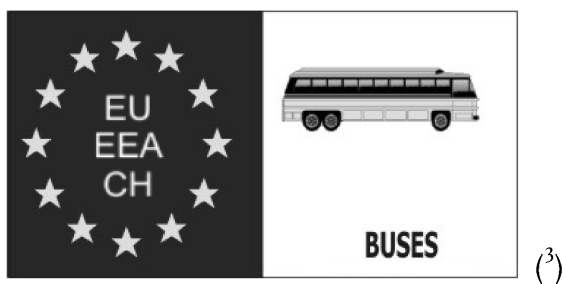
⁽¹⁾

⁽¹⁾ No logo is required for Norway and Iceland.

ANNEX II

**ALL
PASSPORTS**

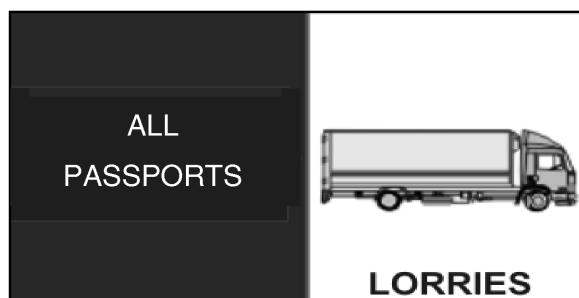
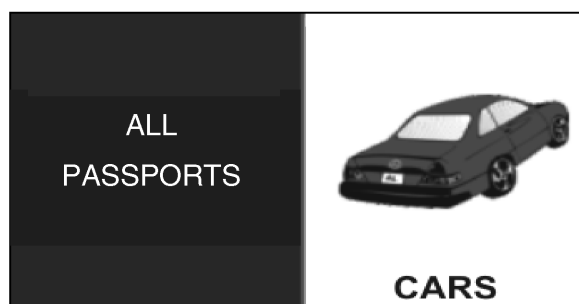
ANNEX III



⁽¹⁾ No logo is required for Norway and Iceland.

⁽²⁾ No logo is required for Norway and Iceland.

⁽³⁾ No logo is required for Norway and Iceland.



THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 28 April 2004

concerning privileges and immunities granted to ATHENA

(2004/582/EC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL OF THE EUROPEAN UNION,

held, shall be immune from search, seizure, requisition, confiscation or any other form of administrative or legal measure of constraint.

Having regard to the Treaty on European Union (TEU), and in particular Title V thereof;

Whereas:

Article 2

(1) ATHENA is the mechanism established by Council Decision 2004/197/CFSP⁽¹⁾ to administer the financing of the common costs of European Union operations having military or defence implications. Certain privileges and immunities are necessary to facilitate the proper functioning of ATHENA in the sole interest of the European Union and its Member States.

The archives of ATHENA shall be inviolable.

Article 3

(2) For tax purposes, Member States consider that Athena fulfils the criteria for an exemption under Article 15(10) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽²⁾ and under Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products⁽³⁾,

1. Within the scope of its official activities, the assets, income and other property belonging to ATHENA, or administered on behalf of the Member States by it, shall be exempt from all direct taxes.

2. Purchases or acquisitions made by ATHENA shall be exempt from all indirect taxes included in the price of movable and immovable property and services purchased for official use and involving considerable expenditure. The exemption may be granted by way of a refund or remission.

3. No exemption shall be granted on taxes which amount merely to charges for public utility services.

HAVE DECIDED AS FOLLOWS:

Article 1

The property, funds and assets belonging to ATHENA, or administered on behalf of the Member States by it, wherever located on the territories of the Member States and by whomsoever

Article 4

Member States shall permit ATHENA to communicate freely and without need for permission, for all official purposes, and shall protect its right to do so. ATHENA 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.

⁽¹⁾ OJ L 63, 28.2.2004, p. 68.

⁽²⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Commission Regulation (EC) No 290/2004 (OJ L 50, 20.2.2004, p. 5).

⁽³⁾ OJ L 76, 23.3.1992, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

Article 5

Articles 1 to 4 shall apply except in so far as ATHENA's Special Committee has expressly waived the immunity or privilege in any particular case.

Article 6

This Decision shall enter into force on 1 November 2004, provided that all Member States have informed the General Secretariat of the Council by that date that the procedures required for the final or provisional implementation of this Decision in their national legal systems have been completed.

Article 7

This Decision shall be published in the *Official Journal of the European Union*.

Hecho en Bruselas, el veintiocho de abril de 2004.

Udfærdiget i Bruxelles den otteogtyvende april to tusind og fire.

Geschehen zu Brüssel am achtundzwanzigsten April zweitausendundvier.

Έγινε στις Βρυξέλλες, στις είκοσι οκτώ Απριλίου δύο χιλιάδες τέσσερα.

Done at Brussels on the twenty-eighth day of April in the year two thousand and four.

Fait à Bruxelles, le vingt-huit avril deux mille quatre.

Fatto a Bruxelles, addì ventotto aprile duemilaquattro.

Gedaan te Brussel, de achtentwintigste april, tweeduizendvier.

Feito em Bruxelas, em vinte e oito de Abril de dois mil e quatro.

Tehty Brysselissä kahdentenakymmenentenäkahdeksantena päivänä huhtikuuta vuonna kaksituhattaneljä.

Som skedde i Bryssel den tjugoåttonde april tjugohundrafyra.

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



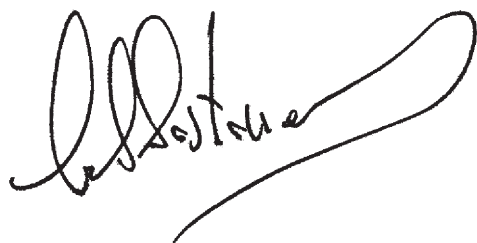
Für die Regierung der Bundesrepublik Deutschland



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

Piero Antonio Carrozzini

Pour le gouvernement du Grand-Duché de Luxembourg

N. Schmit

Voor de Regering van het Koninkrijk der Nederlanden

Th. G. M.

Für die Regierung der Republik Österreich

Georg Wodny, a. d.

Pelo Governo da República Portuguesa

João Pedro, d. e.

Suomen hallituksen puolesta

På finska regeringens vägnar



På svenska regeringens vägnar



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