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LIMITÉ

JUSTPEN 58

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REPORT

from : Permanent Representatives Committee (Part II)

dated: 13 and 14 May 1988

to : Council

No. prev. doc.: 8277/88 JUSTPEN 52 and 8465/88 JUSTPEN 56

Subject: Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union

I INTRODUCTION

The Council made at its meeting on 19 March 1988 considerable progress concerning certain draft Articles submitted to it. In conformity with the instructions from the Council, the relevant instances of the Council have since actively continued the work regarding the remaining outstanding issues. The opinion of 3 April 1988 of the European Parliament on the draft⁽¹⁾ has been considered during these proceedings.

Some questions still remain unresolved, but good progress has been made, and it should be possible to reach political agreement at Council on a substantial part of the text at this stage.

Point II below sets out the remaining questions regarding the text in the Annex. The subject of the role of the Court of Justice is covered under point III. The situation regarding the negotiations on the inclusion of provisions on interception of telecommunications is outlined under point IV. The Council is under point V invited to examine certain of the outstanding questions and to give a mandate for the continued work on the draft.

⁽¹⁾ See document 8820/88 PE. RE 26 ADD 1.

II UNRESOLVED QUESTIONS REGARDING THE TEXT IN THE ANNEX

The following questions remain unresolved (for further details see the footnotes to the text in the Annex):

a) **General reservation**

- General parliamentary scrutiny reservation by the Danish delegation on the draft Convention.

b) **Article 5 (Requests for mutual assistance)**

- Reservation by the Spanish delegation on paragraph 3. This reservation and the reservations by the Spanish delegation on Articles 16 and 17 are linked together. Possible solutions are being explored between Spain and the Presidency.

c) **Article 9 (Hearing by video conferance)**

- Scrutiny reservation by the Danish delegation on this Article.

d) **Article 11 (Covert investigations)**

- Parliamentary scrutiny reservation by the Swedish delegation on the inclusion of Article 11 in the Convention.

e) **Article 16 (Statements)**

- Reservation by the Spanish delegation. See point b).

f) **Article 17 (Reservations)**

- Reservation by the Spanish delegation. See point b).

The majority of the delegations could agree to a proposal from the Presidency to enter the following declaration in the minutes of the Council at the adoption of the set drawing up the Convention:

"The Council declares that the issue of whether to adopt provisions relating to the protection of personal data which are communicated pursuant to the application of this Convention will be resolved during the Council's consideration of the proposed Protocol to the Convention, having regard to the provisions of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data."

However, the German and Belgian delegations could not accept this proposal and continued to support the following alternative wording:

"The Council declares that the issue of which provisions relating to the protection of personal data communicated pursuant to the application of this Convention shall be adopted, will be resolved during the Council's consideration of the proposed Protocol to the Convention, (having regard to the provisions of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. These provisions shall be applicable likewise on the processing of data outside the area of automated filing systems.)"

III ROLE OF THE COURT OF JUSTICE

Delegations in the K.4 Committee agreed that the question of a role for the Court of Justice in relation to the Convention should be examined in the context of the proposed Protocol to the Convention.

However, the Legal Service of the Council has in the context of the ongoing discussions on the draft EURODAC Convention been asked by the Permanent Representatives Committee to present a written opinion on certain questions regarding the possible consequences of the provisions on the Court of Justice in the Amsterdam Treaty for Conventions adopted under Title VI of the Treaty on European Union before the entry into force of the Amsterdam Treaty.

it will be necessary to re-examine in due course the role of the Court of Justice in relation to the Mutual Assistance Convention depending on the outcome of the discussions on the draft EURODAC Convention.

IV INTERCEPTION OF TELECOMMUNICATIONS

The Committee discussed the subject of the inclusion of provisions on interception of telecommunications. It was agreed that further examination of this issue was necessary before submitting it to the Council. It is in particular necessary to further examine which scenarios involving interception the text should cover. A number of points of detail will also have to be considered further.

V CONCLUSION

The Committee invites the Council to:

- take note of the progress made;
- examine the unresolved questions set out under point II above and record agreement on as much as possible of the text in the Annex;
- instruct the relevant instances of the Council to finalize the work on the Convention as soon as possible, having in mind that the deadline for the adoption of the Convention has been fixed to mid 1998 in the 1997 Action Plan to combat organized crime⁽¹⁾.

⁽¹⁾ GJ No C 251, 15.8.1998, page 1.

COUNCIL ACT

of

drawing up the Convention on Mutual Assistance
in Criminal Matters between the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the rules governing mutual assistance in criminal matters between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty,

HAVING DECIDED that the Convention signed today by the Representatives of the Governments of the Member States of the Union, the text of which is given in the Annex, is hereby drawn up,

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

Done at Brussels,

For the Council
The President

**CONVENTION,
DRAWN UP ON THE BASIS OF ARTICLE K.3
OF THE TREATY ON EUROPEAN UNION,
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS
BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION⁽¹⁾**

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

REFERRING to the Council Act of

DESIRING to improve judicial cooperation in criminal matters between the Member States of the Union;

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

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

TAKING INTO ACCOUNT the importance of concluding a Convention between the Member States of the European Union to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1958 and other Conventions in force in this area;

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

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

HAVE AGREED ON THE FOLLOWING PROVISIONS:

⁽¹⁾General parliamentary scrutiny reservation by the Danish delegation on the draft Convention.

REQUESTS FOR MUTUAL ASSISTANCEArticle 1 ⁽¹⁾

General provisions

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union, of:
 - the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the "European Mutual Assistance Convention";
 - the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
 - the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at their Common Borders, in the context of relations between the Member States party to that Convention, and
 - Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1982, as amended by the Protocol of 11 May 1974, hereinafter referred to as the "Benelux Treaty", in the context of relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the 1959 Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories.

⁽¹⁾ The text of Article 1 has been modelled on Article 1 of the Convention on Extradition of 27 September 1987 (OJ No C 313, 23.10.1986, p. 11). The explanatory report to be drawn up will provide explanations on the Article, including the expression "more favourable" in paragraph 2. On this issue it might take a lead from the explanatory report on the Extradition Convention (OJ No C 181, 23.8.1987, p. 13).

Article 2

Procedures in connection with which assistance is to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of offences which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. ⁽¹⁾
2. Mutual assistance shall also be afforded in connection with criminal proceedings and procedures as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

Article 3 ⁽²⁾

Compliance with the formalities and procedures indicated by the requesting Member State

1. Where mutual assistance is afforded and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State, the Member States shall undertake to comply, unless otherwise provided in this Convention, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting Member State. The requested Member State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting Member State. The requesting Member State shall explain the reason for the deadline. ⁽³⁾

(1) The explanatory report will have to make it clear that this paragraph covers the concept of "Ordnungswidrigkeit" in German legislation (see Article 1 (1) in the explanatory report on the European Mutual Assistance Convention).

(2) The explanatory report will point out that statements made under Article 5 of the European Mutual Assistance Convention are not affected by Article 3.

(3) The explanatory report will point out that the possibility of setting deadlines should not be abused and that where the requesting Member State considers it appropriate to set deadlines it should only set deadlines which are reasonable under the given circumstances.

2. Where the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request (...). The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary making such action subject to the fulfilment of those conditions.
3. If it is foreseeable that the deadline set for execution of the request cannot be complied with, and if the grounds referred to in paragraph 1, third sentence, indicate in a concrete way that this will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request.⁽¹⁾

Article 4 ⁽²⁾

Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.

⁽¹⁾ The explanatory report to the Convention will state that if the conditions set out in paragraph 3 are met, the requested Member State is obliged to make the notification to the requesting Member State as provided for in the paragraph; The last sentence provides for the possibility of agreements between Member States, which may be reached in an informal manner and do not imply any binding legal obligations.

The Netherlands delegation has asked that the explanatory report should make it clear that the requested Member State could notify the Requesting Member State of delays either in writing or by telephone.

⁽²⁾ The explanatory report to the Convention will clarify the term "procedural documents", interpreting it widely to include, for example, court decisions and judicial verdicts.

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

⁽¹⁾ The explanatory report will point out that the requesting Member State should make reasonable efforts to find the address of the person before making a request and that the request should be accompanied by relevant information where possible to help the requested Member State to find the person.

⁽²⁾ The explanatory report will give additional information on the content of the report referred to in Article 4(4). The report could draw on Article 11(4) and (5) of 7945/87 JUSTPEN 41.

Article 8

Transmission of requests for mutual assistance

1. Requests for mutual assistance and the communications referred to in Article 6 shall be made directly between judicial authorities with territorial competence for their service and execution, and returned through the same channels unless otherwise specified in this Article.

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

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

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

3. ⁽¹⁾ A Member State may declare, in a statement to be sent to the depositary of this Convention, that its judicial authorities do not, or do not in general, have authority to execute requests received directly as envisaged in paragraph 1, or requests received from a central authority as envisaged in paragraph 2(b), and that requests and information must therefore be sent via the central authority or authorities of the Member State to the extent indicated in the statement. The Member State may at any time amend its statement by means of a communication to be made to the depositary and any such amendment shall be for the purpose of giving greater effect to paragraph 1. ⁽²⁾

⁽¹⁾ The explanatory report will explain that the possibility of a declaration regarding paragraph 1 has been provided to cater for Member States, in particular Ireland and the United Kingdom, where judicial authorities are not generally competent to execute direct requests for mutual assistance. The K.4. Committee has noted that the possibility of a declaration regarding paragraph 2 (b) has been provided at the request of France.

⁽²⁾ Reservation by the Spanish delegation

4. Any request as referred to in paragraph 1 may, for the sake of speed, be made via the International Criminal Police Organization (Interpol) or any body competent under provisions introduced pursuant to the Treaty on European Union.
5. Where, in respect of requests pursuant to Articles 10 or 11, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts.
6. Where, in respect of requests for assistance in relation to proceedings as envisaged in Article 2(1) the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities.
7. Any Member State may declare, when giving the notification provided for in Article 18(2), that it is not bound by the first sentence of paragraph 5 and/or by paragraph 6 or that it will only apply those paragraphs under certain conditions which it shall specify. Such a declaration may be withdrawn or amended at any time.
8. The following requests or communications shall be made through the central authorities of the Member States:
 - (a) requests for temporary transfer or transit of persons held in custody as referred to in Article 8 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;
 - (b) notices of judgments as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities;

Article 6

Spontaneous exchange of information

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

Title II

Requests for certain specific forms of mutual assistance

Article 7

Restitution

1. At the request of the requesting Member State and without prejudice to the rights of bona fide third parties⁽¹⁾, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 8 of the European Mutual Assistance Convention and Articles 24(2) and 28 of the Benelux Treaty, the requested Member State may waive the return of articles supplied to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.

⁽¹⁾ The explanatory report will contain an explanation of the expression "rights of bona fide third parties" and will make it clear that Article 7 is to apply only in cases where there is no doubt as to who is the rightful owner of the article.

3. In the event of any such waiver as referred to in paragraph 2, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of surrendered articles, other than those owed by the rightful owner.

Article B

Temporary transfer of persons held in custody for purposes of investigation

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.
2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he must be returned to the territory of the requesting Member State.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.
5. Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention and Articles 33, 35 and 46 of the Benelux Treaty shall apply.
6. Each Member State may declare when giving the notification provided for in Article 18(2) that, before reaching an agreement under paragraph 1, the consent referred to in paragraph 3 will be required or will be required under certain conditions indicated in the declaration.

Article 9

Hearing by video conference ⁽¹⁾

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 8.
2. The requested Member State shall agree to the hearing by video conference provided that the use of the video conference is not contrary to its fundamental principles of law ⁽²⁾ and on condition that it has the technical means to permit the hearing. If the requested Member State has no access to the technical means for video conferencing, such means may be made available to it by the requesting Member State by agreement between them.
3. Applications for a hearing by video conference shall contain, in addition to the data referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms prescribed by its legislation.

⁽¹⁾ Scrutiny reservation by the Danish delegation on Article 9.

⁽²⁾ It will be explained in the explanatory report that the reference to "fundamental principles of law" implies that a request may not be refused for the sole reason that one or more detailed conditions for hearing by video conference under the law of the requested Member State are not met.

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

- (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State judges that during the hearing the fundamental principles of the law of the requested Member State are infringed, it shall immediately take the necessary measures for the continuation of the hearing according to the above-mentioned principles.⁽¹⁷⁾;
- (b) measures extending to the protection of the person to be heard may be agreed between the competent authorities of the requesting and the requested Member States.⁽¹²⁾
- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
- (d) at the request of the requesting Member State the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) ⁽¹³⁾ the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State;

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- ⁽¹⁷⁾ It will be stated in the explanatory report on the Convention that the requesting Member State could ask on the basis of Article 3 and Article 9(5)(c) that counsel for the person to be heard be allowed to attend the hearing.
 - ⁽¹²⁾ The explanatory report will state that those measures may include, for instance, the implementation of the requesting Member State's legislation on the protection of the persons to be heard.
 - ⁽¹³⁾ The subject of dealing with the right to refuse to give evidence as a general issue will be added to the list of items to be dealt with in the context of a Protocol to the Convention.

6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Member State shall on conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.
7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter renounces the refunding of all or some of these expenses.
8. Each Member State shall take the necessary measures to ensure that its national law applies where witnesses or experts are being heard within its territory in conformity with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, in the same way as if the hearing took place in a national procedure. ⁽¹⁾
9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving an accused person. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Member States concerned, in conformity with their

⁽¹⁾ It will be explained in the explanatory report that the requesting and requested Member States could inform each other where appropriate for the purpose of application of paragraph 8. The explanatory report should also make it clear that the obligation to testify is under the law of the requested Member State, i.e. where the person being heard is located.

national law and relevant international instruments, including the 1950 European Convention on Human Rights. Any Member State may, when giving its notification pursuant to Article 18(2), declare that it will not apply this paragraph. Such a declaration may be withdrawn at any time. Hearings shall only be carried out with the consent of the accused person. Rules as may be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument. (1)(2)

Article 10

Controlled deliveries (3)

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.
3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State.

(1) The following declaration is added in an annex to the Convention:

"When considering the adoption of an instrument as referred to in Article 8(8), the Council shall respect Member States' obligations under the European Convention on Human Rights."

The Legal Service of the Council has confirmed that the text would not prevent paragraph 9 from coming into force before rules were adopted.

(2) It will be stated in the explanatory report, with reference to the last sentence of Article 9, paragraph 9, that the use of video-conference will be allowed for accused persons even prior to the possible adoption by the Council of a legally binding instrument for the protection of the rights of accused persons.

(3) The explanatory report on the Convention will mention the various possibilities for procedures in controlled deliveries, including the possibility mentioned in Article 10(4) (given in 9897/97 JUSTPEN 85), and will contain a reference to the European Manual on Controlled Deliveries.

Article 11⁽¹⁾

Covert investigations

1. The requesting and the requested Member State may agree to assist one another for the operation of investigations into crime by officers acting under covert or false identity (covert investigations)⁽²⁾
2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, the legal status of the officers concerned and liability for any offence committed or damage caused during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.
3. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The Member States involved shall cooperate on the preparation and supervision of the covert investigation, including arrangements for the security of the officers acting under covert or false identity.
4. Any Member State may when giving the notification provided for in Article 18(2) declare that it is not bound by Article 11. Such a declaration may be withdrawn at any time.

⁽¹⁾ Parliamentary scrutiny reservation by the Swedish delegation on the inclusion of Article 11 in the Convention.

⁽²⁾ The explanatory Report will give examples of the situations where covert investigations might be undertaken.

Title III

Interception of telecommunications⁽¹⁾

Title IV

Final provisions

Article 16⁽²⁾⁽³⁾

Statements

1. When giving the notification referred to in Article 1B(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:
 - (a) the competent administrative authorities or services within the meaning of Article 2(1), if any,
 - (b) one or more central authorities for the purposes of applying Article 5 as well as the authorities competent to deal with the requests referred to in Article 5(B)(b),
 - (c) the police or customs authorities competent for the purposes of Article 5(5), if any,
 - (d) the administrative authorities competent for the purposes of Article 5(6), if any, and

⁽¹⁾ See point IV on page 4.

⁽²⁾ Reservation by the Spanish delegation on Article 16.

⁽³⁾ It will be explained in the explanatory report that the Member States could appoint different authorities for different provisions on cooperation and that the statements under Article 16 should be clear as to the exact competencies of the authorities named in the statements.

(e) the authority or authorities competent for the purposes of the application of Articles 12 to 14,⁽¹⁾

2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

Article 17⁽²⁾

Reservations

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

Article 18

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.
3. This Convention shall enter into force ninety days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.
4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2 or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States which have made the same declaration. Such declarations shall take effect ninety days after the date of deposit thereof.

⁽¹⁾ Provisions on interception of telecommunications.

⁽²⁾ Reservation by the Spanish delegation.

5. This Convention shall apply only to requests for mutual assistance submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

Article 18

Accession of new Member States

1. This Convention shall be open to accession by any State which becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. The instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State which accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period of ninety days.
5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18(4) shall apply to acceding Member States.

Article 20

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Done at on In a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union.