

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

COUNCIL ACT

of 28 November 2002

drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol

(2002/C 312/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Convention on the establishment of a European Police Office ⁽¹⁾, and in particular Article 43(1) thereof,

Having regard to the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol ⁽²⁾, and in particular Article 18 thereof,

Having regard to the initiative of the Kingdom of Belgium and the Kingdom of Spain ⁽³⁾,

Having regard to the Opinion of the European Parliament ⁽⁴⁾,

Having regard to the opinion of the Management Board,

CONSIDERING that the need to enable Europol's participation in joint investigation teams and to adopt measures allowing Europol to ask Member States to initiate investigations in specific cases has been explicitly foreseen in Article 30(2) of the Treaty on European Union,

CONSIDERING that Europol's participation in a support capacity in operational actions of joint investigation teams of the Member States requires an adjustment of the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol,

HAS DECIDED to establish a Protocol, the text of which is attached, amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol, which has been signed today by the representatives of the governments of the Member States of the European Union,

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

Done at Brussels on 28 November 2002.

For the Council

The President

B. HAARDER

⁽¹⁾ OJ C 316, 27.11.1995, p. 2.

⁽²⁾ OJ C 221, 19.7.1997, p. 2.

⁽³⁾ OJ C 42, 15.2.2002, p. 8.

⁽⁴⁾ Opinion delivered 30 May 2002 (not yet published in the Official Journal).

ANNEX

PROTOCOL

amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol

THE HIGH CONTRACTING PARTIES to this Protocol and High Contracting Parties to the Convention on the establishment of a European Police Office and to the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 28 November 2002,

WHEREAS:

- (1) Pursuant to Article 30(2)(a) of the Treaty on European Union, the Council is to enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity.
- (2) Rules need to be laid down governing such participation of Europol in joint investigation teams. These rules should address the role of Europol officials in these teams, the exchange of information between Europol and the joint investigation team, as well as non-contractual liability for damage caused by Europol officials participating in these teams.
- (3) Pursuant to Article 30(2)(b) of the Treaty on European Union, measures need to be adopted allowing Europol to ask the competent authorities of the Member States to conduct and coordinate investigations in specific cases.
- (4) The Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol should be amended to the effect that the immunity of Europol's staff members in respect to words spoken or written, and/or acts performed by them in the exercise of their official functions, does not extend to their activities as participants in the joint investigation teams.

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

The Europol Convention is hereby amended as follows:

1. The following points shall be added to Article 3(1):
 6. to participate in a support capacity in joint investigation teams, according to Article 3a;
 7. to ask the competent authorities of the Member States concerned to conduct or coordinate investigations in specific cases, according to Article 3b.;
2. The following Articles shall be inserted:
 - (a) *'Article 3a*

Participation in joint investigation teams

1. Europol officials may participate in a support capacity in joint investigation teams, including those teams set up in accordance with Article 1 of the Framework Decision of 13 June 2002 on joint investigation teams⁽¹⁾ or in accordance with Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the

European Union, as far as those teams are investigating criminal offences for which Europol is competent under Article 2. Europol officials may, within the limits provided for by the law of the Member State where the joint investigation team operates and in accordance with the arrangement referred to in paragraph 2, assist in all activities and exchange information with all members of the joint investigation team, in accordance with paragraph 3. However, they shall not take part in the taking of any coercive measures.

2. The administrative implementation of the participation of Europol officials in a joint investigation team shall be laid down in an arrangement between the Director of Europol and the competent authorities of the Member States participating in the joint investigation team, with the involvement of the National Units. The rules governing such arrangements shall be determined by the Management Board of Europol acting by a majority of two thirds of its members.

3. Europol officials shall carry out their tasks under the leadership of the leader of the team, taking into account the conditions laid down in the arrangement referred to in paragraph 2.

4. In accordance with the arrangement referred to in paragraphs 2 and 3, officials of Europol may liaise directly with the members of the joint investigation team and provide members and seconded members of the joint investigation team, in accordance with the present Convention, with information from any of the components of the computerised system of collected information referred to in Article 6. In case of direct liaison, the National Units of the Member States represented in the team as well as the Member States which provided the information shall at the same time be informed thereof by Europol.

5. Information obtained by a Europol official while part of a joint investigation team may, with the consent and under the responsibility of the Member State which provided the information, be included in any of the components of the computerised system under the conditions laid down in this Convention.

6. During the operations of a joint investigation team referred to in this Article, Europol officials shall, with respect to offences committed against or by them, be subject to national law of the Member State of operation applicable to persons with comparable functions.

(¹) OJ L 162, 20.6.2002, p. 1.;

(b) 'Article 3b

Requests made by Europol to initiate criminal investigations

1. Member States should deal with any request from Europol to initiate, conduct or coordinate investigations in specific cases and should give such requests due consideration. Europol should be informed whether the requested investigation will be initiated.

2. If the competent authorities of the Member State decide not to comply with a request from Europol, they shall inform Europol of their decision and of the reasons for it unless they are unable to give their reasons because:

- (i) to do so would harm essential national security interests; or
- (ii) to do so would jeopardise the success of investigations under way or the safety of individuals.

3. Replies to requests by Europol to initiate, conduct or coordinate investigations in specific cases as well as information to Europol about the results of investigations should be forwarded through the competent authorities in the Member States in accordance with the rules laid down in the Europol Convention and the relevant national legislation.

4. On the basis of a cooperation agreement to be signed with Eurojust, Europol shall, when making a request to initiate criminal investigations, inform Eurojust thereof.;

(c) 'Article 39a

Liability with regard to Europol's participation in joint investigation teams

1. The Member State in the territory of which damage was caused by officials of Europol operating in accordance with Article 3a in that Member State during their assistance in operational measures shall make good such damage under the conditions applicable to damage caused by its own officials.

2. Unless otherwise agreed by the Member State concerned, Europol shall reimburse in full any sums it has paid to the victims or persons entitled on their behalf for damage referred to in paragraph 1. Any dispute between that Member State and Europol over the principle or amount of repayment must be referred to the Management Board, which shall settle the matter by a two-thirds majority.;

3. The following points shall be inserted in Article 28(1):

'1a. shall, acting by a majority of two thirds of its members, determine the rules governing the administrative implementation of the participation of Europol officials in joint investigation teams (Article 3a(2));'

'21a. shall act by a two-third majority in disputes between a Member State and Europol concerning the liability with regard to Europol's participation in joint investigation teams (Article 39a).';

Article 2

The following paragraph shall be added to Article 8 of the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol:

'4. In accordance with Article 17(2), the immunity referred to in paragraph 1(a) shall not be granted in respect of official acts required to be undertaken in fulfilment of the tasks set out in Article 3a of the Convention regarding the participation of Europol officials in joint investigation teams.'

Article 3

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their constitutional requirements for adopting this Protocol.

3. This Protocol shall enter into force ninety days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act establishing this Protocol, is the last to fulfil that formality.

Article 4

1. This Protocol shall be open to accession by any State which becomes a member of the European Union if this Protocol has not entered into force on the date of deposit of the instruments of accession to the Europol Convention in accordance with Article 46 of the Europol Convention.
2. Instruments of accession to this Protocol shall be deposited simultaneously with the instruments of accession to the Europol Convention in accordance with Article 46 thereof.
3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
4. If, on the expiry of the period referred to in Article 46(4) of the Europol Convention, this Protocol has not entered into force, it shall enter into force for the acceding Member State on

the date of entry into force of this Protocol in accordance with Article 3(3) thereof.

5. If this Protocol enters into force in accordance with Article 3(3) before the period referred to in Article 46(4) of the Europol Convention has expired but after the deposit of the instrument of accession referred to in paragraph 2, the acceding Member State shall accede to the Europol Convention as amended by virtue of this Protocol, in accordance with Article 46 of the Europol Convention.

Article 5

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

Hecho en Bruselas, el veintiocho de noviembre de dos mil dos.

Udfærdiget i Bruxelles den otteogtyvende november to tusind og to.

Geschehen zu Brüssel am achtundzwanzigsten November zweitausendundzwei.

Έγινε στις Βρυξέλλες, στις είκοσι οκτώ Νοεμβρίου δύο χιλιάδες δύο.

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

Fait à Bruxelles, le vingt-huit novembre deux mille deux.

Arna dhéanamh sa Bhruiséil, an t-ochtú lá is fiche de Shamhain sa bhliain dhá mhíle a dó.

Fatto a Bruxelles, addì ventotto novembre duemiladue.

Gedaan te Brussel, de achtentwintigste november tweeduizend en twee.

Feito em Bruxelas, em vinte e oito de Novembro de dois mil e dois.

Tehty Brysselissä kahdentenkymmenentenäkahdeksantena päivänä marraskuuta vuonna kaksituhattakaksi.

Som skedde i Bryssel den tjuogoåttonde november tjugohundratvå.

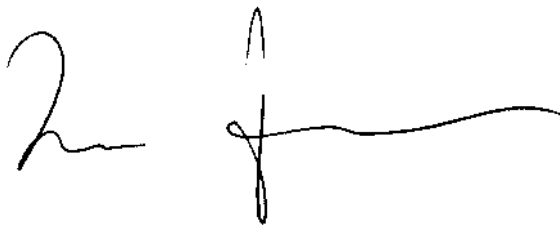
Pour le gouvernement du Royaume de Belgique

Voor de regering van het Koninkrijk België


Für die Regierung des Königreichs Belgien



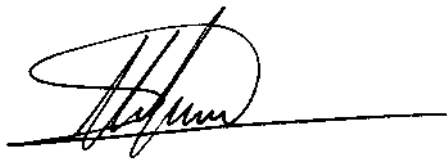
For regeringen for Kongeriget Danmark



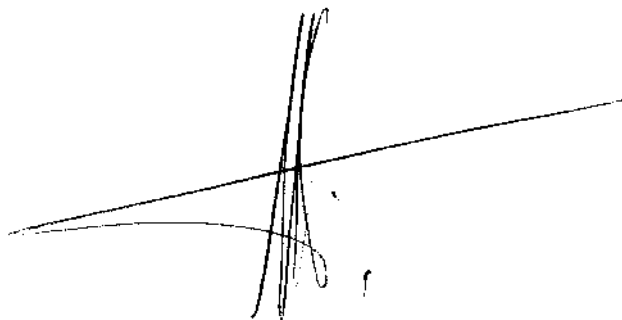
Für die Regierung der Bundesrepublik Deutschland



Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



Pour le gouvernement de la République française




Thar ceann Rialtas na hÉireann

For the Government of Ireland



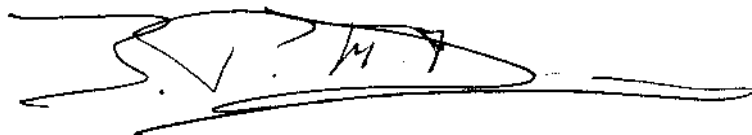
Per il Governo della Repubblica italiana



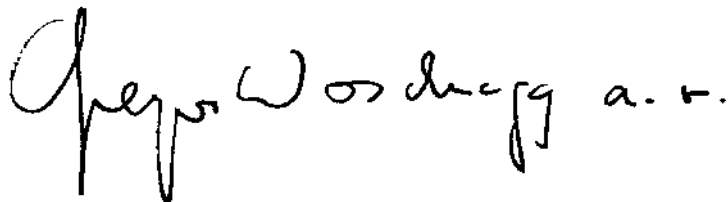
Pour le gouvernement du Grand-Duché de Luxembourg



Voor de regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich

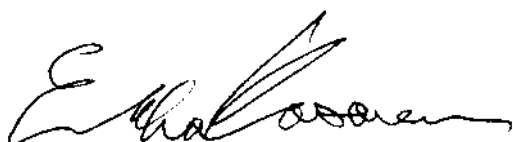


Pelo Governo da República Portuguesa

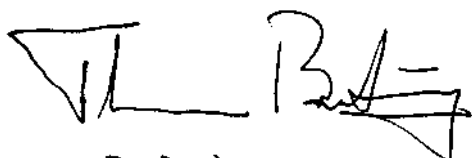


Suomen hallituksen puolesta

På finska regeringens vägnar



På svenska regeringens vägnar



UNDER FÖRBENÄLL FÖR RATIFICERING

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