OUTCOME OF PROCEEDINGS

of: Customs Cooperation Working Party

Nos prev. docs: 9815/95 ENFOCUSTOM 33 + ADD 1
5246/96 ENFOCUSTOM 4 + ADD 1 and 2

Subject: Draft Convention on Mutual Assistance between Customs Administrations (Naples II)

The Customs Cooperation Working Party continued its examination of this proposal at its meeting on
11 June 1996.

The text as it stands after discussion is set out below. Delegations' comments are given in footnotes.
COUNCIL ACT

drawing up the Convention on Mutual Assistance between Customs Administrations

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 customs cooperation as a matter of common interest, coming under the cooperation provided for in Title VI of the Treaty;

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

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

Done at

For the Council
The President
CONVENTION
DRAWN UP ON THE BASIS OF ARTICLE K.3
OF THE TREATY ON EUROPEAN UNION
ON MUTUAL ASSISTANCE
BETWEEN CUSTOMS ADMINISTRATIONS
THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of

RECALLING the need to strengthen the commitments contained in the Convention on Mutual Assistance between Customs Administrations, signed in Rome on 7 September 1967,

CONSIDERING that customs administrations are responsible, together with other competent authorities, at the external frontiers of the Community and within the territorial limit thereof, for the prevention, investigation and suppression of offences against not only Community rules, but also against national laws, in particular those laws covered by Articles 36 and 223 of the Treaty establishing the European Community,

CONSIDERING that a serious threat to public health, morality and security is constituted by the developing trend towards illicit trafficking of all kinds,

CONVINCED that it is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities, using new technology for the management and transmission of such information, subject to the provisions of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

BEARING IN MIND that the customs administrations in their day-to-day work have to implement both Community and non-Community provisions, and that there is consequently an obvious need to ensure that the provisions of mutual assistance and administrative cooperation in both sectors evolve as far as possible in parallel,

HAVE AGREED ON THE FOLLOWING PROVISIONS:
TITLE I
General provisions

Article 1
(Scope)

1. The Member States of the European Union shall provide each other with mutual assistance through their customs administrations, in particular with a view to:

– preventing and detecting infringements of national customs provisions, and

– prosecuting and punishing infringements of Community and national customs provisions. (1)

2. This Convention shall not affect judicial assistance provided by the judicial authorities in criminal cases.

(1) The Commission representative proposed replacing the text of paragraph 1 by the following:

"The Member States shall provide each other with mutual assistance through their customs administrations, in particular with a view to preventing, detecting and prosecuting infringements of national customs regulations.

The Member States shall provide each other with mutual assistance according to the rules laid down in this Convention when action is taken with a view to preventing, detecting or prosecuting an infringement of Community customs regulations by a customs administration at the request of, or under a direct mandate from, a judicial authority." (see 7851/95 ENFOCUSTOM 22)

Two delegations (IRL/NL) reserved their positions. The NL delegation referred to its position on Article 17.
Article 2
(Definitions)

1. "National customs provisions" means all laws, regulations and administrative provisions of a Contracting State the application of which comes wholly or partly within the jurisdiction of the customs administration of that Contracting State concerning:

   – cross-border traffic in goods subject to bans, restrictions or controls, in particular under Articles 36 and 223 of the EC Treaty;

   – the transfer, conversion, concealment or disguise of the true nature of property or proceeds directly or indirectly deriving or obtained from illegal cross-border trafficking or used in such trafficking; (\(^2\))

   – non-harmonized excise duties;

\(^2\) Scrutiny reservation by the A delegation. Reservation by the DK delegation (see 10473/95 ENFOCUSTOM 37).
2. "EC customs regulations" means the body of Community provisions and associated implementing provisions governing the import, export, transit and presence of goods traded between Member States and third countries, and between Member States in the case of goods that do not have Community status within the meaning of Article 9(2) of the EC Treaty or goods subject to additional controls or investigations for the purposes of establishing their Community status as well as the body of provisions adopted at Community level under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products and all indirect taxes.

3. "mutual assistance" means every act of assistance which Member States' customs administrations grant each other in performance of this Convention.

4. "applicant authority" means the competent authority of a Member State which makes a request for assistance.

5. "requested authority" means the competent authority of a Member State to which a request for assistance is made.

6. "customs administrations" means Member States' customs authorities as well as other authorities responsible for implementing certain provisions of this Convention. (³)

7. "personal data" means all information relating to an identified or identifiable individual. (⁴)

8. "cross-border cooperation" means cooperation between customs administrations across the land, maritime and air frontiers of each Member State. (⁵)

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³ Reservation by the DK delegation.
⁴ Reservation by the P delegation.
⁵ Reservations by the EL and IRL delegations.
Article 3  
*(Relationship to judicial assistance provided by the judicial authorities)*

1. Without prejudice to the provisions of national law and international Conventions on judicial assistance provided by the judicial authorities in criminal matters, this Convention covers mutual assistance in the framework of criminal investigations for infringements of national and Community customs provisions, insofar as the applicant authority is responsible for those investigations on the basis of national provisions in the relevant Member State.

2. Where a criminal investigation is carried out on the responsibility of a judicial authority, requests for cooperation shall be submitted by the judicial authority or on its behalf under the heading of judicial assistance, even if the customs administration is entrusted with meeting those requests. (6)

Article 4  
*(Central coordinating units)*

1. Member States shall appoint in their customs administrations a central unit (coordinating unit). It shall be responsible for receiving all applications for mutual assistance and for coordinating mutual assistance, without prejudice to paragraph 2. The unit shall also be responsible for cooperation with other authorities involved in an assistance measure under this Convention. The coordinating units of the Member States shall maintain the necessary direct contact with each other, particularly in the cases covered by Title IV.

2. The activity of the central coordinating units shall not exclude, particularly in an emergency, direct cooperation between other services of the customs authorities of the Member States. For reasons of efficiency and consistency, the central coordinating units shall be informed of any action involving such direct cooperation.

3. If the customs administration is not, or not completely, competent to process a request, the central coordinating unit shall forward the request to the competent national authority and inform the applicant authority that it has done so.

4. If it is not possible to accede to the request for legal or substantive reasons, the coordinating unit shall return the request to the applicant authority with an explanation as to why the request could not be processed.

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(6) This paragraph 2 was added at the request of the NL delegation.
**Article 4a**

*(Liaison officers)*

1. Member States may make agreements between themselves on the exchange of liaison officers for limited or unlimited periods.

2. Liaison officers shall have no powers of intervention in the host country.

3. In order to promote cooperation between Member States' customs administrations, liaison officers' duties may, with the agreement or at the request of the competent authorities of the Member States, include:

   (a) promoting and speeding up the exchange of information between the Member States;

   (b) being present at investigations which relate to their home country or the Member State they represent;

   (c) helping to deal with requests for assistance;

   [ (d) advising and assisting the host country in preparing and carrying out cross-border operations;] *(7)*

   (e) any other duties which Member States may agree between themselves.

4. Member States may agree bilaterally or multilaterally on the terms of reference and the base of the liaison officers. Liaison officers may also represent the interests of one or more Member States.

*(7)* This point will be reviewed in the light of the solution adopted for Title IV (Articles 17 et seq.).
Article 5

(Obligation to prove identity)

Unless otherwise specified in this Convention, staff of the applicant authority present in another Member State in order to exercise the rights laid down in this Convention must at all times be able to produce written authority stating their identity and their official functions.
TITLE II
Assistance on request

Article 6
(Principles)

1. In order to provide the assistance required under this section, the requested authority or the administrative authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own country. In so doing it shall avail itself of all the legal powers at its disposal in order to respond to the request.

2. The requested authority shall extend its assistance to all circumstances of the infringement which have any recognizable bearing on the subject of the request for assistance without this requiring any additional request. In case of doubt the requested authority shall initially contact the applicant authority.

Article 7
(Form and content of the request for assistance)

1. Requests shall always be made in writing. Documents necessary for the execution of such requests shall accompany the request.

2. Requests pursuant to paragraph 1 shall include the following information:

   (a) the applicant authority making the request;
   (b) the measure requested;
   (c) the object of and the reason for the request;
   (d) the laws, rules and other legal elements involved;
   (e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations;
   (f) a summary of the relevant facts, except in cases provided for in Article 12.
Article 7 (continued)

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to such authority.

4. When required because of the urgency of the situation, oral requests shall be accepted, but must be confirmed in writing as soon as possible.

5. If a request does not meet the formal requirements, the requested authority may ask for it to be corrected or completed; measures necessary to comply with the request may, however, be ordered.

Article 8

(Requests for information)

1. At the request of the applicant authority, the requested authority shall communicate to it all information which may enable it to prevent, detect and prosecute infringements of national and Community customs provisions.

2. The information communicated is to be accompanied by reports and other documents, or certified copies or extracts of the same, on which that information is based and which are in the possession of the requested authority or which were produced or obtained in order to execute the request for information.

3. By agreement between the applicant authority and the requested authority, officials authorized by the applicant authority may, subject to detailed instructions from the requested authority, obtain information pursuant to paragraph 1 from the offices of the requested Member State. This shall apply to all information derived from documentation to which the staff of those offices have access. Those officials shall be authorized to take copies of the said documentation.
**Article 9**

(Requests for surveillance)

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept on persons where there are reasonable grounds for believing that they have infringed the national customs provisions of one or more Member States or Community customs provisions or that they are committing or planning such an infringement. At the request of the applicant authority, the requested authority shall also keep a watch on places, means of transport, goods and [all forms of money laundering] (8) connected with activities which might be detrimental to the abovementioned customs provisions.

**Article 10**

(Requests for administrative enquiries)

1. The requested authority shall at the request of the applicant authority carry out, or arrange to have carried out, the appropriate administrative enquiries concerning operations which constitute or appear to the applicant authority to constitute infringements of customs provisions.

   The requested authority shall communicate the results of such administrative enquiries to the applicant authority. Article 8(2) shall apply mutatis mutandis.

2. By agreement between the applicant authority and the requested authority, officials appointed by the applicant authority may be present at the administrative enquiries referred to in paragraph 1.

   Administrative enquiries shall at all times be carried out by staff of the requested authority. The applicant authority's staff may not, of their own initiative, assume the powers conferred on officials of the requested authority. They shall, however, have access to the same premises and the same documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.

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(8) Reservations by the DK and A delegations.
Article 11
(Notification)

1. At the request of the applicant authority, the requested authority shall, in accordance with the national rules of the Member State in which it is based, notify the addressee or have it notified of all instruments or decisions which emanate from the administrative authorities and concern the application of this Convention.

2. Requests for notification, mentioning the subject of the instrument or decision to be communicated, shall be accompanied by a translation in the official language or an official language of the Member State in which the requested authority is based, without prejudice to the latter's right to waive such a translation.

Article 12
(Use as evidence)

Findings, certificates, information, documents, certified true copies and other papers obtained by the staff of the requested authority and transmitted to the applicant authority in the cases provided for in Articles 8 to 10 may be used as evidence by the competent bodies in the Member State of the applicant authority in accordance with national law.
TITLE III
Spontaneous assistance

Article 13
(Principle)

The competent authorities of each Member State shall, as laid down in Articles 14 and 15, provide assistance to the competent authorities of the other Member States without prior request.

Article 14
(Surveillance)

Where it serves the prevention, detection and prosecution of infringements of customs provisions in another Member State, each Member State's competent authorities shall:

(a) as far as is possible keep, or have kept, the special watch described in Article 9;

(b) communicate to the competent authorities of the other Member States concerned all information in their possession, and in particular reports and other documents or certified true copies or extracts thereof, concerning operations which are connected with a planned or committed infringement of customs provisions.
**Article 15**

*(Spontaneous information)*

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States concerned all relevant information concerning planned or committed infringements of customs provisions, and in particular information concerning the goods involved and new ways and means of committing such infringements.

**Article 16**

*(Use as evidence)*

Surveillance reports and information obtained by staff of one Member State and communicated to another Member State in the course of the spontaneous assistance provided for in Articles 13 to 15 may be used, in accordance with national law, as evidence by the competent bodies of the Member State receiving the information.
Title IV
SPECIAL FORMS OF COOPERATION

Article 17
Principles (*)

1. National customs administrations shall engage in cross-border cooperation in accordance with this Title. They shall provide each other with the necessary assistance in terms of staff and organizational support. Requests for cooperation shall, as a rule, take the form of requests for assistance in accordance with Article 7.

[In specific cases referred to in this Title officers of the applicant authority and other persons authorized by it may engage in activities in the territory of the requested State, with the approval of the requested authority.] (**)

 Coordination and planning of cross-border operations shall be the responsibility of the central coordinating units in accordance with Article 4.

2. Cross-border cooperation within the meaning of paragraph 1 shall be permitted for the prevention, investigation and prosecution of infringements in cases of:

(a) illicit traffic in drugs and psychotropic substances, weapons, munitions, explosive materials,
[cultural goods, dangerous and toxic waste, nuclear material] (***) or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons (prohibited goods);

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(*) Reservations by the DK, EL and L delegations.

The NL delegation suggested that Article 17 be incorporated as much as possible into the Articles containing the general provisions of the Treaty (Title I). If principles were needed to determine the scope of the special forms of cooperation, this could be better achieved in the articles concerning the scope in Title I or in the relevant articles of Title IV so as to avoid overlapping and lack of clarity. As regards the infringements referred to in paragraph 2, it was proposed that a definition be incorporated in a new – yet to be drafted – paragraph of Article 2 (definitions) which would include the infringements covered by forms of cooperation. Paragraph 3 relating to the permissibility of forms of cooperation under domestic law and paragraph 4 relating to the participation of legal authorities were fundamental and should therefore be included in the general provisions. Paragraphs 5 to 7 relating to damage were valuable but did not involve a principle. They could be included after Articles 18 and 19 or at the end of Title IV.

(**) One delegation (NL) wanted the possibility offered by this provision to be specified in the Articles concerned.

(***) The Commission representative pointed out that trade in some goods mentioned in paragraph 2 was covered by Community customs provisions (nuclear materials or substances, cultural goods, dangerous or toxic waste, precursors).
[(b) trade in substances listed in tables I and II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and intended for the illegal manufacture of drugs (precursor substances);] \(^{(12)}\)

(c) the transfer, conversion, concealment or disguise of property or proceeds directly or indirectly deriving from illegal cross-border trafficking or used in such trafficking;

[(d) illegal cross-border commercial trade in taxable goods to evade tax or to obtain unauthorized State payments in connection with the import or export of goods, where the extent of the trade and the related risk to taxes and subsidies is such that the potential financial cost to the budget of the European Communities or the Member States is considerable;] \(^{(1)}\)

(e) any other trade in goods prohibited by Community or national customs rules. \(^{(13)}\)

3. The requested authority shall not be obliged to engage in the specific forms of cooperation referred to in this Title if the type of investigation sought is not permitted or not provided for under the domestic law of the requested Member State. In this case the applicant authority shall be entitled to refuse, for the same reason, the corresponding type of cross-border cooperation in the reverse case, where it is requested by an authority of the requested Member State. \(^{(14)}\)

4. If necessary under the domestic law of the Member States, the participating authorities shall apply to their legal authorities for approval of the planned investigations. Where the competent legal authorities make their approval subject to certain conditions and requirements, the participating authorities shall ensure that those conditions and requirements are observed in the course of the investigations.

\(^{(12)}\) See footnote 3 on page 17.

\(^{(13)}\) The Danish, Netherlands and Austrian delegations reserved their positions on (d) and (e), considering that the wording of these points went much too far. Other delegations urged that they be retained in the Convention.

\(^{(14)}\) The Italian delegation proposed adding the following paragraph 3a:
"Each Member State may declare at the time of signing this Convention that neither hot pursuit as referred to in Article 18 nor cross-border surveillance as referred to in Article 19 may be carried out in its territory without prior approval. That declaration may be withdrawn or amended at any time." The Irish delegation thought paragraph 3a should read as follows: "The provisions of Articles 18 and 19 shall not enter into force in respect of a Member State unless it makes a declaration to the depositary mentioned in Title VII that these provisions shall enter into force for it. A Member State may make such a declaration at the time of signing the Convention or at any time thereafter".
5. Where officers of a Member State engage in activities in the territory of another Member State by virtue of this Title, the seconding Member State shall be liable for any damage caused there by the activities of its officers, in accordance with the domestic law of the Member State in whose territory the deployment took place.

The Member State in whose territory the damage referred to in the first sentence occurs shall undertake to make good the damage in the same way as it would have had to do if the damage had been caused by its own officials. (15)

6. The Member State whose officers have caused damage to whomsoever in the territory of another Member State shall reimburse in full to the latter any sums it has paid out to the victims or other entitled persons.

7. Without prejudice to the exercise of its rights vis-à-vis third parties and without prejudice to paragraph 6, each Member State shall refrain, in the case provided for in paragraph 5, from requesting reimbursement of the amount of the damages it has sustained from another Member State.

(15) An addition may be made to this paragraph in order to include the persons referred to in Article 21(1)(b).
**Article 18 (Text 1)**

**Hot pursuit** (16)(17)(18)

1. Officers of a Member State engaged in pursuit of a person who has been discovered immediately after committing or participating in an infringement in their country under Article 17(2) shall be authorized to continue that pursuit in the territory of another Member State, without the prior approval of the competent authorities, where the matter is so urgent that officers of the State of entry cannot be contacted before the border is crossed, or where those officers are not present in time to take up the pursuit.

Officers engaged in pursuit shall contact the competent authorities of the State of entry at the latest on crossing the border. Those authorities shall take up the pursuit at the earliest possible opportunity. At the request of the officers engaged in pursuit, officers with local responsibility shall stop the suspect in order to establish his identity or to make an arrest.

2. If the local authorities' services cannot be enlisted in time, officers engaged in pursuit may detain the suspect until officers of the Member State concerned establish his identity or make an arrest.

Until officers with local responsibility arrive, officers engaged in pursuit may conduct only a security search of the detainee. Officers engaged in pursuit may temporarily confiscate objects and goods being carried by the suspect, until the case is taken over by officers with local responsibility.

Following arrest by officers of the State of entry, the competent authorities of the State originating the pursuit shall have an appropriate period of time in which to apply, in whatever form, for temporary arrest for extradition purposes.

(16) The Spanish delegation proposed that the opening of Article 18 be worded as follows:

"I. Except where this is contrary to domestic legislation and without prejudice to any bilateral (or multilateral) agreements concluded on the matter between Member States, the following provisions shall apply ...." (remainder unchanged).

(17) The categories of officers who would be allowed to enter the territory of a neighbouring Member State could be specified by each Member State, in an Annex to the Convention.

(18) The Portuguese delegation entered a scrutiny reservation on this Article.
3. The right of hot pursuit may be exercised only under the following general conditions:

(a) Officers engaged in pursuit shall be bound by the law of the Member State in whose territory they are present. They shall follow the instructions of the locally competent authorities. (19)

(b) Entry into private dwellings or on to land to which there is no public access shall not be permitted.

(c) Officers engaged in pursuit may carry their official firearms with them unless a decision to the contrary is expressly taken by the competent authorities of the Member State within whose territory the pursuit is taking place; their use shall not be permitted except in self-defence.

(d) On completion of each pursuit operation, officers of the foreign Member State shall immediately contact the locally competent authority of the Member State in whose territory the operation took place to make a report. At the request of that authority, they shall be obliged to hold themselves at the authority's disposal until the circumstances have been clarified, irrespective of whether it was possible to arrest the suspect. The authorities of the Member State from whose territory the officers engaged in pursuit come shall, on request by the authorities of the Member State in whose territory the cross-border pursuit took place, assist in the subsequent investigations, including court proceedings.

4. The authorities of the requested Member State may call a halt to the pursuit at any time.

(19) The UK delegation proposed adding a new subparagraph as follows after (a):
"Pursuit shall be solely over land borders with the exception of the Irish Land Boundary and the Channel Tunnel where the provisions of this Article shall not apply."
Article 18 (Text 2) \(^{(20)}\)

(based on Article 41 of the Schengen Convention)

1. Officers of one of the Contracting Parties following, in their country, an individual apprehended in the act of committing one of the offences referred to in Article 17(2) \(^{(21)}\) or participating in one of those offences shall be authorized to continue pursuit in the territory of another Contracting Party without prior authorization where given the particular urgency of the situation it was not possible to notify the competent authorities of the other Contracting Party prior to entry into that territory or where these authorities have been unable to reach the scene in time to take over the pursuit.

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Contracting Party in whose territory the pursuit is to take place. The pursuit will cease as soon as the Contracting Party in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person so as to establish his identity or to arrest him.

2. The pursuit shall be carried out in accordance with one of the following procedures, defined by the declaration provided for in paragraph 7:

(a) the pursuing officers shall not have the right to apprehend;

(b) if no request to cease the pursuit is made and if the competent local authorities are unable to intervene quickly enough, the pursuing officers may apprehend the person pursued until the officers of the Contracting Party in the territory of which the pursuit is taking place, who must be informed without delay, are able to establish his identity or arrest him.

\(^{(20)}\) Text proposed by the NL and UK delegations.

\(^{(21)}\) The NL delegation thought that the reference to Article 17 should be replaced by a reference to Article 2 (supplemented).
3. Pursuit shall be carried out in accordance with paragraphs 1 and 2 in one of the following ways as defined by the declaration provided for in paragraph 7:

   (a) in an area or during a period as from the crossing of the border, to be established in the declaration;

   (b) without limit in space or time.

4. Pursuit shall be subject to the following general conditions:

   (a) the pursuing officers must comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent local authorities;

   (b) pursuit shall be solely over land borders [with the exception of the Irish Land Boundary and the Channel Tunnel where the provisions of this Article shall not apply] (22) [and maritime borders within territorial waters]; (23)

   (c) entry into private homes and places not accessible to the public shall be prohibited;

   (d) the pursuing officers shall be easily identifiable, either by their uniform or by means of an armband or by accessories fitted to their vehicle; the use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification is prohibited; the pursuing officers must at all times be able to prove that they are acting in an official capacity;

(22) Addition proposed by the UK delegation.
Member States may wish to add to the list of sensitive borders to which this Article shall not apply.

(23) Addition proposed by the NL delegation.
(e) the pursuing officers may carry their service weapons; their use shall be prohibited save in cases of legitimate self-defence;

(f) once the pursued person has been apprehended as provided for in paragraph 2(b), for the purpose of bringing him before the competent local authorities he may be subjected only to a security search; handcuffs may be used during his transfer; objects carried by the pursued person may be seized;

(g) after each operation mentioned in paragraphs 1, 2 and 3, the pursuing officers shall present themselves before the local competent authorities of the Member State in whose territory they were operating and shall give an account of their mission; at the request of those authorities, they must remain at their disposal until the circumstances of their action have been adequately elucidated; this condition shall apply even where the pursuit has not resulted in the arrest of the pursued person;

(h) the authorities of the Member State from which the pursuing officers have come shall when requested by the authorities of the Member State in whose territory the pursuit took place assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

5. A person who, following the action provided for in paragraph 2, has been arrested by the competent local authorities may, whatever his nationality, be held for questioning. The relevant rules of national law shall apply by analogy.
If the person is not a national of the Member State in whose territory he was arrested, he shall be
released no later than six hours after his arrest, not including the hours between midnight and 9.00 in the
morning, unless the competent local authorities have previously received a request for his provisional
arrest for the purposes of extradition in any form whatever.

6. The officers referred to in paragraphs 1 and 2 shall be: (24)

– for the Kingdom of Belgium: ...
– for the Kingdom of Denmark: ...
– for the Federal Republic of Germany: ...
– for the Hellenic Republic: ...
– for the Kingdom of Spain: ...
– for the French Republic: ...
[ – for Ireland: ...]
– for the Italian Republic: ...
– for the Grand Duchy of Luxembourg: ...
– for the Kingdom of the Netherlands: officials of the Fiscal Inlichtingen en Opsporingsdienst (Fiscal
  Information and Investigation Service) responsible for import duties and excise duties
– for the Republic of Austria: ...
– for the Portuguese Republic: ...
– for the Republic of Finland: ...
– for the Kingdom of Sweden: ...
[ – for the United Kingdom of Great Britain and Northern Ireland: ...].

7. On signing this Convention, each Member State shall make a declaration in which it shall define, on the
basis of paragraphs 2, 3 and 4 above, the procedures for implementing pursuit in its territory for each of
the Member States with which it has a common border.

A Member State may at any moment replace its declaration by another declaration, provided the latter
does not restrict the scope of the former.

(24) Paragraph 6 was proposed by the NL delegation.
Each declaration shall be made after consultations with each of the Member States concerned and with a view to obtaining equivalent arrangements on both sides of internal borders.

8. The Member States may, on a bilateral basis, extend the scope of paragraph 1 and adopt additional provisions in implementation of this Article.

9. When depositing its instruments of ratification, acceptance or approval of this Convention, a Member State may declare that it is not bound by Article 18. Such declaration may be withdrawn at any time. (25)

(25) Paragraph 9 was proposed by the NL delegation.
Article 19 (Text 1)

Cross-border surveillance (26)

1. Where a person under suspicion of planning, committing or having committed or participated in an infringement under Article 17(2) is under surveillance by the officers of a Member State, they shall be authorized to continue that surveillance within the territory of another Member State after approval by the competent authority. The approval may at any time be made subject to requirements. Such surveillance may also cover goods and objects of the type described in Article 17(2)(b) to (d), to ascertain the route taken or the recipient.

The surveillance operation must, on request, be transferred to officers of the Member State within whose territory the surveillance is being carried out.

2. Where prior approval cannot be sought from the other Member State on account of the particular urgency of the matter, officers may (27) continue the surveillance across the border on condition that they contact the competent authority of the State of entry at the latest on crossing the border (28).

(26) One delegation (E) thought the word "surveillance" should be defined. It would propose a text.
(27) The UK delegation proposed adding after "may": "subject to Article 17(3)".
(28) The Austrian delegation proposed that paragraph 2 be worded as follows:

"2. Where, for particularly urgent reasons, prior authorization of the other Member States cannot be requested, the officers conducting the observation shall be authorized to continue the observation beyond the border provided that the competent authority of the Member State in whose territory the observation is to be continued is notified immediately, during the observation, that the border has been crossed or a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorization is submitted without delay. Observation shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification or the request, or where authorization has not been obtained five hours after the border was crossed."
3. Cross-border surveillance shall be permitted only under the following general conditions:

(a) officers engaged in surveillance shall be bound by the law of the Member State within whose territory they are present. They shall follow the instructions of the competent authorities;

(b) save where paragraph 2 applies, officers shall carry a document with them during surveillance operations to show that the competent authority has approved the surveillance;

(c) officials engaged in surveillance shall not be authorized to stop or arrest the person under surveillance;

(d) entry into private dwellings or on to land to which there is no public access shall not be permitted;

(e) report must be made, on request, to the competent authorities within whose territory the surveillance operation took place; in addition, the surveillance officers may be required to appear in person at the authority's office;

(f) officers engaged in surveillance may carry their official firearms with them unless a decision to the contrary is expressly taken by the competent authorities of the Member State within whose territory the surveillance is taking place (29); their use shall not be permitted except in self-defence;

(g) the authorities of the Member State from which the surveillance officers come shall, on request by the competent authorities of the Member State within whose territory the intervention took place, assist in the subsequent investigations, including court proceedings.

4. The authorities of the requested Member State may decide at any time to call a halt to the surveillance carried out under the conditions laid down in paragraphs 1 and 2.

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(29) According to the UK delegation, this "decision to the contrary" could be the subject of a declaration at the time when the Convention is signed.
Article 19 (Text 2) (**30**)

*(based on Article 40 of the Schengen Convention)*

1. Officers of one of the Member States who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence referred to in Article 17(2) (**31**), shall be authorized to continue their observation in the territory of another Member State where the latter has authorized cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorization.

On request, the observation will be entrusted to officers of the Member State in whose territory it is carried out.

The request for assistance referred to in the first subparagraph must be sent to an authority designated by each of the Member States and having jurisdiction to grant or to forward the requested authorization.

2. Where, for particularly urgent reasons, prior authorization of the other Member State cannot be requested, the officers conducting the observation shall be authorized to continue beyond the border the observation of a person presumed to have committed offences referred to in Article 17(2) (**2**), provided that the following conditions are met:

(a) [such observation without prior authorization shall apply solely across land borders and shall not apply to the Irish Land Boundary or to the Channel Tunnel] (**32**); [such observation shall take place solely across land borders;] (**33**)

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(**30**) Text proposed by the NL and UK delegations.

(**31**) The NL delegation thought that the reference to Article 17 should be replaced by a reference to Article 2 (supplemented).

(**32**) Text proposed by the UK delegation.

(**33**) Text proposed by the NL delegation.
(b) the authorities of the Member State designated under paragraph 5, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;

(c) a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorization shall be submitted without delay.

Observation shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (b) or the request referred to in (c) or where authorization has not been obtained five hours after the border was crossed.

3. The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

(a) the officers conducting the observation must comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the local responsible authorities;

(b) except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorization has been granted;

(c) the officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity;

(d) the officers conducting the observation may carry their service weapons during the observation save where specifically otherwise decided by the requested Member State; their use shall be prohibited save in cases of legitimate self-defence;
(e) entry into private homes and places not accessible to the public shall be prohibited;

(f) the officers conducting the observation may neither challenge nor arrest the person under observation;

(g) all operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers conducting the observation may be required to appear in person;

(h) the authorities of the Member State from which the observing officers have come shall, when requested by the authorities of the Member State in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. The officers referred to in paragraphs 1 and 2 shall be: \(^{(34)}\)

- for the Kingdom of Belgium: ...
- for the Kingdom of Denmark: ...
- for the Federal Republic of Germany: ...
- for the Hellenic Republic: ...
- for the Kingdom of Spain: ...
- for the French Republic: ...

[ - for Ireland: ...]
- for the Italian Republic: ...
- for the Grand Duchy of Luxembourg: ...
- for the Kingdom of the Netherlands: officials of the Fiscale Inlichtingen en Opsporingsdienst (Fiscal Information and Investigation Service) responsible for import duties and excise duties
- for the Republic of Austria: ...
- for the Portuguese Republic: ...
- for the Republic of Finland: ...
- for the Kingdom of Sweden: ...

[ - for the United Kingdom of Great Britain and Northern Ireland: ...]

\(^{(34)}\) Paragraph 4 was proposed by the NL delegation.
5. The authorities referred to in paragraphs 1 and 2 shall be: (35)

- for the Kingdom of Belgium: ...
- for the Kingdom of Denmark: ...
- for the Federal Republic of Germany: ...
- for the Hellenic Republic: ...
- for the Kingdom of Spain: ...
- for the French Republic: ...

[ - for Ireland: ...]
- for the Italian Republic: ...
- for the Grand Duchy of Luxembourg: ...
- for the Kingdom of the Netherlands: officials of the Fiscale Inlichtingen en Opsporingsdienst (Fiscal Information and Investigation Service) responsible for import duties and excise duties
- for the Republic of Austria: ...
- for the Portuguese Republic: ...
- for the Republic of Finland: ...
- for the Kingdom of Sweden: ...

[ - for the United Kingdom of Great Britain and Northern Ireland: ...].

6. The Member States may, at bilateral level, extend the scope of this Article and adopt additional measures in implementation thereof.

7. When depositing its instruments of ratification, acceptance or approval of this Convention a Member State may declare that it is not bound by Article 19. Such declaration may be withdrawn at any time (4).

(35) Text proposed by the NL delegation.
Article 20

Controlled delivery

1. At the request of the applicant authority the requested authority may, under the conditions laid down in its national legislation, and, if necessary, acting in coordination with the competent national authority, allow the introduction into the territory of the European Union or the transit of goods suspected of being prohibited goods within the meaning of Article 17(2)(a) to be kept under surveillance if, in the opinion of the requested authorities, that is the best way of detecting the principal perpetrators of an infringement or the distribution channels for prohibited goods. Prohibited goods, the controlled delivery of which has been agreed, may be intercepted by agreement between the Member States involved and may be released for further transport in such a way that they remain untouched, are removed or are substituted wholly or in part. If the merchandise represents a particular hazard to persons involved in transporting it or for the general public, controlled delivery shall not take place.

2. The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance. During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at any time it has the possibility of arresting the perpetrators and seizing the prohibited goods.

3. Where a perpetrator or accomplice is arrested after controlled delivery, any court proceedings shall be instigated by the competent authorities of the place of arrest.
**Article 21**

**Covert investigations**

1. At the request of the applicant authority the requested authority may allow:

   (a) officers of the applicant Member State using an assumed identity (covert investigators) or

   (b) persons who, without being members of the applicant authority or another investigating service, are prepared to assist the latter in the detection of planned or committed infringements (trusted collaborators)

   to be deployed within the territory of the requested Member State. The applicant authority shall make a request only if a solution to the case would be completely impossible or extremely difficult without the planned investigative measures. The officers and persons referred to in (a) and (b) shall be authorized in the course of their activities only to collect information and make contact with suspects or other persons associated with them (36).

2. Investigations in the requested Member State shall be confined to specific interventions of limited duration. The preparation and supervision of the interventions shall take place in close cooperation between the relevant authorities of the requested and applicant Member States. The requested authority shall have the final decision on the admissibility, nature, extent and duration of the investigative activities.

3. The conditions under which the covert intervention is to be carried out shall be determined by the requested authority in accordance with its national law. The requested authority shall inform the applicant authority of those conditions.

4. The requested authority shall provide the necessary manpower and technical support. It shall take all steps to protect the persons referred to in paragraph 1 while they are deployed in the requested Member State. It shall allow officers who have the particular confidence of the persons referred to in paragraph 1(b) to participate in the intervention in the requested Member State.

(36) "Contact with suspects" could be defined in a statement.
Article 22
Joint special investigation groups

1. By mutual agreement the authorities of several Member States may set up a joint special investigation group based in a Member State and comprising officers with the relevant specializations.

   The joint special investigation group shall have the following tasks:

   – implementation of difficult and demanding investigations of specific infringements, requiring simultaneous, coordinated action in the Member States concerned;

   – coordination of joint activities to prevent and detect particular types of infringement and obtain information on the persons involved, their associates and the methods used.

2. Joint special investigation groups shall operate under the following general conditions:

   (a) they shall be set up only for a specific purpose and for a limited period;

   (b) an officer from the Member State in which the group's activities take place shall head the group;

   (c) the participating officers shall be bound by the law of the Member State in whose territory the group's activities take place;

   (d) membership of the group shall not bestow on officers any powers of intervention in the territory of another Member State;

   (e) the Member State in which the group's activities take place shall make the necessary organizational arrangements for the group to operate.
TITLE V (37)

Computerized exchange of data

(Articles 23 and 24)

(37) The Working Party proposed deleting Title V. The German delegation entered a scrutiny reservation.

The Chairman reminded the Working Party that:
– on 24 July 1995, the Council and the European Parliament had adopted a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ No L 281, 23.11.1995, p. 31);
– on 26 July 1995, the Convention drawn up on the basis of Article K.3 of the TEU on the use of information technology for customs purposes had been signed (OJ No C 316, 27.11.1995, p. 33).
TITLE VI (38)
Data protection for the non-automated exchange of data

Article 25
(Conventional data protection)

1. Where personal data are communicated pursuant to Titles II and III, the following provisions shall apply:

(a) Use of the personal data by the recipient shall be authorized only for the purpose referred to in Article 1(1). Such data may only be communicated to the competent authorities and courts or tribunals.

(b) The authority of the Member State that communicates data shall ensure that it is accurate and up-to-date. If it emerges that inaccurate data have been communicated or data which should not have been communicated, the recipient authority shall be immediately informed thereof. It shall be obliged to correct such data or have it erased. If the person whose data were communicated (the person concerned) establishes that the data communicated are inaccurate or should not have been communicated, he or she shall have the right to have them corrected or erased.

(c) The forwarding and receipt of exchanged data shall be recorded by the authorities concerned.

(38) The DK, IRL and UK delegations entered reservations. The United Kingdom delegation:
– wanted a definition of data the exchange of which would be non-automated;
– proposed that Article 25(1)(e) be supplemented in order to specify the liabilities of each Member State in the event of injury caused to a person;
– wondered whether Article 25(2) was appropriate to an Article entitled "non-automated exchange of data";
– pointed out that in the United Kingdom there was no legislation on data processed in a non-automated manner.
(d) If so requested, the communicating and recipient authorities must inform the person concerned of the personal data communicated and the use to which it is to be put. There is no obligation to provide the information if it is found, on consideration of the matter, that the importance to the public of the information being withheld outweighs the importance to the person concerned of receiving it. Moreover, the right of the person concerned to receive information about the personal data communicated shall be determined by the national legislation of the Member State in whose territory the information is requested. Before any decision is taken on providing information, the communicating authority shall be given the opportunity of stating its position.

(e) Member States shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through the use of data communicated in the Member State concerned. This shall also be the case where the injury was caused by the communication of inaccurate data or the fact that the communicating authority communicated data in violation of this Convention.

(f) The data communicated shall be kept for a period not exceeding that necessary for the ends for which they were communicated. The need to keep them shall be examined at the appropriate moment by the Member State concerned.

(g) In any event, the data shall enjoy at least the same protection as is given to similar data in the Member State which receives them.

(h) If data are not processed automatically but in some other way, every Member State shall take the appropriate measures to ensure compliance with this Article by means of effective controls. Every Member State may assign the task of control to the national monitoring authority mentioned in Article 17 of the Convention concerning the use of information technology for customs purposes.
2. If the data communicated are processed automatically by the communicating authority or the recipient authority, the provisions of Titles VIII and IX of the Convention concerning the use of information technology for customs purposes shall also apply.
TITLE VIa (**39**)

**Article 25a**

*(Interpretation of the Convention)*

1. Disputes between the High Contracting Parties themselves or with the Commission regarding the application of this Convention shall be discussed by the Council with a view to finding a settlement. If the Council fails to obtain agreement within six months of receipt of the request, the Court of Justice of the European Union may be requested to give a ruling.

2. The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings on the interpretation of this Convention.

   If a question on the interpretation of this Convention is put to a court of a Member State in dispute proceedings that are pending and if that court considers that a ruling is necessary to enable it to deliver a judgment, it may submit the matter to the Court of Justice for a ruling.

   If such a question is put to the court of a Member State in proceedings that are pending, and the judgment of that court may not be contested even by an appeal under domestic law, that court shall be obliged to refer the matter to the Court of Justice.

3. The Protocol on the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court of Justice of the European Union shall also apply to proceedings brought before that Court under this Convention.

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**Notes**

**39** The question of the role of the Court of Justice in this Convention will be examined by the Council's higher bodies.
TITLE VII (40)
Implementation and final provisions

Article 26
(Exceptions from the obligation to provide assistance)

1. This Convention shall not oblige the authorities of Member States to provide mutual assistance where such assistance would be likely to harm the public policy or other essential interests and rights of the State concerned, particularly in the field of data protection. In such cases, assistance may be refused in whole or in part or made subject to compliance with certain conditions.

2. Reasons must be given for any refusal to provide assistance.

(40) The Commission representative suggested including the following Article in Title VII, modelled in part on Articles 3, 17 and 51 of the Regulation on mutual assistance (4324/95 UD 10 AGRI 9): "Without prejudice to application in the Member States of rules on criminal procedure and mutual assistance in criminal matters, including those on the secrecy of judicial inquiries, the customs administrations shall communicate to the Commission within the framework of the actions referred to in Article 1(1):
– any information concerning the application of Community customs regulations which it has obtained, or at least
– that part of the file required to put a stop to a fraudulent practice.
Within this framework, and in as far as that is not already covered by Community law, the Commission, within the limits of its powers, shall continue to collaborate with customs administrations, in particular by providing them with any information which it has which might be useful for the satisfactory completion of an action referred to in Article 1(1)." (see 7851/95 ENFOCUSTOM 22).
**Article 27**
(Reservations)

This Convention shall not be the subject of any reservations.

**Article 28**
(Entry into force)

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

2. The Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall come into force on the first day of the third month following the notification referred to in paragraph 2 by the last State, belonging to the European Union on the date of the adoption by the Council of the act establishing this Convention, to fulfil that formality.

4. On the date of entry into force of this Convention, the Convention on Assistance between Customs Administrations of 7 September 1967 shall be repealed.

References to the Convention of 7 September 1967 shall be regarded as references to the present Convention.
**Article 29**

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of the Convention in the language of the acceding Member State, as 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 come into force with respect to any acceding Member State on the first day of the month following the expiry of a period of [four] months after the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not yet come into force at the time of the expiry of the aforementioned period.

**Article 30**

1. Amendments to this Convention may be proposed by any Member State that is a High Contracting Party. Any proposed amendment shall be sent to the depositary, who shall communicate it to the Council and the Commission.

2. Amendments shall be adopted by the Council, which shall recommend them to the Member States for adoption in accordance with their respective constitutional requirements.

3. Amendments adopted in accordance with paragraph 2 shall come into force in accordance with the provisions of Article 27(3).
Article 31

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, implementation, declarations and reservations, and also any other notification concerning this Convention.

DONE at , , in a single original, in the German, English, Danish, Spanish, Finnish, French, Greek, Irish, Italian, Dutch, Portuguese and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.