

- 60. Zakon o ratifikaciji Sporazuma o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani ter Švicarsko konfederacijo na drugi strani v boju proti goljufijam in vsem drugim nezakonitim dejanjem, ki škodijo njihovim finančnim interesom, s Sklepno listino (MESCHBG)**

Na podlagi druge alineje prvega odstavka 107. člena in prvega odstavka 91. člena Ustave Republike Slovenije izdajam

U K A Z

o razglasitvi Zakona o ratifikaciji Sporazuma o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani ter Švicarsko konfederacijo na drugi strani v boju proti goljufijam in vsem drugim nezakonitim dejanjem, ki škodijo njihovim finančnim interesom, s Sklepno listino (MESCHBG)

Razglašam Zakon o ratifikaciji Sporazuma o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani ter Švicarsko konfederacijo na drugi strani v boju proti goljufijam in vsem drugim nezakonitim dejanjem, ki škodijo njihovim finančnim interesom, s Sklepno listino (MESCHBG), ki ga je sprejel Državni zbor Republike Slovenije na seji 29. septembra 2005.

Št. 001-22-96/05
Ljubljana, dne 7. oktobra 2005

dr. Janez Drnovšek l.r.
Predsednik
Republike Slovenije

Z A K O N

O RATIFIKACIJI SPORAZUMA O SODELOVANJU MED EVROPSKO SKUPNOSTJO IN NJENIMI DRŽAVAMI ČLANICAMI NA ENI STRANI TER ŠVICARSKO KONFEDERACIJO NA DRUGI STRANI V BOJU PROTI GOLJUFIJAM IN VSEM DRUGIM NEZAKONITIM DEJANJEM, KI ŠKODIJO NJIHOVIM FINANČNIM INTERESOM, S SKLEPNO LISTINO (MESCHBG)

1. člen

Ratificira se Sporazum o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani ter Švicarsko konfederacijo na drugi strani v boju proti goljufijam in vsem drugim nezakonitim dejanjem, ki škodijo njihovim finančnim interesom, s Sklepno listino, podpisan 24. oktobra 2004 v Luxembourg.

2. člen

Sporazum s Sklepno listino se v izvorniku v slovenskem in angleškem jeziku glasi:

**SPORAZUM O SODELOVANJU
MED EVROPSKO SKUPNOSTJO IN NJENIMI
DRŽAVAMI ČLANICAMI NA ENI STRANI TER
ŠVICARSKO KONFEDERACIJO NA DRUGI
STRANI V BOJU PROTI GOLJUFIJAM IN
VSEM DRUGIM NEZAKONITIM DEJANJEM, KI
ŠKODIJO NJIHOVIM FINANČNIM INTERESOM**

EVROPSKA SKUPNOST,
KRALJEVINA BELGIJA,
ČEŠKA REPUBLIKA,
KRALJEVINA DANSKA,
ZVEZNA REPUBLIKA NEMČIJA,
REPUBLIKA ESTONIJA,
HELENSKA REPUBLIKA,
KRALJEVINA ŠPANIJA,
FRANCOSKA REPUBLIKA,
IRSKA,
ITALIJANSKA REPUBLIKA,
REPUBLIKA CIPER,
REPUBLIKA LATVIJA,
REPUBLIKA LITVA,
VELIKO VOJVODSTVO LUKSEMBURG,
REPUBLIKA MADŽARSKA,
REPUBLIKA MALTA,
KRALJEVINA NIZOZEMSKA,
REPUBLIKA AVSTRIJA,
REPUBLIKA POLJSKA,
PORTUGALSKA REPUBLIKA,
REPUBLIKA SLOVENIJA,
SLOVAŠKA REPUBLIKA,
REPUBLIKA FINSKA,
KRALJEVINA ŠVEDSKA,
ZDRUŽENO KRALJESTVO VELIKA BRITANIJA IN
SEVERNA IRSKA
na eni strani in

ŠVICARSKA KONFEDERACIJA
na drugi strani,

v nadaljnjem besedilu »pogodbenici«, sta

OB UPOŠTEVANJU tesnih odnosov med Evropsko skupnostjo in njenimi državami članicami na eni strani in Švicarsko konfederacijo na drugi strani,

V ŽELJI, da bi bili učinkoviti v boju proti goljufijam in vsem drugim nezakonitim dejanjem, ki škodijo finančnim interesom pogodbenic,

OB UPOŠTEVANJU potrebe po okrepitvi upravne pomoči na teh področjih,

PREPRIČANI, da mora biti pravna pomoč, ki vključuje preiskave in odvzeme, usklajena, vključno z vsemi primeri tihotapstva in izogibanja posrednemu obdavčevanju, zlasti davka na dodano vrednost, carin in trošarin,

OB PRIZNAVANJU pomena boja proti pranju denarja,

ODLOČILI SKLENITI NASLEDNJI SPORAZUM:

**COOPERATION AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY AND
ITS MEMBER STATES, OF THE ONE PART, AND
THE SWISS CONFEDERATION, OF THE OTHER
PART, TO COMBAT FRAUD AND ANY OTHER
ILLEGAL ACTIVITY TO THE DETRIMENT OF
THEIR FINANCIAL INTERESTS**

THE EUROPEAN COMMUNITY,
THE KINGDOM OF BELGIUM,
THE CZECH REPUBLIC,
THE KINGDOM OF DENMARK,
THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF ESTONIA,
THE HELLENIC REPUBLIC,
THE KINGDOM OF SPAIN,
THE FRENCH REPUBLIC,
IRELAND,
THE ITALIAN REPUBLIC,
THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA,
THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF HUNGARY,
THE REPUBLIC OF MALTA,
THE KINGDOM OF THE NETHERLANDS,
THE REPUBLIC OF AUSTRIA,
THE REPUBLIC OF POLAND,
THE PORTUGUESE REPUBLIC,
THE REPUBLIC OF SLOVENIA,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF FINLAND,
THE KINGDOM OF SWEDEN,
THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND,
of the one part, and

THE SWISS CONFEDERATION,
of the other part,

hereinafter referred to as the »Contracting Parties«,

CONSIDERING the close relations between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part,

DESIRING to be effective in combating fraud and any other illegal activity to the detriment of the Contracting Parties' financial interests,

TAKING ACCOUNT of the need to step up administrative assistance in these areas,

CONVINCED that mutual legal assistance, extending to searches and seizures, must be afforded, including in all cases of smuggling and evasion in the field of indirect taxation, in particular value added tax and customs and excise duties,

RECOGNISING the importance of combating money laundering,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

NASLOV I
SPLOŠNE DOLOČBE

ČLEN 1

Predmet

Predmet tega sporazuma je širitev upravne in pravne pomoči na kazenskem področju med Evropsko skupnostjo in njenimi državami članicami na eni strani, in Švicarsko konfederacijo na drugi strani v boju proti nezakonitim dejanjem, predvidenim v členu 2.

ČLEN 2

Področje uporabe

1. Ta sporazum se uporablja za:

a) upravno in kazensko preprečevanje, odkrivanje, preiskovanje, zasledovanje in pregon goljufij in vseh drugih nezakonitih dejanj, ki škodijo finančnim interesom pogodbenic, kar zadeva:

– blagovno menjavo, ki krši carinsko in kmetijsko zakonodajo;

– trgovanje z blagom ali storitvami, ki krši davčno zakonodajo na področju davka na dodano vrednost, posebnih davkov na potrošnjo in trošarin;

– pobiranje ali zadržanje sredstev – vključno s porabo teh sredstev v druge namene, za katere so bila prvotno odobrena – ki izhajajo iz proračuna pogodbenic ali proračuna, ki ga le-te upravljajo, ali jih upravljajo za njihov račun, kot so subvencije in nadomestila;

– postopke oddaje javnih naročil s strani pogodbenic.

b) zaseg in izterjava dolžnih ali nezakonito prejetih zneskov, ki izvirajo iz nezakonitih dejanj iz točke (a).

2. Sodelovanja v smislu naslova II (upravna pomoč) in naslova III (pravna pomoč) ni možno zavrniti samo iz razloga, da se zahteva nanaša na kršitev, ki jo zaprosena pogodbenica opredeli kot davčno kršitev, ali da zakonodaja zaprosene pogodbenice ne pozna določene vrste dajatev ali izdatkov oziroma ne vsebuje enakih predpisov ali enake pravne kvalifikacije dejanj kot zakonodaja pogodbenice prosilke.

3. Področje uporabe tega sporazuma vključuje pranje premoženjskih koristi iz dejanj, ki jih zajema ta sporazum, pod pogojem, da se dejanja, ki predstavljajo predhodno kršitev, kaznujejo v skladu s pravom obeh pogodbenic z najvišjo zagroženo kaznijo odvzema prostosti ali z varnostnim ukrepom omejevanja prostosti, ki traja najmanj šest mesecev.

4. Neposredni davki so izvzeti s področja uporabe tega sporazuma.

ČLEN 3

Primeri majhne vrednosti

1. Organ zaprosene pogodbenice lahko zavrne zahtevo za sodelovanje, če domnevni znesek, ki ni bil plačan ali je bil utajen, ne presega 25.000 evrov, ali če domnevna vrednost blaga, ki je bilo uvoženo ali izvoženo brez dovoljenja, ne presega 100.000 evrov, razen če pogodbenica prosilka ne meni, da je zadeva, zaradi okoliščin ali osebe, osumljene prestopka, zelo resna.

2. Organ zaprosene pogodbenice nemudoma obvesti organ pogodbenice prosilke o razlogih zavrnitve zahteve za sodelovanje.

ČLEN 4

Javni red

Sodelovanje se lahko zavrne, če zaprosena pogodbenica oceni, da bi izvršitev zahteve lahko škodovala suverenosti, varnosti, javnemu redu ali drugim bistvenim interesom zaprosene pogodbenice.

TITLE I
GENERAL PROVISIONS

ARTICLE 1

Objective

The objective of this Agreement is to extend administrative and mutual legal assistance in criminal matters between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, so as to combat the illegal activities to which Article 2 applies.

ARTICLE 2

Scope

1. This Agreement is applicable to:

(a) the administrative and criminal prevention, detection, investigation, prosecution and repression of fraud and any other illegal activity to the detriment of the Contracting Parties' respective financial interests concerning:

– trade in goods contrary to customs and agricultural legislation;

– trade contrary to tax legislation applicable to value added tax, special taxes on consumption and excise duties;

– the charging or retention of funds – including their use for purposes other than those for which they were initially granted – from the budget of the Contracting Parties or budgets managed by them or on their behalf, such as grants and refunds;

– procedures for the award of contracts by the Contracting Parties;

(b) the seizure and recovery of amounts due or wrongly received as a result of the illegal activities referred to in point (a).

2. Cooperation within the meaning of Titles II (Administrative assistance) and III (Mutual legal assistance) may not be withheld on the sole ground that the request relates to an offence treated as a tax offence in the requested Contracting Party or that the legislation of the requested Contracting Party does not provide for the same type of levy or expenditure or does not contain the same type of rules or the same legal characterisation of the facts as the legislation of the requesting Contracting Party.

3. The scope of this Agreement includes the laundering of the proceeds of the activities covered by the Agreement provided that the activities which constitute the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.

4. Direct taxes are excluded from the scope of this Agreement.

ARTICLE 3

Minor cases

1. The authority of the requested Contracting Party may refuse a request for cooperation where the alleged amount of duty underpaid or evaded does not exceed EUR 25 000 or where the presumed value of the goods exported or imported without authorisation does not exceed EUR 100 000, unless, given the circumstances or identity of the suspect, the case is deemed to be extremely serious by the requesting Contracting Party.

2. The authority of the requested Contracting Party shall inform the authority of the requesting Contracting Party without delay of its reasons for refusing the request for cooperation.

ARTICLE 4

Ordre public

Cooperation may be refused if the requested Contracting Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the requested Contracting Party.

ČLEN 5

Posredovanje informacij in dokazov

1. Za informacije in dokaze, sporočene ali prejete v katerikoli obliki na podlagi tega sporazuma, velja poklicna tajnost in uživajo zaščito, ki jo podobnim informacijam zagotavlja nacionalna zakonodaja pogodbenice, ki jih je prejela in ustrezne določbe, ki se uporabljajo za institucije Skupnosti.

Zlasti se takšne informacije in dokazi ne smejo razkriti drugim osebam kakor osebam v institucijah Evropskih skupnosti, državah članicah ali Švicarski konfederaciji, katerih funkcija zahteva poznavanje teh informacij, niti se ne smejo uporabljati v druge namene kakor tiste, ki spadajo na področje uporabe tega sporazuma.

2. Informacije in dokazi, ki jih pridobi pogodbenica prosilka po tem sporazumu, se lahko posredujejo vsaki pogodbenici, če ta pogodbenica vodi preiskavo, za katero sodelovanje ni izključeno, ali če obstajajo konkretni pokazatelji, da bi ta pogodbenica lahko koristno vodila tako preiskavo. Tako posredovanje se ne sme uporabiti za nobene druge namene razen za tiste, predvidene s tem sporazumom.

3. Posredovanje informacij in dokazov, pridobljenih na podlagi tega sporazuma, drugi pogodbenici ali več pogodbenicam, ne sme biti predmet pritožbe pri prvotno zaproseni pogodbenici.

4. Vsaka pogodbenica, ki se ji v skladu z odstavkom 2 posredujejo informacije in dokazi, spoštuje omejitve njihove uporabe, ki jih postavi zaprosena pogodbenica pogodbenici prosilki prvega posredovanja.

5. Pogodbenica, ki na podlagi tega sporazuma pridobljene informacije in dokaze posreduje tretji državi, mora za to predhodno pridobiti dovoljenje pogodbenice, od katere te informacije in dokazi izvirajo.

ČLEN 6

Zaupnost

Pogodbenica prosilka lahko zahteva od zaprosene pogodbenice zagotovilo, da bosta zahteva in njena vsebina ostali zaupni, razen v primeru, ko to ni združljivo z izpolnitvijo zahteve. Če zaprosena pogodbenica ne more izpolniti zahtev o zaupnosti, o tem predhodno obvesti organ pogodbenice prosilke.

NASLOV II
UPRAVNA POMOČPOGLAVJE 1
SPLOŠNE DOLOČBE

ČLEN 7

Povezava z drugimi sporazumi

Ta naslov ne vpliva na določbe, ki se uporabljajo za pravo pomoč na kazenskem področju, niti na širše obveznosti na področju upravne pomoči, ali ugodnejše določbe dvo- ali večstranskih dogovorov o sodelovanju med pogodbenicama, zlasti ne na Dodatni protokol z dne 9. junija 1997 o carinskem sodelovanju in medsebojni upravni pomoči v carinskih zadevah.

ARTICLE 5

Transmission of information and evidence

1. Information and evidence transmitted or received under this Agreement, whatever its form, shall be subject to professional confidentiality and shall enjoy the protection enjoyed by comparable information conferred by the domestic law of the Contracting Party receiving it and by the corresponding provisions applicable to the Community institutions.

In particular, such information and evidence may not be divulged to persons other than those who, in the Community institutions, the Member States or the Swiss Confederation, are required by their functions to be acquainted with it, nor used by them for purposes that are not within the scope of this Agreement.

2. The information and evidence obtained by the requesting Contracting Party under this Agreement may be transmitted to any Contracting Party if this Contracting Party is conducting an investigation in respect of which cooperation is not excluded or if there are clear indications that this Contracting Party could usefully conduct such an investigation. No such transmission may serve any purpose other than those of this Agreement.

3. The transmission of information and evidence obtained pursuant to this Agreement by a Contracting Party to another Contracting Party or to more than one Contracting Party may not be open to appeal in the Contracting Party initially requested.

4. Any Contracting Party to which information or evidence is transmitted in conformity with paragraph 2 shall respect such limits as are put by the requested Contracting Party on the use of the information by the requesting Contracting Party of the first transmission.

5. The transmission of information and evidence obtained under this Agreement by a Contracting Party to a third State shall be subject to authorisation from the Contracting Party from which the information or evidence originated.

ARTICLE 6

Confidentiality

The requesting Contracting Party may ask the requested Contracting Party to ensure that the request and the content thereof remain confidential, except in so far as this is incompatible with the execution of the request. If the requested Contracting Party cannot comply with confidentiality requirements, it shall inform the authority of the requesting Contracting Party in advance.

TITLE II
ADMINISTRATIVE ASSISTANCECHAPTER 1
GENERAL PROVISIONS

ARTICLE 7

Relationship with other Agreements

This Title shall not affect the provisions applicable to mutual legal assistance in criminal matters or more extensive obligations in the field of administrative assistance or more favourable provisions of bilateral or multilateral cooperation arrangements between the Contracting Parties, in particular the Additional Protocol on mutual administrative assistance in customs matters of 9 June 1997.

ČLEN 8

Obseg

1. Pogodbenici si nudita medsebojno pomoč v boju proti nezakonitim dejanjem, predvidenim v tem sporazumu, zlasti pri preprečevanju in odkrivanju operacij in drugih dejanj ter opustitev, ki so v nasprotju z ustrezno zakonodajo, ter pri vodenju s tem povezanih preiskav.

2. Pomoč iz tega naslova zadeva vsak pristojni upravni organ pogodbenic, ki deluje v okviru pooblastil na področju upravnih preiskav ali kazenskega pregona, vključno kadar izvajajo pooblastila na zahtevo sodnih organov.

Če kazensko preiskavo opravlja ali vodi sodni organ, ta določi, ali so zahteve po medsebojni pomoči ali sodelovanju predloženi na podlagi določb o pravni pomoči na kazenskem področju, ali na podlagi tega naslova.

ČLEN 9

Pristojnosti

1. Organi pogodbenic uporabljajo določbe tega naslova v okviru pristojnosti, ki so jim dodeljene na podlagi njihove nacionalne zakonodaje. Nobene določbe tega naslova si ni mogoče razlagati kot spremembo pristojnosti, ki so bile po nacionalni zakonodaji dodeljene organom pogodbenic v smislu tega naslova.

Postopajo, kot da bi delovali v svojem imenu ali na zahtevo drugega organa iste pogodbenice. V ta namen izvajajo vsa pravna pooblastila, s katerimi razpolagajo v okviru svoje nacionalne zakonodaje, da ugodijo zahtevi.

2. Zahteve, naslovljene na organe, ki niso pristojni, se brez odlašanja posredujejo pristojnemu organu.

ČLEN 10

Sorazmernost

Organ zaprosene pogodbenice lahko zavrne zahtevo za sodelovanje, če je očitno, da:

a) število in vrsta zahtev, ki jih je vložila pogodbenica prosilka v danem obdobju, predstavlja za organ zaprosene pogodbenice nesorazmerne upravne stroške;

b) organ pogodbenice prosilke ni izčrpal običajnih virov informacij, ki bi jih lahko glede na okoliščine uporabil za pridobitev zahtevanih informacij ne da bi ogrozil doseganje zelenih rezultatov.

ČLEN 11

Centralne službe

1. Vsaka pogodbenica določi eno ali več centralnih služb, pristojnih za obravnavo zahtev za upravno pomoč v smislu tega naslova.

Te službe se za izvedbo zahtevane pomoči povežejo z vsemi pristojnimi upravnimi organi.

2. Centralne službe komunicirajo neposredno med seboj.

3. Dejavnost centralnih služb ne izključuje, zlasti v nujnih primerih, neposrednega sodelovanja med ostalimi pristojnimi organi pogodbenic na področjih uporabe tega sporazuma. Centralne službe so obveščene o vsakem dejanju, ki poziva k takemu neposrednemu sodelovanju.

4. Pogodbenici ob uradnem obvestilu iz člena 44(2) sporočita, kateri organi se štejejo za centralne službe v smislu tega člena.

ARTICLE 8

Scope

1. The Contracting Parties shall provide each other with mutual assistance to combat illegal activities to which this Agreement applies, in particular in preventing and detecting operations and other acts of commission and omission contrary to the relevant legislation and in conducting investigations relating thereto.

2. The assistance provided for by this Title shall apply to all competent administrative authorities in the Contracting Parties acting in the exercise of administrative investigation powers or criminal prosecution powers, including cases where these authorities exercise powers at the request of the judicial authorities.

Where a criminal investigation is carried out by or under the direction of a judicial authority, that authority shall determine whether requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable concerning mutual legal assistance in criminal matters or on the basis of this Title.

ARTICLE 9

Powers

1. The authorities of the Contracting Parties shall apply this Title with the limits of the powers conferred upon them under national provisions. Nothing in this Title may be construed as affecting the powers conferred under national provisions upon the authorities of the Contracting Parties within the meaning of this Title.

They shall proceed as though they were acting on their own account or at the request of another authority of the same Contracting Party. In so doing they shall avail themselves of all the legal powers at their disposal within the framework of their national law to respond to the request.

2. Requests addressed to non-competent authorities shall be forwarded without delay to the competent authority.

ARTICLE 10

Proportionality

The authority of the requested Contracting Party may refuse a request for cooperation where it is clear that:

(a) the number and the nature of the requests for information made by the requesting Contracting Party within a specific period impose a disproportionate administrative burden on that requested authority;

(b) the authority of the requesting Contracting Party has not exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested without running the risk of jeopardising the achievement of the desired end.

ARTICLE 11

Central units

1. Each Contracting Party shall designate one or more central unit empowered to process requests for administrative assistance under this Title.

These units shall call on all competent administrative authorities for the execution of the assistance requested.

2. The central units shall communicate directly with each other.

3. The activities of the central units shall not exclude, especially in an emergency, direct cooperation between the other authorities in the Contracting Parties having power to act in matters to which this Agreement applies. The central units shall be informed of any action involving such direct cooperation.

4. The Contracting Parties, when making the notification provided for by Article 44(2), shall announce which are the authorities regarded as the central units for the purposes of this Article.

POGLAVJE 2
POMOČ PO ZAPROSILU

ČLEN 12

Zaprosila za informacije

1. Po zaprosilu organa pogodbenice prosilke organ za-prošene pogodbenice tej v mejah področja uporabe tega sporazuma sporoči vse informacije, ki jih ima na razpolago sam ali drugi organi iste pogodbenice in organu pogodbenice prosilke omogočajo preprečevanje, raziskovanje in kaznovanje nezakonitih dejanj v smislu tega sporazuma ali so potrebni za izterjavo terjatve. Organ zaprošene pogodbenice opravi vse potrebne upravne poizvedbe za pridobitev teh informacij.

2. Posredovanim informacijam je treba priložiti poročila in druge dokumente ali overjene kopije ali izvlečke teh poročil in dokumentov, na katerih temeljijo posredovane informacije in s katerimi razpolagajo organi zaprošene pogodbenice ali so bili pripravljani ali pridobljeni za ugoditev zaprosilu za informacije.

3. S soglasjem med organom pogodbenice prosilke in organom zaprošene pogodbenice ter v skladu z natančnimi navodili slednjega ima od organov pogodbenice prosilke pooblaščen osebje dostop v urade organov zaprošene pogodbenice, do dokumentov in informacij v smislu odstavka 1, ki se nanašajo na natančno določena nezakonita dejanja s področja uporabe tega sporazuma ter jih posedujejo organi te pogodbenice. To osebje je pooblaščen za izdelovanje kopij navedene dokumentacije.

ČLEN 13

Zaprosilo za nadzor

Na zahtevo organa pogodbenice prosilke organ za-prošene pogodbenice izvaja v mejah možnosti nadzor nad menjavo blaga, ki krši zakonodajo, navedeno v členu 2. Ta nadzor se lahko nanaša na osebe, za katere obstaja razlog za utemeljen sum, da so sodelovale ali sodelujejo pri izva-
janju teh nezakonitih dejavnosti ali pri pripravi za njihovo izvedbo, tako kot na nadzor lokacij, transportnih sredstev in blaga, ki so povezani s temi dejavnostmi.

ČLEN 14

Vročitev in posredovanje po pošti

1. Na zahtevo organa pogodbenice prosilke organ za-prošene pogodbenice naslovníku vroči ali naroči, da se temu v skladu z nacionalnimi določbami zaprošene pogodbenice vročijo vsi dokumenti ali odločitve pristojnih organov pogodbenice prosilke, ki so s področja uporabe tega sporazuma.

2. Zahtevkom za vročitev, v katerih mora biti naveden predmet dokumenta ali odločitve, ki jo je treba vročiti, je priložen prevod v uradnem jeziku zaprošene pogodbenice ali v jeziku, sprejemljivem za to pogodbenico.

3. Pogodbenici lahko neposredno po pošti udeleženi, ki jih zadeva tretja in četrta alineja člena 2(1)(a) in prebivajo na ozemlju druge pogodbenice, pošiljata akte vročitve in za-prosila za posredovanje informacij in dokumentov.

Te osebe lahko zahtevkom ugodijo in dostavijo do-kumente in ustrezne informacije v obliki, ki jih predvidevajo pravila in dogovori, v skladu s katerimi so bila sredstva odo-brena.

CHAPTER 2
ASSISTANCE ON REQUEST

ARTICLE 12

Requests for information

1. At the request of the authority of the requesting Con-tracting Party, the authority of the requested Contracting Party shall communicate to it, within the limits of the scope of this Agreement, all information which may enable it or other authorities of the same Contracting Party to prevent, detect and prosecute the illegal activities to which the Agreement applies or needed to recover a claim. The authority of the requested Contracting Party shall undertake all requisite ad-ministrative inquiries needed to gather such information.

2. The information communicated is to be accompa-nied by reports and other documents, or certified copies of or extracts of the same, on which the information notified is based and which are in the possession of the authorities of the requested Contracting Party or which were produced or obtained in order to execute the request for information.

3. By agreement between the authority of the request-ing Contracting Party and the authority of the requested Contracting Party, officers authorised by the authority of the requesting Contracting Party may, subject to detailed instruc-tions from the authority of the requested Party, have access in the offices of the authorities of the requested Contracting Party to documents and information pursuant to paragraph 1 held by the authorities of the requested Contracting Party which refer to specific illegal activities falling within the scope of this Agreement. Those officers shall be authorised to take copies of the said documentation.

ARTICLE 13

Requests for surveillance

At the request of the authority of the requesting Con-tracting Party, the authority of the requested Contracting Party shall as far as possible exercise surveillance over trade in goods in breach of the legislation referred to in Article 2. Such surveillance may relate to a person suspected on rea-sonable grounds of having participated or of participating in the commission of such illegal activities or having carried out preparatory acts with a view to the commission of such illegal activities, as well as to the premises, means of transport and goods connected with such activities.

ARTICLE 14

Notification and transmission by post

1. At the request of the authority of the requesting Con-tracting Party, the authority of the requested Contracting Party shall, in accordance with the national rules of the requested Contracting Party, notify the addressee or have it notified, of all instruments or decisions emanating from the competent authorities of the requesting Contracting Party which are within the scope of this Agreement.

2. Requests for notification, mentioning the subject of the instrument or decision to be notified, shall be accompa-nied by a translation in an official language of the requested Contracting Party or in a language acceptable to that Con-tracting Party.

3. The Contracting Parties may post acts of notification and requests for information and documents direct to the operators concerned by the third and fourth indents of Arti-cle 2(1)(a) residing in the other Contracting Party's territory.

Such persons may respond thereto and provide the relevant documents and information in the form provided for by the rules and arrangements under which the funds were granted.

ČLEN 15

Zahteve za preiskavo

1. Na zahtevo pogodbenice prosilke zaprošena pogodbenica začne ali sproži potrebne preiskave glede dejanj ali vedenj, ki so nezakonita dejanja, opredeljena v tem sporazumu, ali ki pri organu pogodbenice prosilke vzbujajo utemeljeni sum, da so bila takšna nezakonita dejanja storjena.

2. Zaprošena pogodbenica uporabi vsa sredstva preiskave, ki so na razpolago v njenem pravnem redu, pod pogoji, pod katerimi bi lahko uporabila ta sredstva, če bi delovala v svojem imenu ali na zahtevo katerega drugega notranjega organa, vključno z vključitvijo ali po potrebi s pooblastilom sodnih organov.

Ta določba ne vpliva na dolžnost sodelovanja gospodarskih subjektov v smislu člena 17.

Organ zaprošene pogodbenice sporoči rezultate preiskave organu pogodbenice prosilke. Smiselno se uporabi člen 12(2).

3. Organ zaprošene pogodbenice razširi pomoč na vse okoliščine, predmete in osebe, ki so v očitni zvezi s predmetom zaprosila za pomoč, dodatno zaprosilo pri tem ni potrebno. V primeru dvoma organ zaprošene pogodbenice najprej naveže stik z organom pogodbenice prosilke.

ČLEN 16

Prisotnost pooblaščenih uslužbencev pristojnega organa pogodbenice prosilke

1. Po sporazumu med organom pogodbenice prosilke in organom zaprošene pogodbenice so lahko uslužbenci, ki jih določi organ pogodbenice prosilke, prisotni pri preiskavah iz prejšnjega člena. Za to prisotnost ni potrebno soglasje osebe ali gospodarskega subjekta, pri katerem preiskava poteka.

2. Uslužbenci organa zaprošene pogodbenice v vsakem trenutku zagotovijo vodenje preiskave. Uslužbenci organa pogodbenice prosilke ne morejo na lastno pobudo izvrševati pooblastil, ki so dodeljena uslužbencem organa zaprošene pogodbenice.

Nasprotno pa imajo dostop do istih prostorov in do istih dokumentov kot uslužbenci organa zaprošene pogodbenice, z njihovim posredovanjem in izključno za potrebe tekoče preiskave.

3. Dovoljenje je lahko omejeno s pogoji.

4. Informacije, dane v vednost organu pogodbenice prosilke, se ne smejo uporabljati kot dokazi, dokler ni dovoljeno posredovanje dokumentov, ki se nanašajo na obravnavo.

ČLEN 17

Dolžnost sodelovanja

Gospodarski subjekti morajo sodelovati pri izvedbi zaprosila za upravno pomoč tako, da omogočijo dostop do svojih prostorov, prevoznih sredstev in dokumentacije, ter s posredovanjem vseh ustreznih informacij.

ČLEN 18

Oblika in vsebina zaprosil za pomoč

1. Zaprosila za pomoč se vložijo pisno. Priloženi so jim dokumenti, potrebni za njihovo obravnavo.

V nujnih primerih so sprejemljiva ustna zaprosila, vendar morajo biti ta potrjena pisno, takoj ko je to mogoče.

ARTICLE 15

Requests for enquiries

1. The requested Contracting Party shall at the request of the requesting Contracting Party carry out or arrange to have carried out appropriate enquiries concerning operations or forms of conduct that constitute illegal activities to which this Agreement applies or which prompt the authority of the requesting Contracting Party to suspect on reasonable grounds that such illegal activities have been committed.

2. The requested Contracting Party shall avail themselves of all investigation means at its disposal within the framework of their national law as though it were acting on its own account or at the request of another internal authority, including the involvement or authorisation of the judicial authorities where required.

This provision shall be without prejudice to the duty of economic operators to cooperate under Article 17.

The authority of the requested Contracting Party shall communicate the results of such investigations to the authority of the requesting Contracting Party. Article 12(2) shall apply mutatis mutandis.

3. The authority of the requested Contracting Party shall extend assistance to all circumstances, objects and persons apparently linked to the object of the request for assistance, without any need for a supplementary request. In cases of doubt, the authority of the requested Contracting Party shall first contact the authority of the requesting Contracting Party.

ARTICLE 16

Presence of authorised staff from the authority of the requesting Contracting Party

1. By agreement between the authority of the requesting Contracting Party and the authority of the requested Contracting Party, officers appointed by the authority of the requesting Contracting Party may be present at the enquiries referred to in the previous Article. Their presence shall not require the consent of the person or economic operator being investigated.

2. Officers of the authority of the requested Contracting Party shall at all times carry out the enquiries. Officers of the authority of the requesting Contracting Party may not, of their own initiative, exercise the powers conferred on officers of the authority of the requested Contracting Party.

They shall, however, have access to the same premises and the same documents as the latter, through them and for the sole purposes of the enquiry being carried out.

3. Conditions may be attached to the authorisation.

4. The information brought to the knowledge of the authority of the requesting Contracting Party may not be used as evidence until the transmission of the documents relating to execution has been authorised.

ARTICLE 17

Duty to cooperate

Economic operators shall be required to cooperate with the execution of the request for administrative assistance by giving access to their premises, means of transport and documentation and providing all relevant information.

ARTICLE 18

Form and content of requests for assistance

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

In cases of urgency, oral requests shall be accepted, but must be confirmed in writing as soon as possible.

2. Zaposilom so priloženi naslednji podatki:

- a) organ prosilec;
- b) zaproseni ukrep;
- c) predmet in razlog zaprosila;
- d) zakonodaja, predpisi in drugi pravni elementi;
- e) čimbolj natančni in popolni podatki o fizičnih ali pravnih osebah, o katerih teče preiskava; f) povzetek ustreznih dejstev in že opravljenih poizvedb, razen v primerih, predvidenih v členu 14.

f) povzetek ustreznih dejstev in že opravljenih poizvedb, razen v primerih, predvidenih v členu 14.

3. Zaposila je treba predložiti v uradnem jeziku za-prošene pogodbenice ali v jeziku, ki je za to pogodbenico sprejemljiv.

4. Nepravilne ali nepopolne zahteve se lahko popravijo ali dopolnijo. Medtem se lahko odredijo ukrepi, potrebni za obravnavanje zaprosila.

ČLEN 19

Uporaba informacij

1. Pridobljene informacije se uporabljajo izključno za namene tega sporazuma. Če ena od pogodbenic zahteva uporabo takšnih informacij v druge namene, mora zaprositi za predhodno pisno dovoljenje organ, ki je te informacije pri-skrbel. Za uporabo teh informacij potem veljajo omejitve, ki jih določi ta organ.

2. Odstavek 1 ne izključuje uporabe informacij v sodnih ali upravnih postopkih, sproženih zaradi nespoštovanja zak-onodaje, navedene v zaprosilu za upravno pomoč, če so za te postopke na razpolago ista sredstva pomoči. Pristojni organ pogodbenice, ki je te informacije pridobil, je nemudoma ob-veščen o takšni uporabi.

3. Pogodbenici lahko zbrane informacije in dokumente, v katere sta imeli vpogled, v skladu z določbami tega spo-razuma uporabljata kot dokazno sredstvo v svojih dokaznih spisih, poročilih, pri zaslišanju prič ter v postopkih in tož-bah, ki tečejo pred sodišči.

POGLAVJE 3

POMOČ NA LASTNO POBUDO

ČLEN 20

Pomoč na lastno pobudo

1. Oblike sodelovanja iz prejšnjega poglavja lahko po-tekajo brez predhodne zahteve druge pogodbenice.

2. Organ pogodbenice, ki posreduje informacije, lahko v skladu z nacionalno zakonodajo dopolni s pogoji način uporabe teh informacij s strani organa pogodbenice, ki so ji namenjene.

3. Vsi organi pogodbenic so vezani na te pogoje.

POGLAVJE 4

POSEBNE OBLIKE SODELOVANJA

ČLEN 21

Skupni ukrepi

1. Pri uvozu, izvozu in tranzitu blaga, ki obseg trans-akcij in tveganja, ki iz tega izhajajo glede davkov in subvencij, lahko povzročijo pomembne izgube v proračunu pogodbenic, se lahko ti dogovorita o skupnih čezmejnih ukrepih za prepre-čevanje in pregon nezakonitih dejanj, ki spadajo v področje uporabe tega sporazuma.

2. Requests shall be accompanied by the following in-formation:

- (a) the requesting authority;
- (b) the measure requested;
- (c) the object and the grounds for the request;
- (d) the laws, rules and other legal provisions involved;
- (e) indications as exact and comprehensive as pos-sible of the natural or legal persons being the target of the investigations;

(f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Arti-cle 14.

3. Requests shall be submitted in an official language of the requested Contracting Party or in a language that is acceptable to that Contracting Party.

4. Incorrect or incomplete requests may be corrected or completed. The measures necessary to comply with the request shall be commenced in the meantime.

ARTICLE 19

Use of information

1. The information obtained shall be used exclusively for the purposes of this Agreement. Where a Contracting Party asks to use such information for other purposes, it shall request the prior written agreement of the supplying authority. Such use shall then be subject to any restrictions laid down by that authority.

2. Paragraph 1 shall not preclude the use of the infor-mation in judicial or administrative proceedings for failure to comply with the legislation to which the request for admin-istrative assistance applies if the same forms of assistance were to be available for these proceedings. The competent authority of the Contracting Party which supplied the infor-mation shall be advised without delay of such use.

3. The Contracting Parties may, in their records of ev-idence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence the infor-mation obtained and the documents consulted in accordance with this Agreement.

CHAPTER 3

SPONTANEOUS ASSISTANCE

ARTICLE 20

Spontaneous assistance

1. The forms of cooperation established by the forego-ing Chapter may be given without the prior request of another Contracting Party.

2. The authority of the Contracting Party transmitting the information may, in accordance with its domestic law, attach conditions to the use of the information by the authority of the recipient Contracting Party.

3. All the authorities of the Contracting Parties shall be bound by such conditions.

CHAPTER 4

SPECIAL FORMS OF COOPERATION

ARTICLE 21

Joint operations

1. On imports, exports and transit of goods, where the extent of the trade and the related risk to taxes and subsidies is such that the potential financial loss to the budget of the Contracting Parties is considerable, those Parties may agree to conduct joint cross-border operations for the prevention and prosecution of illegal activities to which this Agreement applies.

2. Usklajevanje in načrtovanje čezmejnih ukrepov sta v pristojnosti centralne službe ali urada, ki ga ta določi.

ČLEN 22

Posebne skupne preiskovalne skupine

1. Organi več držav članic lahko na podlagi vzajemnega dogovora ustanovijo posebno skupno preiskovalno skupino, ki ima sedež v eni od držav članic.

2. Preiskovalna skupina izvaja težje preiskave, ki zahtevajo mobilizacijo znatnih sredstev, in usklajuje skupne ukrepe.

3. Sodelovanje v taki ekipi predstavnikom organov pogodbenice, ki jo sestavljajo, ne daje nobenih pooblastil za posredovanje na ozemlju pogodbenice, kjer se preiskave izvajajo.

ČLEN 23

Uradniki za zvezo

1. Pristojni organi pogodbenic se lahko dogovorijo o naporitvi uradnikov za zvezo ene pogodbenice k pristojnim službam druge pogodbenice za določen ali nedoločen čas s ciljem zagotavljanja vzajemne podpore pri izvajanju upravne pomoči.

2. Naloga uradnikov za zvezo je svetovanje in pomoč. Nimajo pooblastila za ukrepanje na ozemlju pogodbenice, ki jih je sprejela. S soglasjem ali na zahtevo pristojnih organov pogodbenic lahko:

a) olajšajo in pospešijo izmenjavo informacij;

b) nudijo pomoč pri preiskavah;

c) sodelujejo pri obravnavi zaprosil za pomoč;

d) svetujejo in pomagajo pogodbenici gostiteljici pri pravi in izvajanju čezmejnih ukrepov;

e) izvajajo vse ostale naloge, o katerih se lahko pogodbenici med seboj dogovorita.

3. Pristojni organi pogodbenic določijo podrobnosti s skupnim dogovorom.

4. Uradniki za zvezo lahko zastopajo interese ene ali več pogodbenic.

POGLAVJE 5

IZTERJAVA

ČLEN 24

Izterjava

1. Na zahtevo pogodbenice prosilke zaprošena pogodbenica začne postopek izterjave terjatev, ki spadajo v področje uporabe tega sporazuma, kot če bi šlo za njene lastne terjatve.

2. Zahtevku za izterjavo terjatve mora biti priložena uradna ali overjena kopija dokumenta, ki predstavlja izvršilni naslov, ki jo izda pogodbenica prosilka in, če je to potrebno, izvirnik ali overjena kopija drugih dokumentov, ki so potrebni za izterjavo.

3. Zaprošena pogodbenica za zagotovitev izterjave terjatve uporabi previdnostne ukrepe.

4. Organ zaprošene pogodbenice nakaže organu pogodbenice prosilke znesek terjatve, ki jo je izterjal. S soglasjem pogodbenice prosilke lahko od zneska odtegne odstotek, ki ustreza nastalim administrativnim stroškom.

5. Kljub prvemu odstavku pa terjatve, ki jih je treba izterjati, ne uživajo nujno prednostnega statusa primerljivih terjatev, nastalih pri zaprošeni pogodbenici.

2. The coordination and planning of such cross-border operations shall be the responsibility of the central unit or of an office designated by it.

ARTICLE 22

Joint special investigation teams

1. By mutual agreement, the authorities of several Contracting Parties may set up a joint special investigation team based in a Contracting Party.

2. The joint team shall conduct difficult investigations requiring the mobilisation of substantial resources and shall coordinate joint actions.

3. Membership of the team shall not bestow on representatives of the participating Contracting Parties' authorities any powers of intervention in the territory of the Contracting Party in which the investigations are conducted.

ARTICLE 23

Liaison officers

1. The competent authorities of the Contracting Parties may decide on the secondment, for limited or unlimited periods, of liaison officers of a Contracting Party to the competent services of another Contracting Party in order to provide mutual support in the execution of administrative assistance.

2. Liaison officers shall have the task of providing advice and assistance. They shall have no independent power to act in the territory of the host Contracting Party. With the agreement or at the request of the competent authorities of the Contracting Parties, they may:

(a) promote and speed up the exchange of information;

(b) provide assistance in investigations;

(c) provide support in dealing with requests for assistance;

(d) advise and assist the host Contracting Party in preparing and carrying out cross-border operations;

(e) perform any other duties on which the Contracting Parties may agree between themselves.

3. The competent authorities of the Contracting Parties shall settle the details by agreement.

4. Liaison officers may represent the interests of one or more Contracting Parties.

CHAPTER 5

RECOVERY

ARTICLE 24

Recovery

1. At the request of the requesting Contracting Party, the requested Contracting Party shall proceed to the recovery of claims to which this Agreement applies as if they were its own claims.

2. The request for recovery of a claim shall be accompanied by an official copy or a certified copy of the document permitting execution, issued by the requesting Contracting Party and, where appropriate, the original or a certified copy of other documents needed for recovery.

3. The requested Contracting Party shall take precautionary measures to ensure recovery of a claim.

4. The authority of the Contracting Party requested shall transfer to the authority of the requesting Contracting Party the amount of the claim that it has recovered. In agreement with the requesting Contracting Party, it may deduct a percentage corresponding to the administrative costs it has incurred.

5. Notwithstanding paragraph 1, claims to be recovered shall not necessarily enjoy the same priority status as comparable claims arising in the requested Contracting Party.

NASLOV III PRAVNA POMOČ

ČLEN 25

Povezava z drugimi sporazumi

1. Določbe tega naslova naj bi dopolnile Evropsko konvencijo o medsebojni pravni pomoči v kazenskih zadevah z dne 20. aprila 1959 in Konvencijo o pranju, odkrivanju, zasegu in zaplembi premoženjske koristi, pridobljene s kaznivim dejanjem, z dne 8. novembra 1990 ter olajšale njuno uporabo med pogodbenicama.

2. Te določbe ne vplivajo na ugodnejše določbe, ki izhajajo iz dvo- ali večstranskih sporazumov med pogodbenicama.

ČLEN 26

Postopki, v katerih je odobrena pravna pomoč

1. Pravna pomoč se prav tako odobri v:

a) postopkih zaradi dejanj, ki so kazniva po nacionalnem pravu ene od dveh pogodbenic ali obeh pogodbenic in jih kot kršitve predpisov preganjajo upravni organi, zoper odločbo katerih je možen postopek pred sodiščem, pristojnim za kazenske zadeve;

b) civilnih tožbah v zvezi s kazenskimi postopki, dokler kazensko sodišče še ni dokončno odločilo v kazenskem postopku;

c) za dejanja ali kršitve, za katere je lahko odgovorna pravna oseba pogodbenice prosilke.

2. Pravna pomoč je prav tako odobrena za preiskave in postopke, ki zadevajo zaseg in zaplembo premoženjske koristi, pridobljene s kršitvijo, in sredstev, uporabljenih pri njeni povzročitvi.

ČLEN 27

Pošiljanje zaprosil

1. Zaposila na podlagi tega naslova predloži organ pogodbenice prosilke ali pa se predloži preko pristojnega osrednjega organa zaprosene pogodbenice ali neposredno pri organu pogodbenice, pristojnem za obravnavanje zaprosila pogodbenice prosilke. Organ pogodbenice prosilke in po potrebi organ zaprosene pogodbenice pošljeta kopijo zaprosila svojemu osrednjemu organu v vednost.

2. Vsaka listina v zvezi z zaprosilom ali njegovo obravnavo se lahko pošlje na enak način. Poslana je, vsaj kot kopija, neposredno organu pogodbenice prosilke.

3. Če organ pogodbenice, ki prejme zaprosilo, ni pristojen za dodelitev pravne pomoči, jo nemudoma prenese pristojnemu organu.

4. Napačna ali nepopolna zaprosila se ne glede na njihove poznejše popravke s strani organa pogodbenice prosilke obravnavajo, kolikor vsebujejo bistvene informacije za obravnavo. Organ zaprosene pogodbenice o pomanjkljivosti opozori organ pogodbenice prosilke in mu določi rok za popravek.

Organ zaprosene pogodbenice nemudoma pošlje organu pogodbenice prosilke vsak drug podatek, ki bi slednjemu lahko omogočil dopolnitev zaprosila ali njegovo razširitev na druge ukrepe.

5. Pogodbenici sporočita ob uradnem obvestilu iz člena 44(2), kateri osrednji organi so pristojni za namene tega člena.

TITLE III MUTUAL LEGAL ASSISTANCE

ARTICLE 25

Relationship with other Agreements

1. The provisions of this Title are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, and to facilitate their implementation between the Contracting Parties.

2. More favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected.

ARTICLE 26

Procedures in which mutual legal assistance shall also be afforded

1. Mutual legal assistance shall also be afforded:

(a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;

(c) for offences or infringements for which a legal person of the requesting Contracting Party may be liable.

2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

ARTICLE 27

Transmission of requests

1. Requests under this Title shall be presented by the authority of the requesting Contracting Party either via a relevant central authority of the requested Contracting Party, or direct to the Contracting Party's authority which is empowered to execute the requesting Contracting Party's request. The authority of the requesting Contracting Party and, where appropriate, the authority of the Contracting Party requested shall send a copy of the request to its central authority for information.

2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent directly to the authority of the requesting Contracting Party.

3. If the authority of the Contracting Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.

4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Contracting Party. The authority of the Contracting Party requested shall inform the authority of the requesting Contracting Party of the defects and allow it time to regularise them.

The authority of the Contracting Party requested shall without delay send the authority of the requesting Contracting Party all other indications that may help it to complete its request or extend it to include other measures.

5. The Contracting Parties, when making the notification provided for by Article 44(2), shall announce which are the competent central authorities for the purposes of this Article.

ČLEN 28

Posredovanje po pošti

1. V postopkih v zvezi z nezakonitimi dejanji v smislu tega sporazuma pošljeta pogodbenici osebami, ki se nahajajo na ozemlju druge pogodbenice, procesne listine praviloma neposredno po pošti.

2. Če organ pogodbenice, ki je izdal listino, ve ali upravičeno domneva, da naslovnik razume samo neki drug jezik, je treba listino ali vsaj pomembnejše dele listine prevesti v ta drugi jezik.

3. Organ pogodbenice pošiljateljice opozori prejemnika, da na ozemlju druge pogodbenice ne more neposredno izvršiti nobenega prisilnega ukrepa ali sankcije.

4. Vsem procesnim listinam je priložen zaznamek z navedbo, da lahko naslovnik od organa, navedenega v zaznamku, pridobi informacije o njegovih pravicah in dolžnostih v zvezi z listino.

ČLEN 29

Začasni ukrepi

1. V mejah svoje nacionalne zakonodaje in svojih zadevnih pristojnosti ter po zaprosilu organa pogodbenice prosilke pristojni organ zaprosene pogodbenice odredi potrebne začasne ukrepe za vzdrževanje obstoječega stanja, zaščito ogroženih pravnih interesov ali za ohranitev dokaznih sredstev, če zaprosilo za pravno pomoč ni očitno nedopustno.

2. Preventivna zamrzitev in zaseg se odredita za premoženjsko korist, pridobljeno s kršitvijo, zaradi katere se zaprosi za pravno pomoč, in za sredstva, uporabljena pri njeni povzročitvi. Če premoženjska korist, pridobljena s kršitvijo, ne obstaja več v celoti ali delno, se ti ukrepi odredijo za premoženje na ozemlju zaprosene pogodbenice, ki ustreza vrednosti zadevne premoženjske koristi.

ČLEN 30

Prisotnost organov pogodbenice prosilke

1. Zaprošena pogodbenica na zaprosilo pogodbenice prosilke predstavnikom njenih organov dovoli, da so prisotni pri obravnavanju zaprosila za pravno pomoč. Za to prisotnost ni potrebno soglasje osebe, ki jo ukrep zadeva.

Dovoljenje je lahko omejeno s pogoji.

2. Prisotne osebe imajo dostop do istih prostorov in do istih dokumentov kot predstavniki organa zaprosene pogodbenice, z njihovim posredovanjem in izključno za potrebe obravnave zaprosila za pravno pomoč. Lahko so še zlasti pooblaščenice za postavljanje vprašanj ali predlaganje ukrepov v zvezi s preiskavo.

3. Ta prisotnost ne sme povzročiti, da za dejstva s kršitvijo uradne tajnosti ali pravic zadevne osebe zvedo druge osebe, ki niso pooblaščenice na podlagi predhodnih odstavkov. Informacije, dane v vednost organu pogodbenice prosilke, se ne morejo uporabiti kot dokazno sredstvo, dokler odločitev o prenosu listin v zvezi z obravnavo ni pravnomočna.

ČLEN 31

Preiskave in zaseg predmetov

1. Pogodbenici ne pogojujeta dopustnosti zaprosila za pravno pomoč za preiskavo ali zaseg z drugimi pogoji kot:

ARTICLE 28

Service by post

1. As a rule the Contracting Parties shall, in proceedings for illegal activities covered by this Agreement, send procedural documents intended for persons who are in the territory of the other Contracting Party directly by post.

2. If the authority of the Contracting Party that issued the documents knows or has reason to believe that the addressee understands only some other language, the documents, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

3. The authority of the serving Contracting Party shall advise the addressee that no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Contracting Party.

4. All procedural documents shall be accompanied by a report indicating that the addressee may obtain information from the authority identified in the report regarding his or her rights and obligations concerning the documents.

ARTICLE 29

Provisional measures

1. Within the limits of its domestic law and its respective powers and at the request of the authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall order the necessary provisional measures for the purpose of maintaining an existing situation, protecting endangered legal interests or preserving evidence, if the request for mutual assistance does not appear manifestly inadmissible.

2. Preventive freezing and seizure of instrumentalities and proceeds of offences shall be ordered in cases where assistance is requested. If the proceeds of an offence no longer exist in whole or in part, the same measures shall be ordered in relation to assets located within the territory of the requested Contracting Party corresponding in value to the proceeds in question.

ARTICLE 30

Presence of the authorities of the requesting Contracting Party

1. The requested Contracting Party shall, at the request of the requesting Contracting Party, authorise the representatives of the latter Party's authorities to attend the execution of the request for mutual legal assistance. Their presence shall not require the consent of the person concerned by the measure.

Conditions may be attached to the authorisation.

2. The persons present shall have access to the same premises and the same documents as the representatives of the requested Contracting Party, through them and for the sole purposes of execution of the request for mutual legal assistance. In particular they may be authorised to put or propose questions and suggest measures of investigation.

3. Their presence shall not result in facts being divulged to persons other than those authorised by virtue of the preceding paragraphs in breach of judicial confidentiality or the rights of the person concerned. The information brought to the knowledge of the authority of the requesting Contracting Party may not be used as evidence until the decision on transmission of the documents relating to execution has acquired the force of *res judicata*.

ARTICLE 31

Searches and seizures

1. The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

a) da se dejanje, v zvezi s katerim je bilo poslano zaprosilo za pravno pomoč, po zakonodaji obeh pogodbenic kaznuje z najvišjo zagroženo kaznijo odvzema prostosti ali z varnostnim ukrepom omejitve prostosti v trajanju najmanj šest mesecev, ali da se kaznuje po zakonodaji ene od pogodbenic z enakovredno kaznijo in ga po zakonodaji druge pogodbenice kot kršitev predpisov preganjajo upravni organi, zoper odločbe katerih je možen postopek pred sodiščem, ki je pristojno predvsem za kazenske zadeve;

b) izvršitev zaprosila za pravno pomoč je skladna z zakonodajo zaprosilne pogodbenice.

2. Zaprosila za pravno pomoč pri preiskavi in zasegu zaradi pranja denarja, ki spada v področje uporabe tega sporazuma, so prav tako dopustna pod pogojem, da se dejanja, ki predstavljajo predhodno kršitev, po pravu obeh pogodbenic kaznujejo z najvišjo zagroženo kaznijo odvzema prostosti ali z varnostnim ukrepom omejitve prostosti v trajanju najmanj šest mesecev.

ČLEN 32

Zaprosilo za bančne in finančne podatke

1. Če so izpolnjeni pogoji člena 31, zaprosilna pogodbenica obravnava zaprosila za pravno pomoč, ki zadevajo pridobitev in posredovanje bančnih in finančnih podatkov, vključno s:

a) poizvedovanji in informacijami o bančnih računih, odprtih v bankah, ustanovljenih na njenem ozemlju in katerih imetniki ali pooblaščenци so osebe v preiskavi ali izvajajo kontrolo, ter o informacijah v zvezi s temi bančnimi računi;

b) poizvedovanji in informacijami o bančnih poslih in operacijah, ki se izvajajo iz, na ali preko enega ali več bančnih računov ali s strani določenih oseb v določenem času, ter o informacijah v zvezi s temi bančnimi posli.

2. V okviru tega, kar je dovoljeno na podlagi njenega kazenskega procesnega prava pri primerljivih notranjih primerih, lahko zaprosilna pogodbenica odredi, da se v točno določenem obdobju izvaja nadzor nad bančnimi posli, ki se opravljajo iz, na ali preko bančnih računov ali s strani določenih oseb, ter sporočanje rezultatov pogodbenici proslilki. Odločitev o nadzoru nad posli in sporočanju rezultatov sprejmejo pristojni organi zaprosilne pogodbenice za vsak posamezen primer in mora biti v skladu z nacionalno zakonodajo te pogodbenice. O praktičnih ukrepih nadzora se dogovorijo pristojni organi pogodbenice prosilke in zaprosilne pogodbenice.

3. Vsaka pogodbenica izvede potrebne ukrepe, s katerimi zagotovi, da finančne institucije zadevni stranki in tretjim ne razkrijejo, da se izvajajo ukrepi po zaprosilu pogodbenice prosilke ali da je v teku preiskava, dokler je to potrebno, da se ne ogrozi njihov rezultat.

4. Organ pogodbenice, ki je izdal zaprosilo:

a) določi razloge, zaradi katerih meni, da bi zahtevane informacije lahko bile bistvenega pomena za preiskavo glede kršitve;

b) natančno določi razloge, zaradi katerih domneva, da banke, ki se nahajajo na ozemlju zaprosilne pogodbenice, vodijo zadevne račune, ter v okviru razpoložljivih dokazov navede, katere banke bi to lahko zadevalo;

c) sporoči vsako informacijo, ki bi lahko olajšala obravnavo zaprosila.

5. Pogodbenica se ne sklicuje na bančno tajnost kot na razlog za zavrnitev sodelovanja v zvezi z zaprosilom za pravno pomoč druge pogodbenice.

(a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

2. Letters rogatory for purposes of search and seizure for laundering offences within the scope of this Agreement shall also be admissible provided that the activities making up the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.

ARTICLE 32

Requests for banking and financial information

1. Where the conditions of Article 31 are met, the requested Contracting Party shall execute requests for assistance in obtaining and transmitting banking and financial information, including:

(a) the identification of, and information concerning, bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;

(b) the identification of, and all information concerning, banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.

2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Contracting Party may order surveillance of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Contracting Party. The decision to monitor transactions and transmit the results shall be taken in each individual case by the competent authorities of the requested Contracting Party and shall comply with that Contracting Party's national law. The practical details regarding the monitoring shall be determined by agreement between the competent authorities of the requesting and requested Contracting Parties.

3. Each Contracting Party shall take the necessary measures to ensure the financial institutions do not disclose to the customer concerned or to other third persons that measures are being executed at the request of the requesting Contracting Party or that an investigation is under way, for such time as is necessary to avoid compromising the results.

4. The authority of the Contracting Party issuing the request shall:

(a) state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence;

(b) state on what grounds it presumes that banks in the requested Contracting Party hold the account and, to the extent available, which banks may be involved;

(c) include all information available which may facilitate the execution of the request.

5. A Contracting Party shall not invoke banking secrecy as grounds for rejecting all cooperation on a request for mutual assistance from another Contracting Party.

ČLEN 33

Nadzorovane dobave

1. Pristojni organ zaprošene pogodbenice se zavezuje, da bodo na zaprosilo organa pogodbenice prosilke na njegovem ozemlju lahko dovoljene nadzorovane dobave v okviru kazenskih preiskav o kršitvah, ki bi lahko povzročile izročitev.

2. Odločitev o izvajanju nadzorovanih dobav sprejmejo pristojni organi zaprošene pogodbenice za vsak primer posebej ob upoštevanju svojega nacionalnega prava.

3. Nadzorovane dobave se vršijo v skladu s postopki, predvidenimi z zakonodajo zaprošene pogodbenice. Pooblastilo za delovanje, vodenje in nadzor delovanja imajo njeni pristojni organi.

ČLEN 34

Izročitev zaradi zaplembe ali vrnitve

1. Na zaprosilo pogodbenice prosilke so lahko predmeti, dokumenti, denarna sredstva ali druge vrednosti, ki so bile zaplenjene iz previdnosti, izročeni zaradi zaplembe ali vrnitve tistemu, ki ima do njih pravico.

2. Zaprošena pogodbenica ne more zavrniti izročitve z utemeljitvijo, da denarna sredstva ustrezajo davčnemu ali carinskemu dolgu.

3. Pravice, ki jih tretja oseba v dobri veri uveljavlja do teh predmetov, ostanejo pridržane.

ČLEN 35

Pospešitev medsebojne pomoči

1. Organ zaprošene pogodbenice obravnava zaprosilo za pravno pomoč takoj, ko je mogoče, pri čemer skrbno upošteva roke postopka, ki jih določi organ pogodbenice prosilke, ali druge roke. Slednji pojasni razloge za roke, ki jih je določil.

2. Če zaprosilo ne more biti obravnavano ali ne more biti obravnavano v celoti v skladu z zahtevami organa pogodbenice prosilke, organ zaprošene pogodbenice o tem nemudoma obvesti organ pogodbenice prosilke in navede pogoje, pod katerimi bi zaprosilo lahko bilo obravnavano. Oba organa se lahko naknadno dogovorita o nadaljnjem postopku pri obravnavi zaprosila, ter to, če je potrebno, podedita upoštevanju navedenih pogojev.

Če je možno predvideti, da roka, ki ga je določil organ pogodbenice prosilke za obravnavo svojega zaprosila, ne bo mogoče upoštevati in če razlogi, navedeni v drugem stavku odstavka 1, jasno kažejo, da bo vsaka zamuda znatno ovirala postopek, ki ga vodi ta organ, organ zaprošene pogodbenice nemudoma navede predvideni čas, potreben za obravnavo zaprosila. Organ pogodbenice prosilke nemudoma navede, ali kljub temu še vztraja pri zahtevi. Oba organa se lahko nato dogovorita o nadaljnjem reševanju zaprosila.

ČLEN 36

Uporaba informacij in dokaznih sredstev

Informacije in dokazna sredstva, posredovana v okviru postopka pravne pomoči, se lahko razen v postopku, za katerega je bila zagotovljena pravna pomoč, uporabijo še v:

a) kazenskem postopku pri pogodbenici prosilki, ki se vodi proti ostalim osebam, ki so sodelovale pri povzročitvi kršitve, za katero je bila odobrena pravna pomoč;

ARTICLE 33

Controlled deliveries

1. The competent authority in the requested Contracting Party shall undertake to ensure that, at the request of the authority of the requesting Contracting Party, controlled deliveries may be permitted in its territory within 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 Contracting Party, with due regard for its national law.

3. Controlled deliveries shall take place in accordance with the procedures provided for in the law of the requested Contracting Party. The right to act and to direct and control operations shall lie with the competent authorities of that Contracting Party.

ARTICLE 34

Handing-over for confiscation or return

1. At the request of the requesting Contracting Party, all objects, documents, funds or other items of value that have been seized on a precautionary basis may be handed over for confiscation or for return to the rightful owner.

2. The requested Contracting Party may not refuse to return funds on the sole ground that they correspond to a tax or customs debt.

3. Rights asserted by a third party in good faith shall remain reserved.

ARTICLE 35

Speeding up assistance

1. The authority of the requested Contracting Party shall execute the request for mutual legal assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Contracting Party. The requesting Contracting Party shall explain the reasons for the deadline.

2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall promptly inform the authority of the requesting Contracting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Contracting Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

If it is foreseeable that the deadline set by the authority of the requesting Contracting Party for executing its request cannot be met and if the reasons referred to in the second sentence of paragraph 1, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted by that authority, the authority of the requested Contracting Party shall promptly indicate the estimated time needed for execution of the request. The authority of the requesting Contracting Party shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Contracting Parties may subsequently agree on further action to be taken concerning the request.

ARTICLE 36

Use of information and evidence

Information and evidence transmitted in the course of the assistance procedure may be used for the following purposes in addition to the purposes of the assistance procedure for which it was supplied:

(a) in criminal proceedings in the requesting Contracting Party against other persons who participated in the commission of the offence for which assistance was given;

b) primerih, ko dejanja, na katerih temelji zaprosilo, predstavljajo kršitev, za katero bi morala biti pravna pomoč prav tako odobrena;

c) postopkih v zvezi z zaplenbo premoženjske koristi, pridobljene s kršitvijo, za katero bi morala biti odobrena pravna pomoč, in sredstev, uporabljenih pri njeni povzročitvi, ter v odškodninskih postopkih v zvezi z dejanji, za katera je bila zagotovljena pravna pomoč.

ČLEN 37

Posredovanje dokazov na lastno pobudo

1. V mejah svoje nacionalne zakonodaje in svojih pristojnosti lahko sodni organi pogodbenice na lastno pobudo posredujejo informacije in dokazna sredstva sodnemu organu druge pogodbenice, če ocenijo, da bi organu pogodbenice prejemnice lahko koristili pri uvedbi ali vodenju preiskav ali postopkov, ali pa bi te informacije in dokazna sredstva lahko povzročile, da bi ta organ vložil zaprosilo za pravno pomoč.

2. Organ pogodbenice, ki posreduje informacije in dokazna sredstva, lahko v skladu s svojo nacionalno zakonodajo pri uporabi teh informacij in dokaznih sredstev organu pogodbenice prejemnice postavi pogoje.

3. Vsi organi pogodbenic so vezani na te pogoje.

ČLEN 38

Postopki pri zaproseni pogodbenici

Zaprosilo po pravni pomoči ne posega v pravice, ki bi za pogodbenico prosilko lahko izhajale iz njenega položaja civilne stranke v notranjih kazenskih postopkih pred organi zaprosene pogodbenice.

NASLOV IV KONČNE DOLOČBE

ČLEN 39

Skupni odbor

1. Ustanovi se Skupni odbor, sestavljen iz predstavnikov pogodbenic, ki je odgovoren za pravilno uporabo tega sporazuma. V ta namen sestavlja priporočila in sprejema odločitve v primerih, predvidenih s sporazumom. Odloča soglasno.

2. Skupni odbor sprejme svoj poslovnik, ki med ostalimi določbami vsebuje načine sklica sej, imenovanja svojega predsednika in določitve njegovih funkcij.

3. Skupni odbor se sestane po potrebi in najmanj enkrat na leto. Vsaka pogodbenica lahko zahteva sklic seje.

4. Skupni odbor lahko odloči ustanoviti delovno skupino ali skupino strokovnjakov, ki mu pomaga pri izvajanju njegovih nalog.

ČLEN 40

Reševanje sporov

1. Vsaka pogodbenica lahko skupnemu odboru predloži spor, ki se nanaša na razlago ali uporabo tega sporazuma, zlasti ko meni, da druga pogodbenica večkrat zaporedoma ne ugotdi zahtevam za sodelovanje, ki so ji bile poslane.

(b) where the infringements on which the request is based constitute another offence for which assistance ought also to be given;

(c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of infringements for which assistance had been given.

ARTICLE 37

Spontaneous transmission

1. Within the limits of their national law and their powers, the judicial authorities of a Contracting Party may spontaneously transmit information or evidence to the judicial authorities of another Contracting Party, when they consider that such information or evidence might assist the receiving Contracting Party's authority in initiating or carrying out investigations or proceedings, or might lead to a request for mutual legal assistance by the receiving authority.

2. The authority of the Contracting Party transmitting the information may, pursuant to its national law, impose conditions on the use of such information by the authority of the receiving Contracting Party.

3. All the authorities of the Contracting Parties shall be bound by such conditions.

ARTICLE 38

Procedures in the requested Contracting Party

The request for assistance shall be without prejudice to such rights as the requesting Contracting Party may enjoy as a result of its status as »partie civile« in domestic judicial criminal proceedings commenced before the authorities of the requested Contracting Party.

TITLE IV FINAL PROVISIONS

ARTICLE 39

Joint Committee

1. A Joint Committee shall be established, consisting of representatives of the Contracting Parties, and shall be responsible for the sound application of this Agreement. To that end, it shall make recommendations and take decisions in the cases provided for by the Agreement. It shall act by mutual agreement.

2. The Joint Committee shall adopt its Rules of Procedure, which shall include provisions governing the convening of meetings, the designation of the Chair and the determination of his or her functions.

3. The Joint Committee shall meet as required but no less than once every year. Any Contracting Party may request that a meeting be convened.

4. The Joint Committee may decide to establish working parties or expert groups to assist it in the performance of its tasks.

ARTICLE 40

Dispute settlement

1. Each Contracting Party may submit to the Joint Committee a dispute relating to the interpretation or application of this Agreement, in particular if it considers that another Contracting Party is failing repeatedly to take action on requests for cooperation made to it.

2. Skupni odbor si prizadeva rešiti spor v najkrajšem času. Skupnemu odboru se dajo na razpolago vse koristne informacije, ki omogočajo poglobljeno obravnavo zadeve pri iskanju sprejemljive rešitve. V ta namen skupni odbor preveri vse možnosti, ki omogočajo nadaljnje dobro delovanje tega sporazuma.

ČLEN 41

Vzajemnost

1. Organ zaprosene pogodbenice lahko zavrne zahtevo za sodelovanje, če pogodbenica prosilka večkrat zaporedoma ne ugotdi zahtevi za sodelovanje v podobnih primerih.

2. Pred zavrnitvijo zahteve za sodelovanje na podlagi vzajemnosti je skupni odbor obveščen, tako da ima priložnost, da se o vprašanju izreče.

ČLEN 42

Spremembe

Če ena od pogodbenic želi spremembo tega sporazuma, predloži v ta namen predlog Skupnemu odboru, ki oblikuje priporočila, zlasti glede začetka pogajanj.

ČLEN 43

Ozemeljska veljavnost

Ta sporazum se uporablja na ozemlju Švicarske konfederacije na eni strani in na ozemljih, kjer se uporablja Pogodba o ustanovitvi Evropske skupnosti pod pogoji, predvidenimi s to pogodbo, na drugi strani.

ČLEN 44

Začetek veljavnosti

1. Ta sporazum je sklenjen za nedoločen čas.

2. Pogodbenici ratificirata ali odobrita Sporazum v skladu s svojimi postopki. Veljati začne prvi dan drugega meseca po zadnjem uradnem obvestilu o listinah o ratifikaciji ali odobritvi.

3. Do začetka veljavnosti tega sporazuma lahko vsaka pogodbenica pri uradnem obvestilu iz odstavka 2 ali kadar koli pozneje izjavi, da se ta sporazum zanjo uporablja v njenih odnosih z vsako drugo pogodbenico, ki je podala enako izjavo. Te izjave začnejo veljati devetdeset dni po datumu prejema uradnega obvestila.

ČLEN 45

Odstop

Evropska skupnost ali Švicarska konfederacija lahko odstopita od tega sporazuma z uradnim obvestilom o svoji odločitvi drugi pogodbenici. Odstop začne veljati šest mesecev po datumu prejema obvestila o odstopu.

ČLEN 46

Časovna uporaba

Določbe tega sporazuma se uporabljajo za zaprosila v zvezi z nezakonitimi dejanji, storjenimi najmanj šest mesecev po datumu njegovega podpisa.

2. The Joint Committee shall endeavour to settle the dispute as quickly as possible. The Joint Committee shall be supplied with all relevant items of information to assist its detailed examination of the situation with a view to identifying a satisfactory solution. To that end, the Joint Committee shall examine all possibilities of preserving the sound operation of this Agreement.

ARTICLE 41

Reciprocity

1. The authority of the requested Contracting Party may refuse a request for cooperation where the requesting Contracting Party fails repeatedly to take action on a request for cooperation in similar cases.

2. Before a request for cooperation is refused on the grounds of reciprocity, the Joint Committee shall be informed to give it the opportunity to state its opinion on the matter.

ARTICLE 42

Revision

If a Contracting Party wishes this Agreement to be revised, it shall lay a proposal before the Joint Committee, which shall make recommendations, notably for the commencement of negotiations.

ARTICLE 43

Territorial scope

This Agreement shall apply, on the one hand, to the territory of the Swiss Confederation and, on the other hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty.

ARTICLE 44

Entry into force

1. This Agreement shall be concluded for an indefinite period.

2. It shall be ratified or approved by the Contracting Parties in accordance with their respective procedures. It shall enter into force on the first day of the second month after the last notification of instruments of ratification or approval.

3. Until the entry into force of this Agreement, each Contracting Party may, at the time of the notification referred to in paragraph 2 or at any other subsequent time, declare that it shall consider itself bound by the Agreement in its relations with any other Contracting Party having made the same declaration. These declarations shall take effect ninety days after the date of receipt of the notification.

ARTICLE 45

Denunciation

The European Community or the Swiss Confederation may denounce this Agreement by notifying the other Contracting Party of its decision. The denunciation shall take effect six months after the date of receipt of the notification of the denunciation.

ARTICLE 46

Application over time

The provisions of this Agreement shall be applicable to requests concerning illegal activities committed at least six months after it was signed.

ČLEN 47

Razširitev sporazuma na nove države članice EU

1. Vsaka država, ki postane država članica Evropske unije, lahko z uradnim pisnim obvestilom pogodbenicama postane pogodbenica tega sporazuma.

2. Besedilo sporazuma v jeziku nove pridružene države članice, ki ga sestavi Svet Evropske unije, se potrdi na podlagi izmenjave pisem med Evropsko skupnostjo in Švicarsko konfederacijo. Velja kot verodostojno besedilo v smislu člena 48.

3. Ta sporazum začne veljati za vsako novo državo članico, ki vstopi v Evropsko unijo, devetdeset dni po prejemu uradnega obvestila o njeni listini o pristopu ali na dan začetka veljavnosti sporazuma, če ta še ni začel veljati ob izteku omenjenega roka devetdesetih dni.

4. Če ta sporazum še ni začel veljati ob uradnem obvestilu o listinah o pristopu novih držav članic, se za njih uporablja člen 44(3).

ČLEN 48

Jeziki

1. Ta sporazum je sestavljen v dveh izvodih v angleškem, češkem, danskem, estonskem, finskem, francoskem, grškem, italijanskem, latvijskem, litovskem, malteškem, madžarskem, nemškem, nizozemskem, poljskem, portugalskem, slovaškem, slovenskem, španskem in švedskem jeziku, pri čemer so vsa besedila enako verodostojna.

2. Različico v malteškem jeziku bodo pogodbenice overile na podlagi izmenjave pisem. Ta različica bo enako verodostojna kot različice v jezikih, ki so naštet v prejšnjem odstavku.

V POTRDI TEV TEGA so spodaj podpisani pooblaščenici podpisali ta sporazum.

ARTICLE 47

Extension of the Agreement to the new Member States of the European Union

1. Any State which becomes a Member State of the European Union may, by written notification to the Contracting Parties, become a Contracting Party to this Agreement.

2. The text of the Agreement in the language of the new acceding Member State as established by the Council of the European Union shall be authenticated by an exchange of letters between the European Community and the Swiss Confederation. It shall be considered to be authentic within the meaning of Article 48.

3. This Agreement shall enter into force in relation to any new Member State of the European Union which accedes to it ninety days after the receipt of its instrument of accession, or on the date of entry into force of this Agreement if it was not yet in force when that ninety-day period expired.

4. If this Agreement is not yet in force when the new acceding State notifies its instrument of accession, Article 44(3) shall apply.

ARTICLE 48

Languages

1. This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

2. The Maltese language version of this Agreement shall be authenticated by the Contracting Parties on the basis of an Exchange of Letters. It shall also be authentic, in the same way as for the languages referred to in paragraph 1.

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

Hecho en Luxemburgo, el veintiseis de octubre del dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümne kuuendal päeval Luxembourgis.

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Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

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Priimta du tūkstančiai ketvirtą metų spalio dvidešimt dešimtą dieną Liuksemburge.

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V Luxembourg, dne šestindvajsetega oktobra leta dva tisoč štiri.

Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

Pour le Royaume de Belgique
Voor het Koninkrijk België
Für das Königreich Belgien

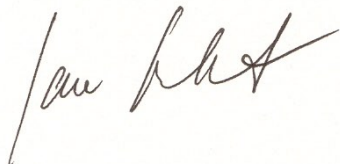


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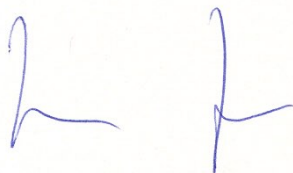
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Za Českou republiku



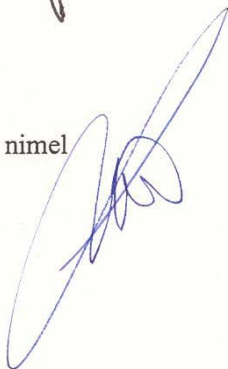
På Kongeriget Danmarks vegne



Für die Bundesrepublik Deutschland



Eesti Vabariigi nimel



Για την Ελληνική Δημοκρατία



Por el Reino de España



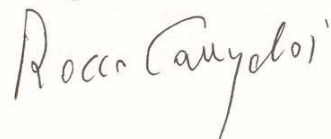
Pour la République française



Thar cheann Na hÉireann
For Ireland



Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία,



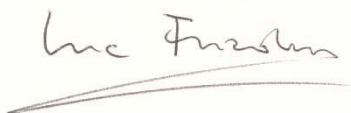
Latvijas Republikas vārdā



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



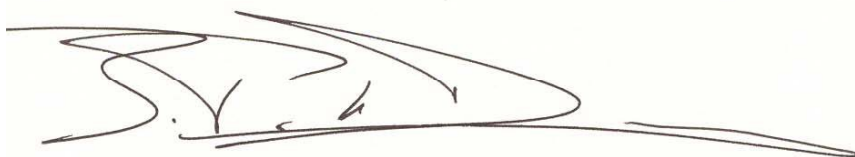
A Magyar Köztársaság részéről



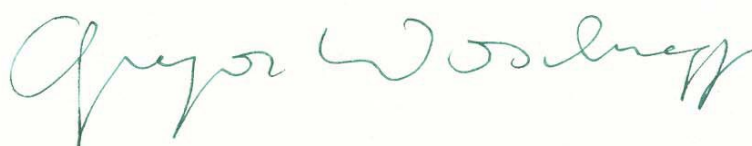
Għar-Repubblika ta' Malta



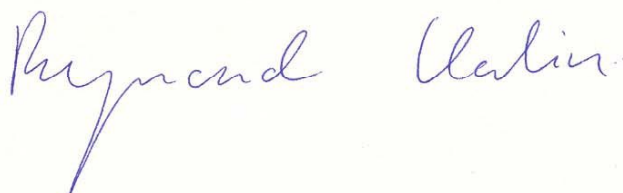
Voor het Koninkrijk der Nederlanden



Für die Republik Österreich



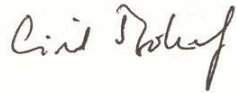
W imieniu Rzeczypospolitej Polskiej



Pela República Portuguesa



Za Republiko Slovenijo



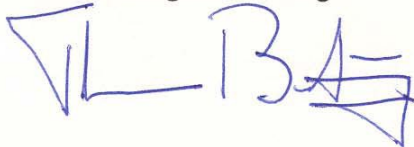
Za Slovenskú republiku



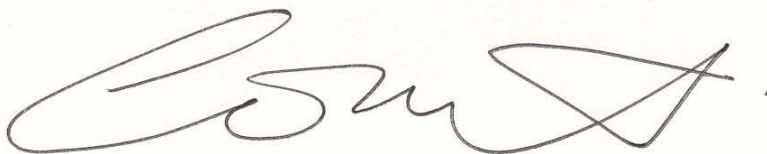
Suomen tasavallan puolesta
För Republiken Finland



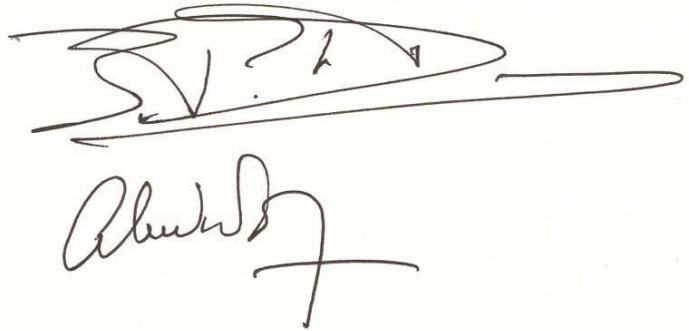
För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar

A stylized signature in dark ink, consisting of a large, sweeping loop followed by a horizontal line and a small vertical stroke.

Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera

A signature in dark ink, featuring a large, cursive 'H' followed by a series of horizontal strokes.

SKLEPNA LISTINA

Pooblaščenci
KRALJEVINE BELGIJE,
ČEŠKE REPUBLIKE,
KRALJEVINE DANSKE,
ZVEZNE REPUBLIKE NEMČIJE,
REPUBLIKE ESTONIJE,
HELENSKE REPUBLIKE,
KRALJEVINE ŠPANIJE,
FRANCOSKE REPUBLIKE
IRSKE,
ITALIJANSKE REPUBLIKE,
REPUBLIKE CIPER,
REPUBLIKE LATVIJE,
REPUBLIKE LITVE,
VELIKEGA VOJVODSTVA LUKSEMBURG,
REPUBLIKE MADŽARSKE,
REPUBLIKE MALTE,
KRALJEVINE NIZOZEMSKÉ,
REPUBLIKE AVSTRIJE,
REPUBLIKE POLJSKE,
PORTUGALSKE REPUBLIKE,
REPUBLIKE SLOVENIJE,
SLOVAŠKE REPUBLIKE,
REPUBLIKE FINSKE,
KRALJEVINE ŠVEDSKE,
ZDRUŽENEGA KRALJESTVA VELIKA BRITANIJA IN
SEVERNA IRSKA,
EVROPSKE SKUPNOSTI
na eni strani in

ŠVICARSKE KONFEDERACIJE
na drugi strani,

zbranih dne 26. oktobra 2004 v Luxembourgju za podpis sporazuma o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani in Švicarsko konfederacijo na drugi strani v boju proti goljufijam in drugim nezakonitim dejanjem, ki škodijo njihovim finančnim interesom, so sprejeli skupni deklaraciji, omenjeni v nadaljnjem besedilu in priloženi tej sklepi listini:

1. Skupna deklaracija o pranju denarja;
2. Skupna deklaracija o sodelovanju Švicarske konfederacije z Eurojustom in če je možno, z Evropsko pravosodno mrežo.

Pooblaščenci držav članic Evropske unije in njenih držav članic ter pooblaščenci Švicarske konfederacije so nadalje sprejeli potrjeni zapisnik o pogajanjih, ki je priložen tej sklepi listini. Potrjeni zapisnik je zavezujoč.

SKUPNA DEKLARACIJA
O PRANJU DENARJA

Pogodbenci se strinjata, da člen 2(3) sporazuma o sodelovanju pri preprečevanju pranja denarja kot predhodne kršitve vključuje davčne goljufije ali profesionalno tihotapstvo po švicarskem pravu. Informacije, prejete na podlagi zaprosila, ki se nanašajo na pranje denarja, se lahko uporabijo v postopkih zaradi pranja denarja, razen v postopkih proti švicarskim osebam, če so bila vsa dejanja, povezana s kršitvijo, izvršena izključno v Švici.

FINAL ACT

The plenipotentiaries of
THE KINGDOM OF BELGIUM,
THE CZECH REPUBLIC,
THE KINGDOM OF DENMARK,
THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF ESTONIA,
THE HELLENIC REPUBLIC,
THE KINGDOM OF SPAIN,
THE FRENCH REPUBLIC,
IRELAND,
THE ITALIAN REPUBLIC,
THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA,
THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF HUNGARY,
THE REPUBLIC OF MALTA,
THE KINGDOM OF THE NETHERLANDS,
THE REPUBLIC OF AUSTRIA,
THE REPUBLIC OF POLAND,
THE PORTUGUESE REPUBLIC,
THE REPUBLIC OF SLOVENIA,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF FINLAND,
THE KINGDOM OF SWEDEN,
THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND,
THE EUROPEAN COMMUNITY,
of the one part, and of

THE SWISS CONFEDERATION,
of the other part,

meeting on 26 October 2004 for the signature of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests, have adopted the joint declarations listed below and attached to this Final Act:

1. Joint declaration on money laundering;
2. Joint declaration on cooperation by the Swiss Confederation with Eurojust and, if possible, with the European Judicial Network.

The plenipotentiaries of the European Union and of its Member States and the plenipotentiaries of the Swiss Confederation have furthermore adopted the Agreed Minute of the negotiations attached to this Final Act. The Agreed Minute is binding.

JOINT DECLARATION
ON MONEY LAUNDERING

The Contracting Parties hereby agree that Article 2(3) of the Agreement on cooperation in combating money laundering shall include as precursor offences those which constitute tax fraud or professional smuggling under Swiss law. Information received in response to a request concerning laundering may be used in proceedings for laundering, save in proceedings against Swiss persons if all the acts relevant to the offence were committed in Switzerland only.

SKUPNA DEKLARACIJA
O SODELOVANJU ŠVICARSKE KONFEDERACIJE
Z EUROJUSTOM IN ČE JE MOŽNO, Z EVROPSKO
PRAVOSODNO MREŽO

Pogodbenici se seznaniata z željo Švicarske konfederacije, da bi proučili možnost sodelovanja Švicarske konfederacije pri delu Eurojusta in, če je možno, pri delu Evropske pravosodne mreže.

POTRJEN ZAPISNIK
POGAJANJ O SPORAZUMU O SODELOVANJU MED
EVROPSKO SKUPNOSTJO IN NJENIMI DRŽAVMI
ČLANICAMI NA ENI STRANI TER ŠVICARSKO
KONFEDERACIJO NA DRUGI STRANI, V BOJU PROTI
GOLJUFIJAM IN VSEM DRUGIM NEZAKONITIM
DEJAVNOSTIM, KI ŠKODIJO NJIHOVIM FINANČNIM
INTERESOM

Pogodbene stranke so se dogovorile o naslednjem:

K členu 2(1)(a)

izrazi "goljufija in vsako drugo nezakonito dejanje" vključuje tudi tihotapljenje, korupcijo in pranje premoženjske koristi, ki jih zajema ta sporazum, ob upoštevanju člena 2(3);

izrazi "menjava blaga, ki krši carinsko in kmetijsko zakonodajo" se razumejo neodvisno od prehoda blaga (odhoda, namembnega kraja ali tranzita) ali ne preko ozemlja druge pogodbene stranke;

izrazi "menjava, ki krši davčno zakonodajo na področju davka na dodano vrednost, posebnih davkov na porabo in trošarin" se razumejo neodvisno od prehoda blaga ali storitev (odhoda, namembnega kraja ali tranzita) ali ne preko ozemlja druge pogodbene stranke;

K členu 15(2)

izraz "sredstvo preiskave" vključuje zaslišanje oseb, obiske in preiskave prostorov in transportnih sredstev, kopijo dokumentov, zahtevo podatkov in zaseg predmetov, dokumentov in vrednostnih predmetov;

K drugemu pododstavku člena 16(2)

ta pododstavek pomeni tudi, da so lahko navzoče osebe pooblaščenice za postavljanje vprašanj in predlaganje ukrepov za preiskave;

K členu 25(2)

pojem večstranski sporazumi med pogodbenimi strankami vključuje zlasti sporazum od njegovega začetka veljavnosti med Evropsko unijo, Evropsko skupnostjo in Švicarsko konfederacijo o švicarski pridružitvi k izvajanju, uporabi in razvoju Schengenskega pravnega reda;

K členu 35(1)

z "zahtevo po medsebojni pravni pomoči" se prav tako razume posredovanje podatkov in dokazov pristojnemu organu pogodbene stranke prosilke;

K členu 43

Evropska komisija bo najpozneje v času podpisa sporazuma sporočila okvirno listo ozemelj, kjer se uporablja ta sporazum.

JOINT DECLARATION
ON COOPERATION BY THE SWISS CONFEDERATION
WITH EUROJUST AND, IF POSSIBLE, WITH THE
EUROPEAN JUDICIAL NETWORK

The Contracting Parties take note of the Swiss Confederation's wish to study the possibility of cooperating in the work of Eurojust and, if possible, the European Judicial Network.

AGREED MINUTE
OF THE NEGOTIATIONS ON THE COOPERATION
AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND ITS MEMBER STATES, OF THE ONE PART, AND
THE SWISS CONFEDERATION, OF THE OTHER
PART, TO COMBAT FRAUD AND ANY OTHER ILLEGAL
ACTIVITY TO THE DETRIMENT OF THEIR FINANCIAL
INTERESTS

The Contracting Parties have agreed as follows:

Ad Article 2(1)(a)

The expression »fraud and any other illegal activity« extends to smuggling, corruption and laundering of the proceeds of the activities covered by this Agreement, subject to Article 2(3).

The expression »trade in goods contrary to customs and agricultural legislation« is to be understood independently of the passage (departure, destination or transit) or otherwise of the goods through the territory of the other Contracting Party.

The expression »trade contrary to tax legislation applicable to value added tax, special taxes on consumption and excise duties« is to be understood independently of the passage (departure, destination or transit) or otherwise of the goods or services through the territory of the other Contracting Party.

Ad Article 15(2)

The term »investigation means« includes the questioning of persons, the searching of premises and means of transport, the copying of documents, the requesting of information and the seizure of objects, documents and items of value.

Ad second subparagraph of Article 16(2)

This subparagraph also means that those present may in particular be authorised to put questions and propose measures of investigation.

Ad Article 25(2)

The concept of multilateral Agreements between the Contracting Parties includes in particular, as of its entry into force, the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen acquis.

Ad Article 35(1)

»Request for mutual legal assistance« also means the transmission of information and evidence to the authority of the requesting Contracting Party.

Ad Article 43

The European Commission will, at the latest at the date of signature of this Agreement, send an indicative list of the territories to which this Agreement applies.

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Pour le Royaume de Belgique
Voor het Koninkrijk België
Für das Königreich Belgien

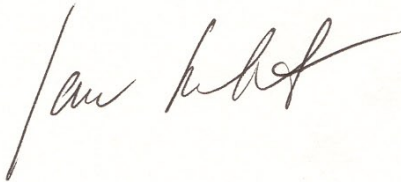


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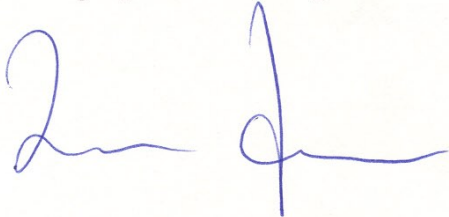
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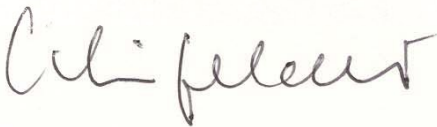
Za Českou republiku



På Kongeriget Danmarks vegne



Für die Bundesrepublik Deutschland



Eesti Vabariigi nimel



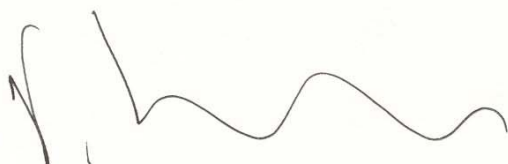
Για την Ελληνική Δημοκρατία



Por el Reino de España



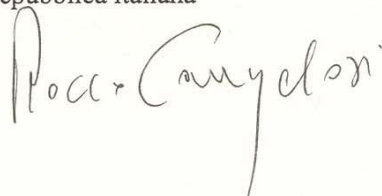
Pour la République française



Thar cheann Na hÉireann
For Ireland



Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία,



Latvijas Republikas vārdā



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



A Magyar Köztársaság részéről



Għar-Repubblika ta' Malta

Louis Berg

Voor het Koninkrijk der Nederlanden

A stylized, abstract signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Für die Republik Österreich

Georg Woschnigg

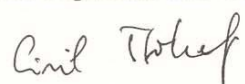
W imieniu Rzeczypospolitej Polskiej

Przemysław Czarnek

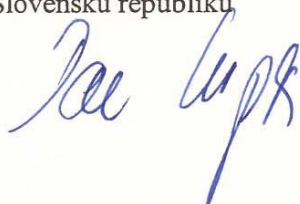
Pela República Portuguesa

Paulo Gestas Rangel

Za Republiko Slovenijo



Za Slovenskú republiku

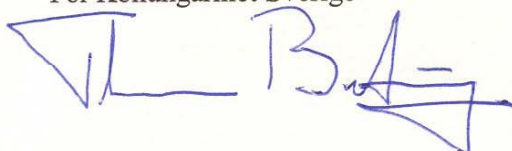


Suomen tasavallan puolesta

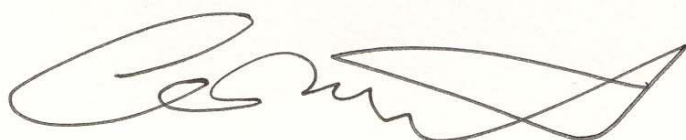
För Republiken Finland



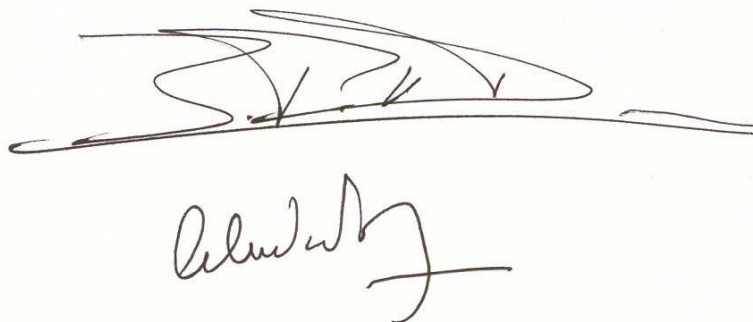
För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera



3. člen

Za izvajanje Sporazuma s Sklepno listino skrbi Ministrstvo za finance.

4. člen

Ta zakon začne veljati petnajsti dan po objavi v Uradnem listu Republike Slovenije – Mednarodne pogodbe.

Št. 440-04/05-5/1

Ljubljana, dne 29. septembra 2005

EPA 428-IV

Predsednik
Državnega zbora
Republike Slovenije
France Cukjati, dr. med., l.r.

VSEBINA

60. Zakon o ratifikaciji Sporazuma o sodelovanju med Evropsko skupnostjo in njenimi državami članicami na eni strani ter Švicarsko konfederacijo na drugi strani v boju proti goljufijam in vsem drugim nezakritim dejanjem, ki škodijo njihovim finančnim interesom, s Sklepno listino (MESCHBG) 1185