

- 26.** Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, in Drugega protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti (MKZFIES)

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 Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, in Drugega protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti (MKZFIES)

Razglašam Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, in Drugega protokola, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti (MKZFIES), ki ga je sprejel Državni zbor Republike Slovenije na seji 1. februarja 2007.

Št. 001-22-20/07
Ljubljana, dne 9. februarja 2007

dr. Janez Drnovšek l.r.
Predsednik
Republike Slovenije

Z A K O N

O RATIFIKACIJI KONVENCIJE, PRIPRAVLJENE NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH SKUPNOSTI, PROTOKOLA, PRIPRAVLJENEGA NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, H KONVENCIJI O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH SKUPNOSTI, PROTOKOLA, PRIPRAVLJENEGA NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O RAZLAGI KONVENCIJE O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH SKUPNOSTI S PREDHODNIM ODLOČANJEM ŠODIŠČA EVROPSKIH SKUPNOSTI, IN DRUGEGA PROTOKOLA, PRIPRAVLJENEGA NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, H KONVENCIJI O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH SKUPNOSTI (MKZFIES)

1. člen

Ratificirajo se:

- Konvencija, pripravljena na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, sklenjena 26. julija 1995 v Bruslju,
- Protokol, pripravljen na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, sklenjen 27. septembra 1996 v Dublinu,
- Protokol, pripravljen na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, sklenjen 29. novembra 1996 v Bruslju,
- Drugi protokol, pripravljen na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, sklenjen 19. junija 1997 v Bruslju.

2. člen

Besedila konvencije in protokolov se v izvorniku v angleškem jeziku in v prevodu v slovenskem jeziku glasijo:

CONVENTION
DRAWN UP ON THE BASIS OF ARTICLE K.3
OF THE TREATY ON EUROPEAN UNION,
ON THE PROTECTION OF THE EUROPEAN
COMMUNITIES' FINANCIAL INTERESTS

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

REFERRING to the Act of the Council of the European Union of 26 July 1995;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

NOTING that fraud affecting Community revenue and expenditure in many cases is not confined to a single country and is often committed by organized criminal networks;

CONVINCED that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition;

CONVINCED of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty which can give rise to extradition;

RECOGNIZING that businesses play an important role in the areas financed by the European Communities and that those with decision-making powers in business should not escape criminal responsibility in appropriate circumstances;

DETERMINED to combat together fraud affecting the European Communities' financial interests by undertaking obligations concerning jurisdiction, extradition, and mutual cooperation,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

ARTICLE 1

General provisions

1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

– non-disclosure of information in violation of a specific obligation, with the same effect,

– the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

– non-disclosure of information in violation of a specific obligation, with the same effect,

– misapplication of a legally obtained benefit, with the same effect.

2. Subject to Article 2 (2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

KONVENCIJA,
PRIPRAVLJENA NA PODLAGI ČLENA K.3
POGODBE O EVROPSKI UNIJI, O ZAŠČITI
FINANČNIH INTERESOV EVROPSKIH
SKUPNOSTI

VISOKE POGODBENICE te konvencije, države članice Evropske unije,

SO SE,

SKLICUJOČ SE na Akt Sveta Evropske unije z dne 26. julija 1995,

V ŽELJI zagotoviti, da bi njihova kazenska zakonodaja učinkovito prispevala k zaščiti finančnih interesov Evropskih skupnosti;

OB UGOTOVITVI, da goljufije, ki škodijo prihodkom in odhodkom Skupnosti, v številnih primerih niso omejene na eno samo državo in jih pogosto zagrešijo organizirane kriminalne mreže,

V PREPRIČANJU, da zaščita finančnih interesov Evropskih skupnosti zahteva kazenski pregon goljufivega ravnanja, ki škodi navedenim interesom, in v ta namen sprejetje skupne opredelitve pomena izraza,

V PREPRIČANJU, da je treba tako ravnanje kaznovati z učinkovitimi, sorazmernimi in odvračilnimi kazenskimi sankcijami, ne da bi se posegalo v možnost uporabe drugih kazni v določenih primerih, in da je treba vsaj v težjih primerih tako ravnanje kaznovati z odvzemanjem prostosti, kar lahko vodi v izročitev,

V SPOZNANJU, da imajo podjetja pomembno vlogo na področjih, ki jih financirajo Evropske skupnosti, in da se tisti, ki imajo pooblastila za odločanje v podjetju, ne smejo izogniti kazenski odgovornosti v določenih okoliščinah,

ODLOČENE, da se skupaj bojujejo proti goljufijam, ki škodijo finančnim interesom Evropskih skupnosti, s prevezmanjem obveznosti v zvezi s sodno pristojnostjo, izročitvijo in medsebojnim sodelovanjem,

DOGOVORILE O NASLEDNJIH DOLOČBAH:

ČLEN 1

Splošne določbe

1. Goljufije, ki škodijo finančnim interesom Evropskih skupnosti, so po tej Konvenciji:

(a) glede odhodkov, vsako namerno dejanje ali opustitev v zvezi z:

– uporabo ali predložitvijo lažnih, nepravilnih ali nepopolnih izjav ali dokumentov, katere posledica je poneverba ali neupravičeno zadržanje sredstev splošnega proračuna Evropskih skupnosti ali proračunov, ki jih upravljajo Evropske skupnosti ali se upravljajo v njihovem imenu,

– nerazkritjem podatkov, ki pomeni kršitev določene obveznosti z enako posledico,

– neustrezno uporabo takih sredstev za druge namene kot za tiste, za katere so bila prvotno dodeljena;

(b) glede prihodkov vsako namerno dejanje ali opustitev v zvezi z:

– uporabo ali predložitvijo lažnih, nepravilnih ali nepopolnih izjav ali dokumentov, katere posledica je nezakonito zmanjšanje sredstev splošnega proračuna Evropskih skupnosti ali proračunov, ki jih upravljajo Evropske skupnosti ali se upravljajo v njihovem imenu,

– nerazkritjem podatkov, ki pomeni kršitev določenih obveznosti z enako posledico,

– neustrezno uporabo zakonito pridobljenih koristi z enako posledico.

2. Vsaka država članica v skladu s členom 2(2) sprejme potrebne in ustrezne ukrepe za prenos odstavka 1 v svojo notranjo kazensko zakonodajo tako, da v tej konvenciji navedeno ravnanje pomeni kaznivo dejanje.

3. Subject to Article 2 (2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1.

4. The intentional nature of an act or omission as referred to in paragraphs 1 and 3 may be inferred from objective, factual circumstances.

ARTICLE 2 Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding ECU 50 000.

2. However in cases of minor fraud involving a total amount of less than ECU 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2.

ARTICLE 3 Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1, by a person under their authority acting on behalf of the business.

ARTICLE 4 Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Article 1 and 2 (1) when:

- fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory,
- a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State,
- the offender is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred.

2. Each Member State may declare, when giving the notification referred to in Article 11 (2), that it will not apply the rule laid down in the third indent of paragraph 1 of this Article.

ARTICLE 5 Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Articles 1 and 2 (1), when committed by its own nationals outside its territory.

3. Vsaka država članica v skladu s členom 2(2) sprejme tudi potrebne ukrepe za zagotovitev, da namerna priprava ali posredovanje lažnih, nepravilnih ali nepopolnih izjav ali dokumentov, ki ima v odstavku 1 opisano posledico, pomeni kaznivo dejanje, če ni že kaznivo kot glavno kaznivo dejanje ali kot udeležba pri goljufiji, napeljevanje k njej ali poskus storitve goljufije, kot je opredeljeno v odstavku 1.

4. Namerna narava dejanja ali opustitve, kot je navedeno v odstavkih 1 in 3, se lahko ugotovi na podlagi objektivnih dejanskih okoliščin.

ČLEN 2 Sankcije

1. Vsaka država članica sprejme potrebne ukrepe za zagotovitev, da se ravnanje iz člena 1 in udeležba pri ravnanju iz člena 1(1), napeljevanje k njemu ali poskus takega ravnanja kaznujejo z učinkovitimi, sorazmernimi in odvračilnimi kazenskimi sankcijami, ki vsaj pri velikih goljufijah vključujejo tudi kazen odvzema prostosti, ki lahko vodi v izročitev; za veliko goljufijo se šteje goljufija, ki zajema najmanjši znesek, ki ga določi posamezna država članica. Najmanjši znesek ne sme presegati 50 000 ECU.

2. Država članica lahko za male goljufije, katerih skupni znesek je manjši od 4000 ECU in po njeni notranji zakonodaji ne vključujejo posebno oteževalnih okoliščin določi drugačne sankcije od tistih, ki so navedene v odstavku 1.

3. Svet Evropske unije lahko soglasno spremeni znesek iz odstavka 2.

ČLEN 3 Kazenska odgovornost vodij podjetij

Vsaka država članica sprejme potrebne ukrepe za to, da se vodje podjetij ali druge osebe, ki so pooblaščenec za sprejemanje odločitev ali nadzor v podjetjih, v primeru goljufije, ki škodi finančnim interesom Evropske skupnosti, kot je navedeno v členu 1, in jo stori oseba, ki jim je podrejena in deluje v imenu podjetja, spoznajo za kazensko odgovorne po načelih, ki jih določa njena notranja zakonodaja.

ČLEN 4 Jurisdikcija

1. Vsaka država članica sprejme potrebne ukrepe za vzpostavitev jurisdikcije nad kaznivimi dejanji, ki jih je določila v skladu s členoma 1 in 2(1) kadar:

- je goljufija, udeležba pri goljufiji ali poskus goljufije, ki škoduje finančnim interesom Evropskih skupnosti, storjen v celoti ali delno na njenem ozemlju, vključno z goljufijo, pri kateri je bila korist pridobljena na tem ozemlju,
- oseba na njenem ozemlju zavestno pomaga pri storitvi take goljufije ali napeljuje k njej na ozemlju katerekoli druge države,
- je storilec kaznivega dejanja državljan te države članice, če zakonodaja te države članice zahteva, da je ravnanje kaznivo tudi v državi, v kateri je bilo storjeno.

2. Vsaka država članica lahko ob uradnem obvestilu iz člena 11(2) izjavi, da ne bo uporabljala pravil iz tretje alineje odstavka 1 tega člena.

ČLEN 5 Izročitev in pregon

1. Vsaka država članica, ki po svoji zakonodaji ne izroča svojih državljanov, sprejme potrebne ukrepe, da vzpostavi jurisdikcijo nad kaznivimi dejanji, ki jih je določila v skladu s členoma 1 in 2(1), kadar jih storijo njeni državljani zunaj nje-nega ozemlja.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State a criminal offence involving the conduct described in Articles 1 and 2 (1), and it does not extradite that person to that other Member State solely on the ground of his or her nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. A Member State may not refuse extradition in the event of fraud affecting the European Communities' financial interests for the sole reason that it concerns a tax or customs duty offence.

4. For the purposes of this Article, a Member State's own nationals shall be construed in accordance with any declaration made by it under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of that Article.

ARTICLE 6

Cooperation

1. If a fraud as defined in Article 1 constitutes a criminal offence and concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

ARTICLE 7

Ne bis in idem

1. Member States shall apply in their national criminal laws the 'ne bis in idem' rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 11 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

(a) if the facts which were the subject of the judgement rendered abroad took place on its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly on the territory of the Member State where the judgment was rendered;

(b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgment rendered abroad were committed by an official of the Member State contrary to the duties of his office.

3. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

4. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

2. Država članica mora predložiti primer svojim pristojnim organom zaradi pregona, če je to potrebno, kadar državljani države članice v drugi državi članici domnevno stori kaznivo dejanje, ki vključuje ravnanje iz členov 1 in 2(1) in te osebe ne izroči drugi državi članici samo na podlagi njenega državljanstva. Da se omogoči pregon, se v skladu s postopki iz člena 6 Evropske konvencije o izročitvi pošljejo dokumentacija, podatki in dokazno gradivo v zvezi s kaznivim dejanjem. Država članica prosilka se obvesti o začetem pregonu in njegovem izidu.

3. Država članica ne sme zavrniti izročitve v primeru goljufigije, ki škoduje finančnim interesom Evropskih skupnosti, samo zato, ker se nanaša na kršitev v zvezi z davki ali carinskimi dajatvami.

4. V tem členu se izraz državljani države članice razlaga v skladu z vsako izjavo, ki jo je država članica dala na podlagi člena 6(1)(b) Evropske konvencije o izročitvi in odstavka 1(c) navedenega člena.

ČLEN 6

Sodelovanje

1. Če goljufigija, kot je opredeljena v členu 1, pomeni kaznivo dejanje in se nanaša na vsaj dve državi članici, te države pri preiskavi, pregonu in izvrševanju izrečene kazni sodelujejo na način, kot je na primer medsebojna pravna pomoč, izročitev, prevzem postopkov ali izvršitve odločbe, izdane v drugi državi članici.

2. Kadar ima več kot ena država članica jurisdikcijo in možnost izvedljivega pregona kaznivega dejanja, ki temelji na istih dejstvih, vpletene države članice sodelujejo pri odločitvi, katera bo preganjala storilca ali storilce, da bi se pregon centraliziral v eni sami državi članici, če je to mogoče.

ČLEN 7

Ne bis in idem

1. Države članice uporabljajo v svoji notranji kazenski zakonodaji pravilo "ne bis in idem", na podlagi katerega oseba, glede katere je bilo na sojenju v državi članici pravnomočno odločeno, ne sme biti preganjana v drugi državi članici v zvezi z istimi dejstvi pod pogojem, da je bila kaznen, če je bila izrečena, izvršena, se trenutno izvršuje ali pa se ne more več izvršiti po zakonodaji države, ki je izdala odločbo.

2. Država članica lahko ob uradnem obvestilu iz člena 11(2) izjavi, da je odstavek 1 tega člena ne zavezuje v enem ali več naslednjih primerih:

(a) če so dejstva, na katerih temelji sodba, izdana v tujini, v celoti ali delno nastala na njenem ozemlju; v zadnjem primeru se ta izjema ne uporablja, če so navedena dejstva nastala delno na ozemlju države članice, na katerem je bila sodba izdana;

(b) če dejstva, na katerih temelji sodba, izdana v tujini, pomenijo kaznivo dejanje zoper varnost ali druge enako bistvene interese te države članice;

(c) če je dejstva, na katerih temelji sodba, izdana v tujini, storil uradnik države članice v nasprotju s svojimi uradnimi dolžnostmi.

3. Izjeme, ki so lahko predmet izjave iz odstavka 2, se ne uporabljajo, če je ta država članica glede istih dejstev zaprosila drugo državo članico, naj začne pregon, ali je odobrila izročitev osebe.

4. Ta člen ne vpliva na ustrezne dvostranske ali večstranske sporazume, ki so jih sklenile države članice, in na izjave, ki so jih dale v zvezi z njimi.

ARTICLE 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of Article 1 or 10 of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

ARTICLE 9

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

ARTICLE 10

Transmission

1. Member States shall transmit to the Commission of the European Communities the text of the provisions transposing into their domestic law the obligations imposed on them under the provisions of this Convention.

2. For the purposes of implementing this Convention, the High Contracting Parties shall determine, within the Council of the European Union, the information to be communicated or exchanged between the Member States or between the Member States and the Commission, and also the arrangements for doing so.

ARTICLE 11

Entry into force

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

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

3. This Convention shall enter into force ninety days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

ARTICLE 12

Accession

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

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

ARTICLE 13

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

ČLEN 8

Sodišče

1. Vse spore med državami članicami o razlagi ali uporabi te konvencije mora najprej obravnavati Svet po postopku, določenem v Naslovu VI Pogodbe o Evropski uniji, da bi se dosegla rešitev.

Če se rešitev ne doseže v šestih mesecih, lahko stranka v sporu zadevo predloži Sodišču Evropskih skupnosti.

2. Sodišču se lahko predložijo vsi spori med eno ali več državami članicami in Komisijo Evropskih skupnosti glede uporabe člena 1 ali 10 te konvencije, za katere se je izkazalo, da jih ni mogoče rešiti s pogajanjem.

ČLEN 9

Notranji predpisi

Nobena določba v tej konvenciji ne preprečuje državam članicam sprejetja notranjih predpisov, ki presegajo obveznosti iz te konvencije.

ČLEN 10

Obveščanje

1. Države članice pošljejo Komisiji Evropskih skupnosti besedilo predpisov, ki v njihovo notranje pravo prenašajo obveznosti, ki jim jih nalagajo določbe te konvencije.

2. Za izvajanje te Konvencije visoke pogodbenice v Svetu Evropske unije določijo podatke, ki jih je treba sporočiti ali izmenjati med državami članicami ali med državami članicami in Komisijo, in ureditev take izmenjave.

ČLEN 11

Začetek veljavnosti

1. Države članice sprejmejo to konvencijo v skladu s svojimi ustavnimi zahtevami.

2. Države članice uradno obvestijo Generalnega sekretarja Sveta Evropske unije o izpolnitvi ustavnih zahtev za sprejetje te konvencije.

3. Ta konvencija začne veljati 90 dni po uradnem obvestilu države članice, ki zadnja izpolni obveznost iz odstavka 2.

ČLEN 12

Pristop

1. K tej konvenciji lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Besedilo k konvenciji v jeziku države pristopnice ki ga pripravi Svet Evropske unije, je verodostojno.

3. Listine o pristopu se deponirajo pri depozitarju.

4. Za vsako državo, ki pristopi k tej konvenciji, ta začne veljati 90 dni od dneva deponiranja njene listine o pristopu ali na dan začetka veljavnosti te konvencije, če po izteku navedenega 90-dnevnega roka še ni začela veljati.

ČLEN 13

Depozitar

1. Depozitar te konvencije je generalni sekretar Sveta Evropske unije.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

2. Depozitar v Uradnem listu Evropskih skupnosti objavi informacije o poteku sprejemanja in pristopanja, izjave in pridržke, ter vsa druga uradna obvestila v zvezi s to konvencijo.

V POTRDITEV TEGA so spodaj podpisani pooblaščenca podpisali to konvencijo.

Sestavljeno v Bruslju, šestindvajsetega julija leta tisoč devetsto petindevetdeset v enem izvorniku, v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vsako besedilo enako verodostojno, izvornik se deponira v arhivu Generalnega sekretariata Sveta Evropske unije.

PROTOCOL

DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION TO THE CONVENTION ON THE PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS

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

REFERRING to the Act of the Council of the European Union of twenty-seventh day of September in the year one thousand nine hundred and ninety-six,

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 for combating fraud affecting Community revenue and expenditure;

AWARE that the financial interests of the European Communities may be damaged or threatened by other criminal offences, particularly acts of corruption by or against national and Community officials, responsible for the collection, management or disbursement of Community funds under their control;

CONSIDERING that people of different nationalities, employed by different public agencies or bodies, may be involved in such corruption and that, in the interests of effective action against such corruption with international ramifications, it is important for their reprehensible nature to be perceived in a similar manner under Member States' criminal laws;

NOTING that several Member States' criminal law on crime linked to the exercise of public duties in general and concerning corruption in particular covers only acts committed by or against their national officials and does not cover, or covers only in exceptional cases, conduct involving Community officials or officials of other Member States;

CONVINCED of the need for national law to be adapted where it does not penalize acts of corruption that damage or are likely to damage the financial interests of the European Communities involving Community officials or officials of other Member States;

CONVINCED also that such adaptation of national law should not be confined, in respect of Community officials, to acts of active or passive corruption, but should be extended to other crimes affecting or likely to affect the revenue or expenditure of the European Communities, including crimes committed by or against persons in whom the highest responsibilities are vested;

PROTOKOL,

PRIPRAVLJEN NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, H KONVENCIJI O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH SKUPNOSTI

VISOKE POGODBENICE tega protokola, države članice Evropske unije, SO SE,

SKLICUJOČ SE na Akt Sveta Evropske unije z dne 27. septembra 1996,

V ŽELJI zagotoviti, da bi njihova kazenska zakonodaja učinkovito prispevala k zaščiti finančnih interesov Evropskih skupnosti;

OB PRIZNAVANJU pomembnosti Konvencije o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995 za boj proti goljufijam, ki škodijo prihodkom in izdatkom Skupnosti;

OB ZAVEDANJU, da lahko finančne interese Evropskih skupnosti ogrozijo druga kazniva dejanja, zlasti dejanja korupcije, pri katerih so udeleženi nacionalni uradniki in uradniki Skupnosti, odgovorni za zbiranje, upravljanje ali izplačevanje sredstev Skupnosti pod njihovim nadzorom;

OB UPOŠTEVANJU, da so lahko v to korupcijo vpletene osebe z različnim državljanstvom, ki so zaposlene v različnih javnih ustanovah ali organih, in da je v interesu učinkovitega delovanja proti taki mednarodno razvejani korupciji, da se ta dejanja v kazenski zakonodaji držav članic obravnavajo na podoben način;

OB UPOŠTEVANJU, da kazenska zakonodaja o kaznivih dejanjih, povezanih z izvajanjem javnih služb na splošno in posebej s korupcijo, v številnih državah članicah zajema le dejanja, pri katerih so udeleženi nacionalni uradniki, ne zajema pa ravnanja uradnikov Skupnosti ali uradnikov drugih držav članic ali pa ga zajema le v izjemnih primerih.;

OB PREPRIČANJU, da je treba prilagoditi notranjo zakonodajo, če ta ne sankcionira dejanj korupcije, ki škodujejo ali bi verjetno škodovala finančnim interesom Evropskih skupnosti, pri katerih so udeleženi uradniki Skupnosti ali uradniki drugih držav članic;

TUDI OB PREPRIČANJU, da tako prilagajanje notranje zakonodaje glede uradnikov Skupnosti ne sme biti omejeno na dejanja aktivne ali pasivne korupcije, temveč mora zajemati tudi druga kazniva dejanja, ki škodujejo ali bi verjetno škodovala prihodkom ali odhodkom Evropskih skupnosti, vključno s kaznivimi dejanji, pri katerih so udeležene osebe, ki opravljajo najodgovornejše naloge;

CONSIDERING that appropriate rules should also be laid down on jurisdiction and mutual cooperation, without prejudice to the legal conditions under which they are to apply in specific cases, including waiver of immunity where appropriate;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to the criminal acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

ARTICLE 1

Definitions

For the purposes of this Protocol:

1. (a) "official" shall mean any "Community" or "national" official, including any national official of another Member State;

(b) the term "Community official" shall mean:

– any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,

– any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

(c) the term "national official" shall be understood by reference to the definition of "official" or "public officer" in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State the latter shall not be bound to apply the definition of "national official" except in so far as that definition is compatible with its national law;

2. "Convention" shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, of 26 July 1995¹.

ARTICLE 2

Passive corruption

1. For the purposes of this Protocol, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

ARTICLE 3

Active corruption

1. For the purposes of this Protocol, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in

OB UPOŠTEVANJU, da je treba pripraviti tudi ustrezna pravila glede jurisdikcije in medsebojnega sodelovanja brez poseganja v pravne pogoje njihove uporabe v posameznih primerih, vključno z odvzemom imunitete, kadar je to primerno;

OB UPOŠTEVANJU, da je treba zagotoviti, da se lahko ustrezne določbe Konvencije o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995 uporabljajo za kazniva dejanja iz tega protokola,

DOGOVORILE O NASLEDNJIH DOLOČBAH:

ČLEN 1

Pomen izrazov

V tem protokolu:

1. (a) "uradnik" pomeni vsakega uradnika Skupnosti ali nacionalnega uradnika, vključno z vsakim nacionalnim uradnikom druge države članice;

(b) "uradnik Skupnosti" pomeni:

– vsako osebo, ki je uradnik ali drug pogodbeni uslužbenec v smislu kadrovskega predpisa za uradnike Evropskih skupnosti ali pogojev za zaposlitev drugih uslužbencev Evropskih skupnosti,

– vsako osebo, ki jo države članice ali kateri koli javni ali zasebni organ začasno premestijo v Evropske skupnosti in opravlja naloge, enakovredne tistim, ki jih opravljajo uradniki in drugi uslužbenci Evropske skupnosti.

Člani in uslužbenci organov, ustanovljenih v skladu s pogodbami o ustanovitvi Evropskih skupnosti, se obravnavajo kot uradniki Skupnosti, če se zanje ne uporabljajo kadrovske predpisi Evropskih skupnosti ali pogoji za zaposlitev drugih uslužbencev Evropskih skupnosti;

(c) za namene uporabe kazenske zakonodaje države članice "nacionalni uradnik" pomeni "uradnika" ali "javnega uslužbenca" po notranji zakonodaji države članice, v kateri oseba opravlja to funkcijo;

Vendar pa državi članici, ki uvede postopek proti uradniku druge države članice, ni treba uporabiti opredelitve "nacionalnega uradnika" razen toliko, kolikor je ta združljiva z njeno notranjo zakonodajo;

2. "konvencija" pomeni Konvencijo, pripravljeno na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995¹.

ČLEN 2

Pasivna korupcija

1. Po tem protokolu je pasivna korupcija vsako namerno dejanje uradnika, ki neposredno ali po posredniku zahteva ali prejme kakršne koli ugodnosti zase ali za tretjo osebo ali sprejme obljubo za tako ugodnost in v nasprotju s svojimi uradnimi dolžnostmi opravi ali opusti dejanje, za katero je odgovoren ali spada v opravljanje njegove funkcije, na način, ki škoduje ali bi verjetno škodoval finančnim interesom Evropskih skupnosti.

2. Vsaka država članica sprejme potrebne ukrepe, s katerimi zagotovi, da se ravnanje iz odstavka 1 določi kot kaznivo dejanje.

ČLEN 3

Aktivna korupcija

1. Po tem protokolu je aktivna korupcija vsako namerno dejanje kogar koli, ki neposredno ali po posredniku obljublja ali daje v svojem imenu ali v imenu tretje osebe kakršne koli ugodnosti uradniku, da ta v nasprotju s svojimi uradnimi dolžnostmi opravi ali opusti dejanje, za katero je odgovoren ali spada v

¹ OJ No C 316, 27. 11. 1995, p. 49.

¹ UL L 316, 27.11.1995, str. 49.

breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

ARTICLE 4

Assimilation

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences constituting conduct of the type referred to in Article 1 of the Convention committed by its national officials in the exercise of their functions apply similarly in cases where such offences are committed by Community officials in the exercise of their duties.

2. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in paragraph 1 of this Article and in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities respectively in the exercise of their duties.

3. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 2 of this Article may not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Community are covered by the criminal legislation implementing Articles 2 and 3 and paragraph 1 of this Article.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

5. This Protocol shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

ARTICLE 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

ARTICLE 6

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with Articles 2, 3 and 4 where:

(a) the offence is committed in whole or in part within its territory;

opravljanje njegove funkcije, na način, ki škoduje ali bi verjetno škodoval finančnim interesom Evropskih skupnosti.

2. Vsaka država članica sprejme potrebne ukrepe, s katerimi zagotovi, da se ravnanje iz odstavka 1 določi kot kaznivo dejanje.

ČLEN 4

Prilagoditev

1. Vsaka država članica sprejme potrebne ukrepe, s katerimi zagotovi, da se v njeni kazenski zakonodaji opisi kaznivih dejanj, ki ustrezajo ravnanju iz člena 1 konvencije in jih storijo njeni nacionalni uradniki pri opravljanju svojih funkcij, uporabljajo podobno kot v primerih, ko ta kazniva dejanja pri opravljanju svojih nalog storijo uradniki Skupnosti.

2. Vsaka država članica sprejme potrebne ukrepe, s katerimi zagotovi, da se v njeni kazenski zakonodaji opisi kaznivih dejanj iz odstavka 1 tega člena in iz členov 2 in 3, pri katerih so pri opravljanju svojih funkcij udeleženi vladni ministri, izvoljeni člani parlamenta, člani najvišjih sodišč ali člani računskega sodišča, uporabljajo podobno kot v primerih, ko so pri takih kaznivih dejanjih pri opravljanju svojih funkcij udeleženi člani Komisije Evropskih skupnosti, Evropskega parlamenta, Evropskega sodišča oziroma Računskega sodišča Evropskih skupnosti.

3. Kadar je država članica sprejela posebno zakonodajo glede dejanj ali opustitev dejanj, za katere so zaradi svojega posebnega političnega položaja v tej državi članici odgovorni vladni ministri, odstavka 2 tega člena ni treba uporabljati pod pogojem, da država članica zagotovi, da kazenska zakonodaja za izvajanje členov 2 in 3 in odstavka 1 tega člena zajema člane Komisije Evropskih skupnosti.

4. Odstavki 1, 2 in 3 ne posegajo v določbe, ki se v vsaki državi članici uporabljajo za kazenske postopke in določanje pristojnega sodišča.

5. Ta protokol se glede odvzema imunitete uporablja v skladu z ustreznimi določbami pogodb o ustanovitvi Evropskih skupnosti, protokola o privilegijih in imunitetah Evropskih skupnosti, statuta Sodišča Evropskih skupnosti in z besedili, sprejetimi za njihovo izvajanje.

ČLEN 5

Sankcije

1. Vsaka država članica sprejme vse potrebne ukrepe za zagotovitev, da se ravnanje iz členov 2 in 3, udeležba pri njem in napeljevanje k njemu kaznujejo z učinkovitimi, sorazmernimi in odvračilnimi kazenskimi sankcijami, ki vsaj v hujših primerih vključujejo tudi kazen odvzema prostosti, ki lahko vodi v izročitev.

2. Odstavek 1 ne posega v izvajanje disciplinskih pooblastil pristojnih organov proti nacionalnim uradnikom ali uradnikom Skupnosti. Pri določanju sankcije lahko nacionalna kazenska sodišča v skladu z načeli svoje notranje zakonodaje upoštevajo disciplinske sankcije, ki so bile isti osebi za isto ravnanje že izrečene.

ČLEN 6

Jurisdikcija

1. Vsaka država članica sprejme vse potrebne ukrepe za vzpostavitev jurisdikcije za kazniva dejanja, ki jih je določila v skladu s členi 2, 3 in 4:

(a) če je kaznivo dejanje v celoti ali deloma storjeno na njenem ozemlju;

(b) the offender is one of its nationals or one of its officials;

(c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the institutions referred to in Article 4 (2) who is one of its nationals;

(d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State concerned.

2. Each Member State may declare when giving the notification provided for in Article 9 (2) that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c), and (d).

ARTICLE 7

Relation to the Convention

1. Articles 3, 5 (1), (2) and (4) and Article 6 of the Convention shall apply as if there were a reference to the conduct referred to in Articles 2, 3 and 4 of this Protocol.

2. The following provisions of the Convention shall also apply to this Protocol:

- Article 7, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 9 (2) of this Protocol, any declaration within the meaning of Article 7 (2) of the Convention shall also apply to this Protocol,
- Article 9,
- Article 10.

ARTICLE 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point 1 (c), or Articles 2, 3 and 4, or the third indent of Article 7 (2) of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice of the European Communities.

ARTICLE 9

Entry into force

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

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures required under their respective constitutional rules for adopting this Protocol.

3. This Protocol shall enter into force ninety days after the notification provided for in paragraph 2 has been given by the State which, being a Member of the European Union at the time of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

ARTICLE 10

Accession of new Member States

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

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

(b) če je storilec kaznivega dejanja njen državljan ali njen uradnik;

(c) če je kaznivo dejanje storjeno proti eni od oseb iz člena 1 ali članu ene od ustanov iz člena 4(2), ki je njen državljan;

(d) če je storilec kaznivega dejanja uradnik, ki dela za ustanovo Evropske skupnosti ali za organ, ustanovljen v skladu s pogodbami o ustanovitvi Evropskih skupnosti s sedežem v tej državi članici.

2. Vsaka država članica lahko ob uradnem obvestilu iz člena 9(2) izjavi, da ne bo uporabila enega ali več pravil o pristojnosti, določenih v odstavku 1(b), (c), in (d), ali da jih bo uporabila le v posebnih primerih ali pogojih.

ČLEN 7

Razmerje do konvencije

1. Členi 3, 5(1), (2) in (4) ter 6 konvencije se uporabljajo, kot da se sklicujejo na ravnanje iz členov 2, 3 in 4 tega protokola.

2. Za ta protokol se uporabljajo tudi naslednje določbe konvencije:

– člen 7 pod pogojem, da se, razen če ni ob uradnem obvestilu iz člena 9(2) navedeno drugače, vse izjave v smislu člena 7(2) konvencije uporabljajo tudi za ta protokol,

- člen 9,
- člen 10.

ČLEN 8

Sodišče

1. Vse spore med državami članicami o razlagi ali uporabi tega protokola mora najprej obravnavati Svet po postopku, določenem v naslovu VI Pogodbe o Evropski uniji, da bi se dosegla rešitev.

Če se rešitev ne doseže v šestih mesecih, lahko stranka v sporu zadevo predloži Sodišču Evropskih skupnosti.

2. Sodišču se lahko predložijo vsi spori med eno ali več državami članicami in Komisijo Evropskih skupnosti glede člena 1, razen točke 1(c) ali členov 2, 3 in 4 ali tretje alineje člena 7(2) tega protokola, za katere se je izkazalo, da jih ni mogoče rešiti s pogajanjem.

ČLEN 9

Začetek veljavnosti

1. Države članice sprejmejo ta protokol v skladu s svojimi ustavnimi zahtevami.

2. Države članice uradno obvestijo generalnega sekretarja Sveta Evropske unije o izpolnitvi ustavnih zahtev za sprejetje tega protokola.

3. Ta protokol začne veljati 90 dni po uradnem obvestilu, ki ga pošlje država članica, ki je članica Evropske unije na dan, ko Svet sprejme akt o pripravi tega protokola, in zadnja izpolni obveznost iz odstavka 2. Najprej pa lahko začne veljati hkrati s Konvencijo o zaščiti finančnih interesov Evropskih skupnosti.

ČLEN 10

Pristop novih držav članic

1. K temu protokolu lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Besedilo tega protokola v jeziku države pristopnice, ki ga pripravi Svet Evropske unije, je verodostojno.

3. Instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of ninety days.

ARTICLE 11

Reservations

1. No reservation shall be authorized with the exception of those provided for in Article 6 (2).

2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

ARTICLE 12

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done at Dublin on the twenty-seventh day of September in the year one thousand nine hundred and ninety-six in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Statements**made by Member States on the adoption of the Act drawing up the Protocol**

1. Statement by the German delegation:

"The Government of the Federal Republic of Germany states its intention, as regards the Protocol to the Convention on the protection of the European Communities' financial interests (officials), of reaching, through negotiation, an agreement on the competence of the Court of Justice of the European Communities to give preliminary rulings that is the same as that sought for the Convention on the protection of the European Communities' financial interests and by the same date."

2. Joint statement by the Belgian, Luxembourg and Netherlands delegations:

"The Governments of the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg take the view that, for this Protocol to enter into force, a satisfactory solution to the question of the competence to be conferred on the Court of Justice of the European Communities for the interpretation of the Protocol must be found by the end of November 1996, preferably within the framework of the current discussions on the conferral of competence on the Court of Justice to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests."

3. Statement by the Austrian delegation:

"Austria assumes that the question of the competence of the Court of Justice of the European Communities to give preliminary rulings will be settled favourably in the near future, and it will continue to work to that end."

3. Listine o pristopu se deponirajo pri depozitarju.

4. Za vsako državo, ki pristopi k temu protokolu ta začne veljati 90 dni po deponiranju njene listine o pristopu ali na dan začetka veljavnosti tega protokola, če po izteku navedenega 90-dnevnega roka še ni začel veljati.

ČLEN 11

Pridržki

1. Dovoljeni so samo pridržki, predvideni v členu 6(2).

2. Država članica, ki je vložila pridržek, ga lahko kadar koli v celoti ali delno umakne z uradnim obvestilom depozitarju. Pridržek neha veljati z dnem, ko depozitar prejme tako uradno obvestilo.

ČLEN 12

Depozitar

1. Depozitar tega protokola je generalni sekretar Sveta Evropske unije.

2. Depozitar v Uradnem listu Evropskih skupnosti objavi informacije o poteku sprejemanja in pristopanja, izjave in pridržke ter vsa druga uradna obvestila v zvezi s tem protokolom.

V POTRDITEV TEGA so spodaj podpisani pooblaščenca podpisali ta protokol.

Sestavljeno v Dublinu, dne sedemindvajsetega septembra leta tisoč devetsto šestindvetdeset v enem izvorniku, v angleškem, danskem, finskiem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vsako besedilo enako verodostojno, izvornik se deponira v arhivu generalnega sekretariata Sveta Evropske unije.

IZJAVE**DRŽAV ČLANIC OB SPREJETJU AKTA O PRIPRAVI PROTOKOLA**

1. Izjava nemške delegacije:

"Vlada Zvezne republike Nemčije glede Protokola h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti (uradniki) izjavlja, da namerava do istega datuma s pogajanjem doseči dogovor o pristojnosti Sodišča Evropskih skupnosti za predhodno odločanje, ki je enak kot pri Konvenciji o zaščiti finančnih interesov Evropskih skupnosti."

2. Skupna izjava belgijske, luksemburške in nizozemske delegacije:

"Vlade Kraljevine Belgije, Kraljevine Nizozemske in Velikega vojvodstva Luksemburg menijo, da je treba za to, da bo ta protokol začel veljati, do konca leta 1996 najti ustrezno rešitev za pristojnost Sodišča Evropskih skupnosti za razlago protokola, po možnosti v okviru sedanjih razprav o podelitvi pristojnosti Sodišču za predhodno odločanje o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti."

3. Izjava avstrijske delegacije:

"Avstrija pričakuje, da bo vprašanje pristojnosti Sodišča Evropskih skupnosti za predhodno odločanje v bližnji prihodnosti ugodno rešeno, in si bo še naprej prizadevala za to."

PROTOCOL
DRAWN UP ON THE BASIS OF ARTICLE K.3 OF
THE TREATY ON EUROPEAN UNION, ON THE
INTERPRETATION, BY WAY OF PRELIMINARY
RULINGS, BY THE COURT OF JUSTICE OF
THE EUROPEAN COMMUNITIES OF THE
CONVENTION ON THE PROTECTION OF
THE EUROPEAN COMMUNITIES' FINANCIAL
INTERESTS

THE HIGH CONTRACTING PARTIES,
 HAVE AGREED on the following provisions, which shall
 be annexed to the Convention:

ARTICLE 1

The Court of Justice of the European Communities shall have jurisdiction, under the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the Protocol to that Convention drawn up on 27 September 1996¹, hereinafter referred to as "the first Protocol".

ARTICLE 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol to that Convention under the conditions specified in either paragraph 2 (a) or paragraph 2 (b).

2. A Member State making a declaration under paragraph 1 may specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

ARTICLE 3

1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.

2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise pursuant to Article 1.

ARTICLE 4

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

PROTOKOL,
PRIPRAVLJEN NA PODLAGI ČLENA K.3
POGODBE O EVROPSKI UNIJI, O RAZLAGI
KONVENCIJE O ZAŠČITI FINANČNIH
INTERESOV EVROPSKIH SKUPNOSTI
S PREDHODNIM ODLOČANJEM SODIŠČA
EVROPSKIH SKUPNOSTI

VISOKE POGODBENICE
 SO SE DOGOVORILE o naslednjih določbah, ki so pri-
 loga h konvenciji:

ČLEN 1

Sodišče Evropskih skupnosti je pod pogoji tega protokola pristojno za predhodno odločanje o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti in protokola k tej konvenciji, pripravljenega 27. septembra 1996¹, v nadaljevanju "prvi protokol".

ČLEN 2

1. Vsaka država članica lahko z izjavo ob podpisu tega protokola ali kadar koli pozneje sprejme pristojnost Sodišča Evropskih skupnosti za predhodno odločanje o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti in prvega protokola k tej konvenciji v skladu s pogoji, ki so določeni v odstavku 2(a) ali 2(b).

2. Država članica, ki da izjavo v skladu z odstavkom 1, lahko določi, da:

(a) vsako sodišče te države, zoper odločbe katerega po notranjem pravu ni pravnega sredstva, lahko zaprosi Sodišče Evropskih skupnosti za sprejetje predhodne odločbe o vprašanju v zadevi, ki jo obravnava in se nanaša na razlago Konvencije o zaščiti finančnih interesov Evropskih skupnosti in prvega protokola k tej konvenciji, če meni, da je za izrek njegove sodbe potrebna odločitev o tem vprašanju, ali

(b) vsako sodišče te države lahko Sodišče Evropskih skupnosti zaprosi za sprejetje predhodne odločbe o vprašanju v zadevi, ki jo obravnava in se nanaša na razlago Konvencije o zaščiti finančnih interesov Evropskih skupnosti in prvega protokola k tej konvenciji, če meni, da je za izrek njegove sodbe potrebna odločitev o tem vprašanju.

ČLEN 3

1. Uporabljata se Protokol o Statutu Sodišča Evropskih skupnosti in Poslovnik tega sodišča.

2. V skladu s Statutom Sodišča Evropskih skupnosti ima vsaka država članica ne glede na to, ali je dala izjavo na podlagi člena 2 ali ne, pravico predložiti Sodišču Evropskih skupnosti vloge ali pisna stališča v zadevah iz člena 1.

ČLEN 4

1. Države članice sprejmejo ta protokol v skladu s svojimi ustavnimi zahtevami.

¹ OJ No C 313, 23. 10. 1996, p. 1.

¹ UL C 313, 23.10.1996, str. 1.

2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol and communicate to him any declaration made pursuant to Article 2.

3. This Protocol shall enter into force ninety days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Convention on the protection of the European Communities' financial interests.

ARTICLE 5

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

2. Instruments of accession shall be deposited with the depositary.

3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

4. This Protocol shall enter into force with respect to any State that accedes to it ninety days after the date of deposit of its instrument of accession, or on the date of the entry into force of this Protocol if the latter has not yet come into force when the said period of ninety days expires.

ARTICLE 6

Any State that becomes a member of the European Union and accedes to the Convention on the protection of the European Communities' financial interests in accordance with Article 12 thereof shall accept the provisions of this Protocol.

ARTICLE 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.

2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus established shall enter into force in accordance with the provisions of Article 4.

ARTICLE 8

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the Official Journal of the European Communities the notifications, instruments or communications concerning this Protocol.

In witness whereof the undersigned Plenipotentiaries have signed this Protocol.

Done at Brussels, this twenty-ninth day of November in the year one thousand nine hundred and ninety-six, in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

2. Države članice uradno obvestijo depozitarja o izpolnitvi ustavnih zahtev za sprejetje tega protokola in kakršni koli izjavi v skladu s členom 2.

3. Ta protokol začne veljati 90 dni po uradnem obvestilu, ki ga pošlje država članica, ki je članica Evropske unije na dan, ko Svet sprejme akt o pripravi tega protokola, in zadnja izpolni obveznost iz odstavka 2. Najprej pa lahko začne veljati hkrati s Konvencijo o zaščiti finančnih interesov Evropskih skupnosti.

ČLEN 5

1. K temu protokolu lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Listine o pristopu se deponirajo pri depozitarju.

3. Besedilo tega protokola v jeziku države pristopnice, ki ga pripravi Svet Evropske unije, je verodostojno.

4. Za vsako državo, ki pristopi k temu protokolu, ta začne veljati 90 dni od dneva deponiranja njene listine o pristopu ali na dan začetka veljavnosti tega protokola, če po izteku navedenega 90-dnevnega roka še ni začel veljati.

ČLEN 6

Vsaka država, ki postane članica Evropske unije in pristopi h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti v skladu s členom 12 konvencije, sprejme določbe tega protokola.

ČLEN 7

1. Spremembe tega protokola lahko predlaga vsaka država članica, ki je visoka pogodbenica. Predlogi sprememb se pošljejo depozitarju, ta pa jih pošlje Svetu.

2. Spremembe sprejme Svet, ki priporoči državam članicam, da jih sprejmejo v skladu s svojimi ustavnimi zahtevami.

3. Tako sprejete spremembe začnejo veljati v skladu z določbami člena 4.

ČLEN 8

1. Depozitar tega protokola je generalni sekretar Sveta Evropske unije.

2. Depozitar v Uradnem listu Evropskih skupnosti objavi uradna obvestila, listine ali sporočila v zvezi s tem protokolom.

V POTRDITEV TEGA so spodaj podpisani pooblaščenki podpisali ta protokol.

Sestavljeno v Bruslju, devetindvajstega novembra leta tisoč devetsto šestindevetdeset v enem samem izvorniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vsako besedilo enako verodostojno.

DECLARATION

concerning the simultaneous adoption of the Convention on the protection of the European Communities' financial interests and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Communities, of that Convention

The representatives of the Governments of the Member States of the European Union meeting within the Council,

At the time of the signing of the Council Act drawing up the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests,

Wishing to ensure that the said Convention is interpreted as effectively and uniformly as possible as from its entry into force,

Declare themselves willing to take appropriate steps to ensure that the national procedures for adopting the Convention on the protection of the European Communities' financial interests and the Protocol concerning its interpretation are completed simultaneously at the earliest opportunity.

In witness whereof the undersigned Plenipotentiaries have signed this Declaration.

Done at Brussels on the twenty-ninth day of November in the year one thousand nine hundred and ninety-six.

Declaration made pursuant to Article 2

At the time of the signing of this Protocol, the following declared that they accepted the jurisdiction of the Court of Justice of the European Communities in accordance with the procedures laid down in Article 2:

The French Republic, Ireland and the Portuguese Republic in accordance with the procedures laid down in Article 2 (2) (a);

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, in accordance with the procedures laid down in Article 2 (2) (b).

DECLARATION

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands and the Republic of Austria, reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

For the Kingdom of Denmark and the Kingdom of Spain, the declaration(s) will be made at the time of adoption.

IZJAVA

o sočasnem sprejetju Konvencije o zaščiti finančnih interesov Evropskih skupnosti in Protokola o razlagi Konvencije s predhodnim odločanjem Sodišča Evropskih skupnosti

Predstavniki vlad držav članic Evropske unije, ki so se sestali v okviru Sveta,

ob podpisu Akta Sveta o pripravi Protokola o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti,

z željo zagotoviti, da bi se navedena konvencija po začetku veljavnosti razlagala čim učinkoviteje in enotneje,

izjavljajo, da so pripravljene sprejeti ustrezne ukrepe za zagotovitev sočasnega čimprejšnjega dokončanja notranjih pravnih postopkov za sprejetje Konvencije o zaščiti finančnih interesov Evropskih skupnosti in protokola o razlagi konvencije.

V potrditev tega so podpisani pooblaščenici podpisali to izjavo.

Sestavljeno v Bruslju devetindvajsetega novembra leta tisoč devetsto šestindevetdeset.

Izjava na podlagi člena 2

Ob podpisu tega protokola so v nadaljevanju navedene države izjavile, da sprejemajo pristojnost Sodišča Evropskih skupnosti v skladu s postopki iz člena 2:

Francoska republika, Irska in Portugalska republika v skladu s postopki iz člena 2(2)(a); Zvezna republika Nemčija, Helenska republika, Kraljevina Nizozemska, Republika Avstrija, Republika Finska in Kraljevina Švedska v skladu s postopki iz člena 2(2)(b).

IZJAVA

Zvezna republika Nemčija, Helenska republika, Kraljevina Nizozemska in Republika Avstrija si pridržujejo pravico, da v svoji notranji zakonodaji določijo, da bo sodišče, kadar se v zadevi, o kateri se odloča pred nacionalnim sodiščem, postavi vprašanje, ki se nanaša na razlago Konvencije o zaščiti finančnih interesov Evropskih skupnosti in prvega Protokola k tej konvenciji in zoper odločbo ni nobenega pravnega sredstva, zavezano zadevo predložiti Evropskemu sodišču. Za Kraljevino Dansko in Kraljevino Španijo se izjava(e) da(jo) ob sprejetju.

**SECOND PROTOCOL,
DRAWN UP ON THE BASIS OF ARTICLE K.3 OF
THE TREATY ON EUROPEAN UNION,
TO THE CONVENTION ON THE PROTECTION
OF THE EUROPEAN COMMUNITIES' FINANCIAL
INTERESTS**

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

REFERRING to the Act of the Council of the European Union of 19 June 1997;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 in combating fraud affecting Community revenue and expenditure;

RECOGNIZING the importance of the Protocol of 27 September 1996 to the said Convention in the fight against corruption damaging or likely to damage the European Communities' financial interests;

AWARE that the financial interests of the European Communities may be damaged or threatened by acts committed on behalf of legal persons and acts involving money laundering;

CONVINCED of the need for national law to be adapted, where necessary, to provide that legal persons can be held liable in cases of fraud or active corruption and money laundering committed for their benefit that damage or are likely to damage the European Communities' financial interests;

CONVINCED of the need for national law to be adapted, where necessary, to penalize acts of laundering of proceeds of fraud or corruption that damage or are likely to damage the European Communities' financial interests and to make it possible to confiscate proceeds of such fraud and corruption;

CONVINCED of the need for national law to be adapted, where necessary, in order to prevent the refusal of mutual assistance solely because offences covered by this Protocol concern or are considered as tax or customs duty offences;

NOTING that cooperation between Member States is already covered by the Convention on the protection of the European Communities' financial interests of 26 July 1995, but that there is a need, without prejudice to obligations under Community law, for appropriate provision also to be made for cooperation between member States and the Commission to ensure effective action against fraud, active and passive corruption and related money laundering damaging or likely to damage the European Communities' financial interests, including exchange of information between the Member States and the Commission;

CONSIDERING that, in order to encourage and facilitate the exchange of information, it is necessary to ensure adequate protection of personal data;

CONSIDERING that the exchange of information should not hinder ongoing investigations and that it is therefore necessary to provide for the protection of investigation secrecy;

CONSIDERING that appropriate provisions have to be drawn up on the competence of the Court of Justice of the European Communities;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to certain acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

**DRUGI PROTOKOL,
PRIPRAVLJEN NA PODLAGI ČLENA K.3
POGODBE O EVROPSKI UNIJI, H KONVENCIJI
O ZAŠČITI FINANČNIH INTERESOV EVROPSKIH
SKUPNOSTI**

VISOKE POGODBENICE tega protokola, države članice Evropske unije, SO SE,

SKLICUJOČ SE na Akt Sveta Evropske unije z dne 19. junija 1997;

V ŽELJI zagotoviti, da bi njihova kazenska zakonodaja učinkovito prispevala k zaščiti finančnih interesov Evropskih skupnosti;

OB PRIZNAVANJU pomena Konvencije o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995 v boju proti goljufijam, ki vplivajo na prihodke in odhodke Skupnosti;

OB PRIZNAVANJU pomena Protokola z 27. septembra 1996 k tej konvenciji pri boju proti korupciji, ki škoduje ali bi verjetno škodovala finančnim interesom Evropskih skupnosti;

OB ZAVEDANJU, da lahko finančnim interesom Evropskih skupnosti škodujejo ali bi lahko škodovala dejanja, storjena v imenu pravnih oseb, in dejanja pranja denarja;

OB PREPRIČANJU, da je treba notranje pravo po potrebi prilagoditi tako, da pravne osebe odgovarjajo za dejanja goljufije ali aktivne korupcije in pranja denarja, ki so storjena v njihovo korist in škodujejo ali bi verjetno škodovala finančnim interesom Evropskih skupnosti;

OB PREPRIČANJU, da je treba notranje pravo po potrebi prilagoditi tako, da se določijo kazni za dejanja pranja premoženjskih koristi, pridobljenih z goljufijo ali korupcijo, ki škodujejo ali bi lahko škodovala finančnim interesom Evropskih skupnosti, in da se predvidi možnost zapore premoženjske koristi, pridobljene z goljufijo in korupcijo;

OB PREPRIČANJU, da je treba notranje pravo po potrebi prilagoditi tako, da se preprečuje zavrnitev medsebojne pomoči samo zato, ker se kazniva dejanja iz tega protokola nanašajo na davčna ali carinska kazniva ravnanja ali štejejo za taka dejanja;

OB UGOOTOVITVI, da je sodelovanje med državami članicami že urejeno s Konvencijo o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995, da pa je treba brez poseganja v obveznosti iz zakonodaje Skupnosti ustrezno urediti sodelovanje med državami članicami in Komisijo, da se zagotovi učinkovito ukrepanje proti goljufiji, aktivni in pasivni korupciji in s tem povezanim pranjem denarja, ki škodujejo ali bi verjetno škodovali finančnim interesom Evropskih skupnosti, vključno z izmenjavo podatkov med državami članicami in Komisijo;

OB UPOŠTEVANJU, da je treba za spodbujanje in olajševanje poenostavitve izmenjave podatkov zagotoviti ustrezno varstvo osebnih podatkov;

OB UPOŠTEVANJU, da izmenjava podatkov ne sme ovirati preiskav, ki potekajo in da je zato treba zagotoviti tajnost preiskovalnih postopkov;

OB UPOŠTEVANJU, da je treba pripraviti ustrezne predpise o pristojnosti Sodišča Evropskih skupnosti;

OB UPOŠTEVANJU, da bi se morale ustrezne določbe Konvencije o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995 uporabljati tudi za določena dejanja, ki jih zajema ta protokol,

DOGOVORILE O NASLEDNJIH DOLOČBAH:

ARTICLE 1

Definitions

For the purposes of this Protocol:

(a) "Convention" shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests, of 26 July 1995¹;

(b) "fraud" shall mean the conduct referred to in Article 1 of the Convention;

(c) – "passive corruption" shall mean the conduct referred to in Article 2 of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the convention on the protection of the European Communities' financial interests, of 27 September 1996²,

– "active corruption" shall mean the conduct referred to in Article 3 of the same Protocol;

(d) "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations;

(e) "money laundering" shall mean the conduct as defined in the third indent of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering³, related to the proceeds of fraud, at least in serious cases, and of active and passive corruption.

ARTICLE 2

Money laundering

Each Member State shall take the necessary measures to establish money laundering as a criminal offence.

ARTICLE 3

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on

- a power of representation of the legal person, or
- an authority to take decisions on behalf of the legal person, or
- an authority to exercise control within the legal person,

as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.

ČLEN 1

Pomen izrazov

V tem protokolu izraz:

(a) "konvencija" pomeni Konvencijo, pripravljeno na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti z dne 26. julija 1995¹;

(b) "goljufija" pomeni ravnanje iz člena 1 Konvencije;

(c) – "pasivna korupcija" pomeni ravnanje iz člena 2 Protokola, pripravljenega na podlagi člena K.3 Pogodbe o Evropski uniji h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti z dne 27. septembra 1996²,

– "aktivna korupcija" pomeni ravnanje iz člena 3 istega protokola;

(d) "pravna oseba" pomeni vsak subjekt, ki ima tak status po veljavnem notranjem pravu, razen držav in drugih oseb javnega prava, ki izvajajo javna pooblastila, in javnih mednarodnih organizacij;

(e) "pranje denarja" pomeni ravnanje, ki je opredeljeno v tretji alineji člena 1 Direktive Sveta št. 91/308/EGS z dne 10. junija 1991 o preprečevanju uporabe finančnega sistema za pranje denarja³ in se nanaša na premoženjsko korist, pridobljeno z goljufijo vsaj v hujših primerih ter z aktivno in pasivno korupcijo.

ČLEN 2

Pranje denarja

Vsaka država članica sprejeme vse potrebne ukrepe za zagotovitev, da se pranje denarja določi kot kaznivo dejanje.

ČLEN 3

Odgovornost pravnih oseb

1. Vsaka država članica sprejme vse potrebne ukrepe za zagotovitev, da pravne osebe odgovarjajo za goljufijo, aktivno korupcijo in pranje denarja, ki jih kdor koli stori v njihovo korist kot posameznik ali kot član organa pravne osebe, ki ima vodstveno funkcijo v tej pravni osebi, na podlagi:

- pooblastila za zastopanje pravne osebe ali
- pristojnosti za sprejemanje odločitev v imenu pravne osebe ali
- pristojnosti za nadzor v pravni osebi,

kakor tudi za soudeležbo pri goljufiji, aktivni korupciji ali pranju denarja ali za napeljevanje k njim ali za poskus storitve take goljufije.

2. Vsaka država članica sprejme tudi vse potrebne ukrepe za zagotovitev, da poleg dejanj iz odstavka 1 pravna oseba odgovarja tudi, če oseba iz odstavka 1 z neizvajanjem kontrole ali nadzora omogoči, da njej podrejena oseba stori dejanje goljufije ali aktivne korupcije ali pranja denarja v korist te pravne osebe.

3. Odgovornost pravne osebe v skladu z odstavkoma 1 in 2 ne izključuje kazenskih postopkov zoper fizične osebe, ki so storile dejanje goljufije, aktivne korupcije ali pranja denarja ali sodelovale pri njih ali napeljevale k njim.

¹ OJ No C 316, 27. 11. 1995, p. 49.

² OJ No C 313, 23. 10. 1996, p. 2.

³ OJ No L 166, 28. 6. 1991, p. 77.

¹ UL št. C 316, 27. 11. 1995, str. 49.

² UL št. C 313, 23. 10. 1996, str. 2.

³ UL št. L 166, 28. 6. 1991, str. 77.

ARTICLE 4

Sanctions for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (2) is punishable by effective, proportionate and dissuasive sanctions or measures.

ARTICLE 5

Confiscation

Each Member State shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the Member State in accordance with its national law.

ARTICLE 6

Cooperation with the Commission of the European Communities

A Member State may not refuse to provide mutual assistance in respect of fraud, active and passive corruption and money laundering for the sole reason that it concerns or is considered as a tax or customs duty offence.

ARTICLE 7

Cooperation with the Commission of the European Communities

1. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering.

To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

ČLEN 4

Sankcije zoper pravne osebe

1. Vsaka država članica sprejme potrebne ukrepe za zagotovitev, da se lahko pravne osebe, odgovorne za dejanja iz člena 3(1), kaznujejo z učinkovitimi, sorazmernimi in odvračilnimi sankcijami, ki lahko vključujejo kazenske ali nekazenske denarne sankcije, lahko pa tudi druge sankcije, kot so:

- (a) izguba upravičenja do javnih podpor ali pomoči;
- (b) začasna ali stalna prepoved opravljanja gospodarske dejavnosti;
- (c) odreditev sodnega nadzora;
- (d) sodno odrejena likvidacija.

2. Vsaka država članica sprejme potrebne ukrepe za zagotovitev, da se lahko pravne osebe, odgovorne za dejanja po členu 3(2), kaznujejo z učinkovitimi, sorazmernimi in odvračilnimi sankcijami ali ukrepi.

ČLEN 5

Zaplemba

Vsaka država članica sprejme potrebne ukrepe za zagotovitev, da omogočita zaseg in brez poseganja v pravice dobrovernih tretjih oseb zaplemba ali odvzem predmetov ali premoženjske koristi, pridobljenih z goljufijo, aktivno in pasivno korupcijo ter pranjem denarja, ali premoženja v višini take premoženjske koristi. Država članica z zaseženimi ali zaplenjenimi predmeti, premoženjskimi koristmi ali drugim premoženjem ravna po svojem notranjem pravu.

ČLEN 6

Sodelovanje s Komisijo Evropskih skupnosti

Država članica ne sme zavrnila medsebojne pomoči v zvezi z goljufijo, aktivno in pasivno korupcijo ter pranjem denarja samo zato, ker se nanašajo na davčna ali carinska kazniva dejanja ali štejejo za taka dejanja.

ČLEN 7

Sodelovanje s Komisijo Evropskih skupnosti

1. Države članice in Komisija sodelujejo pri boju proti goljufiji, aktivni in pasivni korupciji ter pranju denarja.

V ta namen Komisija zagotovi tako tehnično in operativno pomoč, kot jo pristojni državni organi potrebujejo za lažje usklajevanje preiskav.

2. Pristojni organi držav članic lahko izmenjavajo podatke s Komisijo za lažje ugotavljanje dejstev in za učinkovito ukrepanje zoper goljufijo, aktivno in pasivno korupcijo ter pranje denarja. Komisija in pristojni državni organi pri vsaki zadevi upoštevajo zahteve tajnosti preiskovalnih postopkov in varstva podatkov. V ta namen lahko država članica pri posredovanju podatkov Komisiji določi posebne pogoje, pod katerimi lahko Komisija ali druga država članica, ki se ji podatki posredujejo, te podatke uporablja.

ARTICLE 8

Data protection responsibility for the Commission

The Commission shall ensure that, in the context of the exchange of information under Article 7 (2), it shall observe, as regards the processing of personal data, a level of protection equivalent to the level of protection set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹.

ARTICLE 9

Publication of data protection rules

The rules adopted concerning the obligations under Article 8 shall be published in the Official Journal of the European Communities.

ARTICLE 10

Transfer of data to other Member States and third countries

1. Subject to any conditions referred to in Article 7 (2), the Commission may transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any other Member State. The Commission shall inform the Member State which supplied the information of its intention to make such as transfer.

2. The Commission may, under the same conditions, transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any third country provided that the Member State which supplied the information has agreed to such transfer.

ARTICLE 11

Supervisory authority

Any authority designated or created for the purpose of exercising the function of independent data protection supervision over personal data held by the Commission pursuant to its functions under the Treaty establishing the European Community, shall be competent to exercise the same function with respect to personal data held by the Commission by virtue of this Protocol.

ARTICLE 12

Relation to the Convention

1. The provisions of Articles 3, 5 and 6 of the Convention shall also apply to the conduct referred to in Article 2 of this Protocol.

2. The following provisions of the Convention shall also apply to this Protocol:

– Article 4, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 16 (2) of this Protocol, any declaration within the meaning of Article 4 (2) of the Convention, shall also apply to this Protocol,

– Article 7, on the understanding that the *ne bis in idem* principle also applies to legal persons, and that, unless otherwise indicated at the time the notification provided for in Article 16 (2) of this Protocol is being given, any declaration within the meaning of Article 7 (2), of the Convention shall also apply to this Protocol,

- Article 9,
- Article 10.

ČLEN 8

Odgovornost Komisije za varstvo podatkov

Komisija v zvezi z izmenjavo podatkov po členu 7(2) zagotovi, da se pri obdelavi osebnih podatkov spoštuje stopnja varstva, določena z Direktivo Evropskega parlamenta in Sveta št. 95/46/ES z dne 24. oktobra 1995 o varstvu posameznikov pri obdelavi osebnih podatkov in o prostem pretoku takih podatkov¹.

ČLEN 9

Objava predpisov o varstvu podatkov

Sprejeti predpisi v zvezi z obveznostmi iz člena 8 se objavijo v Uradnem listu Evropskih skupnosti.

ČLEN 10

Posredovanje podatkov drugim državam članicam in tretjim državam

1. Ob upoštevanju pogojev iz člena 7(2) lahko Komisija pri izvajanju svojih nalog po členu 7 osebne podatke, ki jih je prejela od države članice, pošlje kateri koli drugi državi članici. Komisija o tem, da jih namerava poslati, obvesti državo članico, od katere jih je prejela.

2. Komisija lahko pri izvajanju svojih nalog po členu 7 pod istimi pogoji osebne podatke, ki jih je prejela od države članice, pošlje kateri koli tretji državi, če se država članica, ki ji je podatke posredovala, s tem strinja.

ČLEN 11

Nadzorni organ

Za opravljanje enake naloge v zvezi z osebnimi podatki, ki jih ima Komisija po tem protokolu, je pristojen kateri koli organ, imenovan ali ustanovljen za opravljanje neodvisnega nadzora nad varstvom osebnih podatkov, ki jih ima Komisija v skladu s svojimi nalogami po Pogodbi o ustanovitvi Evropskih skupnosti.

ČLEN 12

Razmerje do konvencije

1. Določbe členov 3, 5 in 6 konvencije se uporabljajo tudi za ravnanje iz člena 2 tega protokola.

2. Za ta protokol se uporabljajo tudi naslednje določbe konvencije:

– člen 4 pod pogojem, da se, razen če ni v uradnem obvestilu iz člena 16(2) tega protokola navedeno drugače, vse izjave iz člena 4(2) Konvencije uporabljajo tudi za ta protokol,

– člen 7 pod pogojem, da se, razen če ni v uradnem obvestilu iz člena 16(2) tega protokola navedeno drugače, načelo *ne bis in idem* uporablja tudi za pravne osebe in da se vse izjave iz člena 7(2) konvencije uporabljajo tudi za ta protokol,

- člen 9,
- člen 10.

¹ OJ No L 281, 23. 11. 1995, p. 31.

¹ UL št. L 281, 23.11.1995, str. 31.

ARTICLE 13

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice by a party to the dispute.

2. Any dispute between one or more Member States and the Commission concerning the application of Article 2 in relation to Article 1 (e), and Article 7, 8, 10 and 12 (2), fourth indent of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice, after the expiry of a period of six months from the date on which one of the parties has notified the other of the existence of a dispute.

3. The Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, of 29 November 1996¹, shall apply to this Protocol, on the understanding that a declaration made by a Member State pursuant to Article 2 of that Protocol is also valid regarding this Protocol unless the Member State concerned makes a declaration to the contrary when giving the notification provided for in Article 16 (2) of this Protocol.

ARTICLE 14

Non-contractual liability

For the purposes of this Protocol, the non-contractual liability of the Community shall be governed by the second paragraph of Article 215 of the Treaty establishing the European Community. Article 178 of the same Treaty shall apply.

ARTICLE 15

Judicial control

1. The Court of Justice shall have jurisdiction in proceedings instituted by any natural or legal person against a decision of the Commission addressed to that person or which is of direct and individual concern to that person, on ground of infringement of Article 8 or any rule adopted pursuant thereto, or misuse of powers.

2. Articles 168 a (1) and (2), 173, fifth paragraph, 174, first paragraph, 176, first and second paragraphs, 185 and 186 of the Treaty establishing the European Community, as well as the Statute of the Court of Justice of the European Community, shall apply, mutatis mutandis.

ARTICLE 16

Entry into force

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

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures required under their respective constitutional rules for adopting this Protocol.

3. This Protocol shall enter into force ninety days after the notification provided for in paragraph 2, by the State which, being a member of the European Union on the date of the adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

ČLEN 13

Sodišče

1. Vse spore med državami članicami o razlagi ali uporabi tega protokola mora najprej obravnavati Svet po postopku, določenem v naslovu VI Pogodbe o Evropski uniji, da bi se dosegla rešitev.

Če se rešitev ne doseže v šestih mesecih, lahko stranka v sporu zadevo predloži Sodišču Evropskih skupnosti.

2. Po šestih mesecih od dneva, ko katera koli stranka o sporu obvesti drugo, se lahko Sodišču predložijo tudi vsi spori med eno ali več državami članicami in Komisijo glede uporabe člena 2 v zvezi s členom 1(e), členi 7, 8, in 10 ter četrto alineo člena 12(2) tega protokola, če se izkaže, da jih ni mogoče rešiti s pogajanjem.

3. Za ta protokol se uporablja tudi Protokol, pripravljen na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti z dne 29. novembra 1996¹ pod pogojem, da izjava države članice v skladu s členom 2 navedenega protokola velja tudi za ta protokol, razen če država članica v svojem uradnem obvestilu iz člena 16(2) tega protokola ne izjavi drugače.

ČLEN 14

Nepogodbena odgovornost

Za namene tega protokola nepogodbena odgovornost Komisije ureja drugi odstavek člena 215 Pogodbe o ustanovitvi Evropske skupnosti. Uporablja se člen 178 iste pogodbe.

ČLEN 15

Sodni nadzor

1. V postopkih, ki jih zaradi kršitve člena 8 ali katerega koli predpisa, sprejetega v skladu s tem členom, ali zlorabe pooblastil sproži katera koli fizična ali pravna oseba zoper odločitev Komisije, ki je naslovljena na to osebo ali se neposredno in posamično nanaša nanjo, je pristojno Sodišče.

2. Smiselno se uporabljajo člen 168 a(1) in (2), peti odstavek člena 173, prvi odstavek člena 174, prvi in drugi odstavek člena 176, člena 185 in 186 Pogodbe o ustanovitvi Evropske skupnosti ter Statut Sodišča Evropskih skupnosti.

ČLEN 16

Začetek veljavnosti

1. Države članice sprejmejo ta protokol v skladu s svojimi ustavnimi zahtevami.

2. Države članice uradno obvestijo generalnega sekretarja Sveta Evropske unije o izpolnitvi ustavnih zahtev, za sprejetje tega protokola.

3. Ta protokol začne veljati 90 dni po uradnem obvestilu, ki ga pošlje država, ki je članica Evropske unije na dan, ko Svet sprejme Akt o pripravi tega protokola, in zadnja izpolni obveznost iz odstavka 2. Če konvencija na ta dan še ni začela veljati, začne protokol veljati z dnem začetka veljavnosti konvencije.

¹ OJ No C 151, 20. 5. 1997, p. 1.

¹ UL.št. C 151, 20.5.1997, str. 1.

4. However, the application of Article 7 (2) shall be suspended if, and for so long as, the relevant institution of the European Communities has not complied with its obligation to publish the data protection rules pursuant to Article 9 or the terms of Article 11 concerning the supervisory authority have not been complied with.

ARTICLE 17

Accession of new Member States

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

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of ninety days.

ARTICLE 18

Reservations

1. Each Member State may reserve the right to establish the money laundering related to the proceeds of active and passive corruption as a criminal offence only in serious cases of active and passive corruption. Any Member State making such a reservation shall inform the depositary, giving details of the scope of the reservation, when giving the notification provided for in Article 16 (2). Such a reservation shall be valid for a period of five years after the said notification. It may be renewed once for a further period of five years.

2. The Republic of Austria may, when giving its notification referred to in Article 16 (2), declare that it will not be bound by Articles 3 and 4. Such a declaration shall cease to have effect five years after the date of the adoption of the act drawing up this Protocol.

3. No other reservations shall be authorized, with the exception of those provided for in Article 12 (2), first and second indent.

ARTICLE 19

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

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

Done at Brussels, this nineteenth day of June in the year one thousand nine hundred and ninety-seven, in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

4. Uporaba člena 7(2) se odloži, dokler ustrežna ustanova Evropskih skupnosti ne izpolni obveznosti objave predpisov o varstvu podatkov iz člena 9 ali dokler niso izpolnjeni pogoji iz člena 11 glede nadzornega organa.

ČLEN 17

Pristop novih držav članic

1. K temu protokolu lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Besedilo tega protokola v jeziku države pristopnice, ki ga sestavi Svet Evropske unije, je verodostojno.

3. Listine o pristopu se deponirajo pri depozitarju.

4. Za vsako državo, ki pristopi k temu protokolu, ta začne veljati 90 dni od dneva deponiranja njene listine o pristopu ali na dan začetka veljavnosti tega protokola, če po izteku navedenega 90-dnevnega roka ta še ni začel veljati.

ČLEN 18

Pridržki

1. Vsaka država članica si lahko pridrži pravico, da pranje denarja, ki se nanaša na premoženjsko korist, pridobljeno z aktivno in pasivno korupcijo, določi kot kaznivo dejanje samo v hujših primerih aktivne in pasivne korupcije. Država članica, ki ima pridržek, o podrobnostih obsega pridržka obvesti depozitarja, ko pošlje uradno obvestilo iz člena 16(2). Pridržek velja pet let od navedenega uradnega obvestila. Lahko se enkrat podaljša za nadaljnjih pet let.

2. Republika Avstrija lahko ob uradnem obvestilu iz člena 16(2) izjavi, da je člena 3 in 4 ne zavezujeta. Taka izjava preneha veljati pet let po dnevu sprejetja akta o pripravi tega protokola.

3. Drugi pridržki, razen pridržkov iz prve in druge alineje člena 12(2), niso dovoljeni.

ČLEN 19

Depozitar

1. Depozitar tega protokola je generalni sekretar Sveta Evropske unije.

2. Depozitar v Uradnem listu Evropskih skupnosti objavi informacije o poteku sprejemanja in pristopanja, izjave in pridržke ter vsa druga uradna obvestila v zvezi s tem protokolom.

V POTRDITEV TEGA so spodaj podpisani pooblaščenici podpisali ta protokol.

Sestavljeno v Bruslju, dne devetnajstega junija leta tisoč devetsto sedemindvetdeset v enem izvorniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vsako besedilo enako verodostojno, izvornik je deponiran v arhivu generalnega sekretariata Sveta Evropske unije.

Joint Declaration on Article 13 (2)

The Member States declare that the reference in Article 13 (2) to Article 7 of the Protocol shall apply only to cooperation between the Commission on the one hand and the Member States on the other and is without prejudice to Member States' discretion in supplying information in the course of criminal investigations.

Commission Declaration on Article 7

The Commission accepts the tasks entrusted to it under Article 7 of the Second Additional Protocol to the Convention on the protection of the European Communities' financial interests.

Skupna izjava o členu 13 (2)

Države članice izjavljajo, da se sklicevanje na člen 7 iz člena 13 (2) tega protokola uporablja samo za sodelovanje med Komisijo na eni strani in državami članicami na drugi ter ne posega v pravico držav članic, da po lastni presoji dajejo podatke med preiskovanjem kaznivih dejanj.

Izjava komisije o členu 7

Komisija sprejema naloge, ki so ji bile zaupane po členu 7 drugega dodatnega protokola h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti.

3. člen

Republika Slovenija ob deponiranju listine o pristopu poda naslednji izjavi:

V zvezi s prvim odstavkom člena 7 Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, Republika Slovenija izjavlja, da je prvi odstavek člena 7 ne zavezuje v primeru točke b) drugega odstavka člena 7 konvencije.

V skladu s prvim odstavkom člena 2 Protokola, pripravljenega na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, Republika Slovenija izjavlja, da sprejema pristojnost Sodišča v skladu s pogoji iz točke b) drugega odstavka člena 2 protokola.

4. člen

Za izvajanje konvencije in protokolov skrbi Ministrstvo za pravosodje.

5. člen

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

Št. 212-05/06-54/1

Ljubljana, dne 1. februarja 2007

EPA 1230-IV

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

27. Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o izročitvi med državami članicami Evropske unije (MKIDEU)

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 Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o izročitvi med državami članicami Evropske unije (MKIDEU)**

Razlašam Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o izročitvi med državami članicami Evropske unije (MKIDEU), ki ga je sprejel Državni zbor Republike Slovenije na seji 1. februarja 2007.

Št. 001-22-23/07
Ljubljana, dne 9. februarja 2007

dr. Janez Drnovšek l.r.
Predsednik
Republike Slovenije

Z A K O N**O RATIFIKACIJI KONVENCIJE, PRIPRAVLJENE NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O IZROČITVI MED DRŽAVAMI ČLANICAMI EVROPSKE UNIJE (MKIDEU)**

1. člen

Ratificira se Konvencija, pripravljena na podlagi člena K.3 Pogodbe o Evropski uniji, o izročitvi med državami članicami Evropske unije, sklenjena 27. septembra 1996 v Dublinu.

2. člen

Besedilo konvencije se v izvirniku v angleškem jeziku in v prevodu v slovenskem jeziku glasi:

C O N V E N T I O N**DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, RELATING TO EXTRADITION BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION**

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

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation for the achievement of these objectives,

STRESSING that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly in so far as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

BEARING IN MIND that by Act of 10 March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

TAKING ACCOUNT of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

K O N V E N C I J A,**PRIPRAVLJENA NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O IZROČITVI MED DRŽAVAMI ČLANICAMI EVROPSKE UNIJE**

VISOKE POGODBENICE te konvencije, države članice Evropske unije

SO SE –

OB SKLICEVANJU na Akt Sveta Evropske unije z dne 27. septembra 1996,

Z ŽELJO, da bi izboljšale pravosodno sodelovanje med državami članicami v kazenskih zadevah, tako glede pregona kot glede izvrševanja izrečenih kazni,

OB UPOŠTEVANJU pomena izročitve v pravosodnem sodelovanju za uresničevanje teh namenov,

OB POUČENJU, da so države članice zainteresirane, da se postopki izročitve izvajajo učinkovito in hitro, kolikor njihovi sistemi vladanja temeljijo na demokratičnih načelih in spoštujejo obveznosti, določene v Konvenciji za varstvo človekovih pravic in temeljnih svoboščinah, podpisani v Rimu 4. novembra 1950,

OB IZRAŽANJU zaupanja v strukturo in delovanje svojih pravosodnih sistemov in ob zmožnosti vseh držav članic, da zagotovijo pošteno sojenje,

OB UPOŠTEVANJU, da je z Aktom 10. marca 1995 Svet oblikoval Konvencijo o poenostavljenem postopku izročitve med državami članicami Evropske unije,

OB UPOŠTEVANJU interesa sklenitve konvencije med državami članicami Evropske unije, s katero se dopolni Evropska konvencija o izročitvi z dne 13. decembra 1957 in druge veljavne tozadevne konvencije,

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

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

– of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the "European Convention on Extradition"),

– the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the "European Convention on the Suppression of Terrorism"),

– the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are party to that Convention, and

– the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the "Benelux Treaty") in relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

Article 2

Extraditable offences

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2 (2) of the European Convention on Extradition and Article 2 (2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

Article 3

Conspiracy and association to commit offences

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

(a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

or

OB UPOŠTEVANJU, da se določbe omenjenih konvencij še naprej uporabljajo za vse zadeve, ki niso zajete v tej konvenciji –

DOGOVORILE O NASLEDNJEM:

ČLEN 1

Splošne določbe

1. Namen te konvencije je dopolniti naslednje določbe in med državami članicami Evropske unije olajšati njihovo uporabo:

– Evropske konvencije o izročitvi z 13. decembra 1957 (v nadaljevanju "Evropska konvencija o izročitvi"),

– Evropske konvencije o zatiranju terorizma z 27. januarja 1977 (v nadaljevanju: "Evropska konvencija o zatiranju terorizma"),

– Konvencije z 19. junija 1990 o uporabi Schengenskega sporazuma z dne 14. junija 1985 o postopni odpravi nadzora na skupnih mejah v okviru odnosov med državami članicami, ki so podpisnice navedene konvencije, in

– prvega poglavja Konvencije o izročitvi in medsebojni pomoči v kazenskih zadevah med Kraljevino Belgijo, Velikim vojvodstvom Luksemburg in Kraljevino Nizozemsko z 27. junija 1962, kakor je spremenjena s Protokolom z dne 11. maja 1974 (v nadaljevanju "Beneluška pogodba") v okviru odnosov med državami članicami Gospodarske unije Beneluks.

(2) Odstavek 1 ne vpliva na uporabo ugodnejših določb dvostranskih ali večstranskih sporazumov med državami članicami, niti ne vpliva, kot to določa člen 28 (3) Evropske konvencije o izročitvi, na dogovore o izročitvi na podlagi enotnih ali vzajemnih zakonov, ki na ozemlju ene države članice zagotavljajo izvrševanje nalogov za prijetje, izdanih na ozemlju druge.

ČLEN 2

Kazniva dejanja, za katera se dovoli izročitev

1. Izročitev se dovoli za kazniva dejanja, ki se po pravu države članice prosilke kaznujejo z odvzemanjem prostosti ali z varnostnim ukrepom z najvišjo zagroženo kaznijo najmanj 12 mesecev in po pravu zaprosene države članice z odvzemanjem prostosti ali varnostnim ukrepom z najvišjo zagroženo kaznijo najmanj šest mesecev.

2. Izročitve ni mogoče zavrniti z utemeljitvijo, da pravo zaprosene države ne predvideva enake vrste prostostnega varnostnega ukrepa kakor pravo države prosilke.

3. Člen 2 (2) Evropske konvencije o izročitvi in člen 2 (2) beneluške pogodbe se uporabljata tudi, če je za določena kazniva dejanja zagrožena denarna kazen.

ČLEN 3

Dogovarjanje in združevanje z namenom storitve kaznivih dejanj

1. Če je kaznivo dejanje, za katero se zahteva izročitev, v pravu države članice prosilke določeno kot dogovor za kaznivo dejanje ali združevanje z namenom storitve kaznivega dejanja in je zanj najvišja zagrožena kazen odvzem prostosti ali varnostni ukrep najmanj 12 mesecev, izročitve ni mogoče zavrniti z utemeljitvijo, da po pravu zaprosene države ista dejanja niso kazniva, če gre za dogovor ali združevanje z namenom storitve:

(a) enega ali več kaznivih dejanj iz členov 1 in 2 Evropske konvencije o zatiranju terorizma; ali

(b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2) (b) of the European Convention on Extradition or in Article 11 (2) (b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

Article 4

Order for deprivation of liberty in a place other than a penitentiary institution

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12 (2) (a) of the European Convention on Extradition or Article 11 (2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

Article 5

Political offences

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 18 (2), declare that it will apply paragraph 1 only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

and

(b) offences of conspiracy or association – which correspond to the description of behaviour referred to in Article 3 (4) – to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. The provisions of Article 3 (2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.

4. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

(b) katerega koli drugega kaznivega dejanja, za katero je najvišji zagrožen odvzem prostosti ali varnostni ukrep najmanj 12 mesecev, na področju nezakonite trgovine z mamili ali drugih oblik organiziranega kriminala ali drugih nasilnih dejanj zoper življenje, telesno nedotakljivost ali osebno prostost ali ustvarjanju splošne nevarnosti za ljudi.

2. Za namene ugotavljanja, ali gre za dogovarjanje ali združevanje za storitev katerega od kaznivih dejanj iz odstavka 1 (a) ali (b) tega člena, zaprosena država članica upošteva informacije, vsebovane v nalogu za prijete ali nalogu, ki ima enake pravne posledice, ali v obsodbi osebe, za katero se zahteva izročitev, pa tudi v izjavi o kaznivih dejanjih, ki jo predvideva člen 12 (2) (b) Evropske konvencije o izročitvi ali v členu 11 (2) (b) beneluške pogodbe.

3. Ob notifikaciji iz člena 18 (2) lahko katera koli država članica izjavi, da si pridržuje pravico, da ne uporabi odstavka 1, ali da ga uporabi pod določenimi posebnimi pogoji.

4. Država članica, ki si je pridržala pravico na podlagi odstavka 3, bo dovolila izročitev po pogojih iz člena 2 (1) zaradi ravnanja katere koli osebe, ki je udeležena pri storitvi enega ali več kaznivih dejanj skupine oseb s skupnim ciljem na področjih terorizma v smislu členov 1 in 2 Evropske konvencije o zatiranju terorizma, nezakonite trgovine z drogami in drugih oblik organiziranega kriminala ali drugih nasilnih dejanj zoper življenje, telesno nedotakljivost ali osebno prostost ali ustvarjanje splošne nevarnosti za ljudi, za kar je najvišja zagrožena kazen odvzem prostosti ali varnostni ukrep najmanj 12 mesecev, tudi če ta oseba ne sodeluje pri dejanski izvedbi zadevnega kaznivega dejanja ali dejanj; taka udeležba mora biti naklepna in storjena ob poznavanju bodisi cilja in splošne kaznive dejavnosti skupine bodisi njenega namena, da stori zadevno kaznivo dejanje ali dejanja.

ČLEN 4

Nalog za odvzem prostosti v kraju, ki ni kazenski zavod

Izročitve zaradi pregona ni mogoče zavrniti z utemeljitvijo, da je prošnji priložen, v skladu s členom 12 (2) (a) Evropske konvencije o izročitvi ali s členom 11 (2)(a) beneluške pogodbe, nalog pravosodnih organov države članice prisilke za odvzem prostosti osebi v kraju, ki ni kazenski zavod.

ČLEN 5

Politična kazniva dejanja

1. Za namene uporabe te konvencije zaprosena država članica ne more šteti nobenega kaznivega dejanja za politično kaznivo dejanje, kaznivo dejanje povezano s političnim kaznivim dejanjem ali politično motivirano kaznivo dejanje.

2. Vsaka država članica lahko ob notifikaciji iz člena 18 (2) izjavi, da bo uporabila odstavek 1 samo v zvezi s:

(a) kaznivimi dejanji iz členov 1 in 2 Evropske konvencije o zatiranju terorizma; in

(b) kaznivimi dejanji dogovarjanja ali združevanja – ki ustreza opisu ravnanja iz člena 3 (4) – z namenom storitve enega ali več kaznivih dejanj iz členov 1 in 2 Evropske konvencije o zatiranju terorizma.

3. Določbe člena 3 (2) Evropske konvencije o izročitvi in člena 5 Evropske konvencije o zatiranju terorizma ostajajo nespremenjene.

4. Pridržki, izraženi v skladu s členom 13 Evropske konvencije o zatiranju terorizma, se ne uporabljajo za izročitev med državami članicami.

Article 6
Fiscal offences

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.

2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7
Extradition of nationals

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.

2. When giving the notification referred to in Article 18 (2), any Member State may declare that it will not grant extradition of its nationals or will authorize it only under certain specified conditions.

3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However, such reservations may be renewed for successive periods of the same duration.

Twelve months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

Article 8
Lapse of time

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

Article 9
Amnesty

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

Article 10
Offences other than those upon which the request for extradition is based

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

ČLEN 6
Fiskalna kazniva dejanja

1. Glede davkov, dajatev, carin in menjave se izročitev dovoli pod pogoji te konvencije, Evropske konvencije o izročitvi in beneluške pogodbe v zvezi s kaznivimi dejanji, ki ustrezajo podobnemu kaznivemu dejanju po pravu zaprosene države članice.

2. Izročitve ni mogoče zavrniti z utemeljitvijo, da pravo zaprosene države članice ne nalaga enake vrste davkov ali dajatev ali nima enake vrste določb v zvezi z davki, dajatvami, carinami in menjavo kakor pravo države članice prosilke.

3. Ob notifikaciji iz člena 18 (2) lahko vsaka država članica izjavi, da bo dovolila izročitev v zvezi s fiskalnim kaznivim dejanjem samo za dejanja ali opustitve, ki bi lahko predstavljala kaznivo dejanje v zvezi s trošarino, davkom na dodano vrednost ali carinami.

ČLEN 7
Izročitev državljanov

1. Izročitve ni mogoče zavrniti z utemeljitvijo, da je zahtevana oseba državljan zaprosene države v smislu člena 6 Evropske konvencije o izročitvi.

2. Ob notifikaciji iz člena 18 (2) lahko vsaka država članica izjavi, da ne bo dovolila izročitve svojih državljanov ali da jo bo dovolila samo pod določenimi posebnimi pogoji.

3. Pridrški iz odstavka 2 veljajo pet let od prvega dne uporabe te konvencije s strani zadevne države članice. Vendar se ti pridrški lahko obnovijo za naslednja enako dolga obdobja.

Dvanajst mesecev pred dnevom izteka pridrška depozitar obvesti zadevno državo članico o izteku.

Najpozneje tri mesece pred iztekom vsakega petletnega obdobja država članica obvesti depozitarja, da ohranja svoj pridršek, ga spreminja, da bi omilila pogoje za izročitev, ali ga umika.

Če notifikacija iz prejšnjega odstavka ni bila opravljena, depozitar obvesti zadevno državo članico, da se šteje, da je njen pridršek avtomatično podaljšan za obdobje 6 mesecev, pred iztekom katerega mora država članica opraviti notifikacijo. Če ob izteku tega roka ni notifikacije, pridršek zapade.

ČLEN 8
Zastaranje

1. Izročitve ni mogoče zavrniti z utemeljitvijo, da je pregon ali kaznovanje osebe po pravu zaprosene države članice zastaralo.

2. Zaprošena država članica ima možnost, da ne uporabi odstavka 1, če gre za izročitev zaradi kaznivih dejanj, za katera je navedena država članica pristojna po lastnem kazenskem pravu.

ČLEN 9
Amnestija

Izročitev se ne dovoli za kaznivo dejanje, za katerega v zaproseni državi članici velja amnestija, če je navedena država za pregon tega kaznivega dejanja pristojna po lastnem kazenskem pravu.

ČLEN 10
Kazniva dejanja, ki niso zajeta v prošnji za izročitev

1. Izročeno osebo se lahko za kazniva dejanja, storjena pred njeno predajo, ki niso zajeta v prošnji za izročitev, brez pristanka zaprosene države članice:

(a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

(b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;

(c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty;

(d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1 (d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1 (d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6 (3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6 (3).

Article 11

Presumption of consent of the requested Member State

Each Member State, when giving the notification referred to in Article 18 (2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14 (1) (a) of the European Convention on Extradition and Article 13 (1) (a) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10 (1) still applies.

Article 12

Re-extradition to another Member State

1. Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18 (2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union (1) provides otherwise or where the person concerned consents to be re-extradited to another Member State.

Article 13

Central authority and transmission of documents by facsimile

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18 (2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

(a) preganja ali ji sodi, če za kazniva dejanja ni zagrožen odvzem prostosti;

(b) preganja ali ji sodi, kolikor kazenski postopek ne povzroči uporabe ukrepa omejitve osebne svobode;

(c) zanjo velja kazen ali ukrep, ki ne vključuje odvzema prostosti, vključno z denarno kaznijo ali ukrepom namesto nje, tudi če bi omejeval osebno svobodo;

(d) preganja, ji sodi, se pripre z namenom izvršitve obsodbe ali varnostnega ukrepa ali se ji drugače omeji osebna svoboda, če se je po predaji izrečno odpovedala uporabi načela specialnosti za posamezna dejanja, storjena pred predajo.

2. Odpoved izročene osebe iz odstavka 1 (d) se poda pred pristojnimi pravosodnimi organi države članice prosilke in se po postopku, določenem z notranjim pravom te države, zapiše v zapisnik.

3. Vsaka država članica sprejme potrebne ukrepe za zagotovitev, da je odpoved iz odstavka 1 (d) podana tako, da se vidi, da jo je oseba podala prostovoljno in pri polni zavesti o posledicah. V ta namen ima izročena oseba pravico do zagovornika.

4. Če je država članica dala izjavo v skladu s členom 6 (3), se odstavki 1 (a), (b) in (c) tega člena ne uporabljajo v zvezi s fiskalnimi kaznivimi dejanji, z izjemo tistih, ki so navedena v členu 6 (3).

ČLEN 11

Domneva o soglasju zaprosene države članice

Vsaka država članica lahko ob notifikaciji iz člena 18 (2) ali v katerem koli drugem času izjavi, da soglašja, da se v odnosih z drugimi državami članicami, ki so podale enako izjavo, za namene člena 14 (1) (a) Evropske konvencije o izročitvi in člena 13 (1) (a) beneluške pogodbe domneva, da je soglasje dano, razen če se ne izrazi drugače, ko dovoli izročitev v posameznem primeru.

Kadar v posameznem primeru država članica izrazi, da ne sme šteti, da je njeno soglasje dano, se še vedno uporablja člen 10 (1).

ČLEN 12

Nadaljna izročitev v tretjo državo članico

1. Člen 15 Evropske konvencije o izročitvi in člen 14 (1) beneluške pogodbe se ne uporabljata za prošnje za nadaljno izročitev iz ene države članice v drugo.

2. Ob notifikaciji iz člena 18 (2) lahko država članica izjavi, da se člen 15 Evropske konvencije o izročitvi in člen 14 (1) beneluške pogodbe še nadalje uporabljata, razen če člen 13 Konvencije o poenostavljenem postopku izročitve med državami članicami¹ določa drugače, ali če zadevna oseba privoli, da se izroči v tretjo državo članico.

ČLEN 13

Osrednji organ in pošiljanje dokumentov po faksu

1. Vsaka država članica določi osrednji organ ali, če to zahteva njena ustavna ureditev, osrednje organe, odgovorne za pošiljanje in sprejemanje prošenj za izročitev in potrebne dokumentacije, ter tudi vse ostale uradne korespondence v zvezi s prošnjami za izročitev, razen če ni v tej konvenciji določeno drugače.

2. Ob notifikaciji iz člena 18 (2) vsaka država članica navede organ ali organe, ki jih je določila v skladu z odstavkom 1 tega člena. Depozitarja obvesti o vseh morebitnih spremembah glede svoje določitve.

¹ UL št. C 78, 30.3.1995, str. 1.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

Article 14

Supplementary information

When giving the notification referred to in Article 18 (2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorized to communicate and receive such supplementary information.

Article 15

Authentication

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

Article 16

Transit

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

(a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited,
- the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment,
- the nature and the legal description of the offence,
- a description of the circumstances in which the offence was committed, including the date and place;

3. Prošnja za izročitev in listine, navedene v odstavku 1, se lahko pošljejo po faksu. Vsak osrednji organ je opremljen s faksom za oddajanje in sprejemanje takšnih listin in zagotavlja, da brezhibno deluje.

4. Da bi se zagotovila avtentičnost in zaupnost prenosa, se v napravo za faksiranje, ki jo ima osrednji organ, umesti kriptografska naprava, ki deluje, kadar se ta oprema uporablja v namene tega člena.

Država članice se medsebojno posvetujejo o praktičnih dogovorih za uporabo tega člena.

5. Da se zajamči avtentičnost izročitvene dokumentacije, osrednji organ države prosilke v svoji prošnji izjavi, da je oddana dokumentacije, ki je priložena prošnji, enaka izvornikom in opiše številčenje strani. Če zaprosena država izpodbija, da dokumenti ustrezajo izvornikom, lahko njen osrednji organ zahteva od osrednjega organa države prosilke, da v razumnem roku priskrbi izvornike dokumentacije ali verodostojne kopije dokumentacije bodisi po diplomatski poti bodisi po kakšni drugi medsebojno dogovorjeni poti.

ČLEN 14

Dodatne informacije

Ob notifikaciji iz člena 18 (2) ali sicer ob kateri koli drugi priložnosti lahko vsaka država članica izjavi, da lahko v okviru odnosov z drugimi državami članicami, ki so podale enako izjavo, njihovi pravosodni organi ali drugi pristojni organi, kadar je to ustrezno, zaprosijo za dodatne informacije v skladu s členom 13 Evropske konvencije o izročitvi ali s členom 12 beneluške pogodbe neposredno pravosodne organe ali druge organe, pristojne v kazenskih postopkih zoper osebo, katere izročitev se zahteva.

Ko poda takšno izjavo, država članica določi svoje pravosodne organe ali druge pristojne organe, ki so pooblaščen za sporočanje in sprejemanje takšnih dodatnih informacij.

ČLEN 15

Overovitev

Vsi dokumenti ali kopije dokumentov, ki se pošljejo zaradi izročitve, so oproščeni overovitve ali katerih koli drugi formalnosti, razen če to izrecno zahtevajo določbe te konvencije, Evropske konvencije o izročitvi ali beneluške pogodbe. V takem primeru se šteje, da so kopije dokumentov overjene, če jih kot verodostojno kopijo potrdijo pravosodni organi, ki so izdali izvornike, ali pa osrednji organi, navedeni v členu 13.

ČLEN 16

Tranzit

V primeru tranzita čez ozemlje ene države članice v drugo državo članico pod pogoji, določenimi v členu 21 Evropske konvencije o izročitvi in členu 21 beneluške pogodbe, se uporabljajo naslednje določbe:

(a) vsaka prošnja za tranzit mora vsebovati zadostne informacije, da tranzitna država članica lahko oceni prošnjo in uporabi ustrezne prisilne ukrepe pri izvedbi tranzita izročene osebe.

V ta namen zadostujejo naslednje informacije:

- identiteta osebe, ki se izroča,
- obstoj naloga za prijetje ali drugega dokumenta z enakimi pravnimi posledicami ali izvršljive sode,
- vrsta in zakonski opis kaznivega dejanja,
- opis okoliščin, v katerih je bilo storjeno kaznivo dejanje, vključno z datumom in krajem;

(b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;

(c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);

(d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

Article 17 Reservations

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

Article 18 Entry into force

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

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

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

Article 19 Accession of new Member States

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

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18 (4) shall apply to acceding Member States.

Article 20 Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

(b) prošnja za tranzit in informacije iz točke (a) se lahko pošljejo v tranzitno državo članico na kakršen koli način, ki omogoča ohranitev pisnega zapisa. Tranzitna država članica svojo odločitev sporoči na enak način;

(c) če pri letalskem prevozu, pri katerem ni načrtovan postanek, pride do nenačrtovanega postanka, država prosilka zagotovi tranzitni državi članici informacije, določene v točki (a);

(d) ob upoštevanju določb te konvencije, zlasti členov 3, 5 in 7, se še naprej uporabljajo določbe člena 21(1), (2), (5) in (6) Evropske konvencije o izročitvi in člena 21 (1) beneluške pogodbe.

ČLEN 17 Pridržki

Glede te konvencije je mogoče vložiti le tiste pridržke, ki so v njej izrecno določeni.

ČLEN 18 Začetek veljavnosti

1. To konvencijo sprejmejo države članice v skladu s svojimi ustavnimi pravili.

2. Države članice obvestijo Generalnega sekretarja Sveta Evropske unije, da so končani postopki, ki so v skladu z njihovimi ustavnimi pravili potrebni za sprejem te konvencije.

3. Ta konvencija začne veljati 90 dni po obvestilu iz odstavka 2, ki ga poda država članica Evropske unije, ki do takrat, ko Svet sprejme akt o tej konvenciji, zadnja opravi to formalnost.

4. Do začetka veljavnosti te konvencije lahko vsaka država članica ob obvestilu iz odstavka 2 ali ob katerem koli drugem času izjavi, da se, v kolikor se nanaša nanjo, ta konvencija uporablja v njenih odnosih z državami članicami, ki so podale enako izjavo. Takšne izjave začnejo veljati 90 dni po njihovem deponiranju.

5. Ta konvencija se uporablja samo za prošnje, vložene po dnevu začetka njene veljavnosti ali uporabe med zaproseno državo članico in državo članico prosilko.

ČLEN 19 Pristop novih držav članic

1. K tej konvenciji lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Besedilo te konvencije je v jeziku države pristopnice, ki ga pripravi Svet Evropske unije, enako verodostojno.

3. Listine o pristopu se deponirajo pri depozitarju.

4. Ta konvencija začne veljati za vse države, ki k njej pristopijo, 90 dni po deponiranju listin o pristopu, ali z dnem začetka veljavnosti te konvencije, če še ni začela veljati ob izteku omenjenega roka 90 dni.

5. Če ta konvencija v času deponiranja njihovih pristopnih listin še ne velja, se za države članice pristopnice uporablja člen 18 (4).

ČLEN 20 Depozitar

1. Generalni sekretar Sveta Evropske unije je depozitar te konvencije.

2. Depozitar v Uradnem listu Evropskih skupnosti objavi obvestila o napredku pri potrditvah in pristopih, izjavah in pridržkih ter vsa druga uradna obvestila, ki se nanašajo na to konvencijo.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to each of the Member States.

V potrditev tega so spodaj podpisani pooblaščenči podpisali to konvencijo.

Sestavljeno v edinem izvorniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer so besedila v vseh teh jezikih enako verodostojna, izvornik pa je deponiran v arhivih generalnega sekretariata Sveta Evropske unije.

ANNEX

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognized by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28 September 1954 and by the Protocol relating to the Status of Refugees of 31 January 1967.

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that – as indicated during their negotiations on accession to the Schengen agreements – they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6 (1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

Declaration on the concept of "nationals"

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3 (4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7 (2) of this Convention.

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities in defence of freedom,
- and
- distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

PRILOGA

Skupna izjava o pravici do azila

Države članice izjavljajo, da ta konvencija ne posega niti v pravico do azila, kakor jo priznavajo njihove ustave, niti v uporabo določb Konvencije o statusu beguncev z dne 28. julija 1951, kakor jo dopolnjujeta Konvencija o statusu oseb brez državljanstva z dne 28. septembra 1954 in Protokol o statusu beguncev z dne 31. januarja 1967.

Izjava Danske, Finske in Švedske glede člena 7 te konvencije

Danska, Finska in Švedska potrjujejo, – kot so naznanile v času pogajanj o pristopu k Schengenskim sporazumom – da se v odnosih z drugimi državami članicami, ki zagotavljajo enako obravnavanje, ne bodo sklicevale na svoje izjave na podlagi člena 6 (1) Evropske konvencije o izročitvi, da bi zavrnile izročitve rezidentov iz ne-nordijskih držav.

Izjava o pojmu "državljan"

Svet jemlje na znanje zavezo držav članic, da uporabijo Konvencijo Sveta Evrope z dne 21. marca 1983 o transferju obsojenih oseb v zvezi z državljanji vsake države članice, v smislu člena 3 (4) navedene konvencije.

Zaveza držav članic iz prvega odstavka ne posega v uporabo člena 7 (2) te konvencije.

Izjava Grčije glede člena 5

Grčija tolmači člen 5 s stališča odstavka 3 navedenega člena. To tolmačenje zagotavlja skladnost s pogoji grške ustave, ki:

- izrecno prepoveduje izročitev tujca, ki se preganja zaradi delovanja, namenjenega varstvu svobode
- in
- razlikuje med političnimi in tako imenovanim mešanimi kaznivimi dejanji, za katera pravila niso enaka kot za politična kazniva dejanja.

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

Council declaration on the follow up to the Convention

The Council declares:

- (a) that it considers that there should be a periodic review, on the basis of information supplied by the Member States, of:
- the implementation of this Convention,
 - the functioning of this Convention after its entry into force,
 - the possibility for Member States to amend the reservations entered in the framework of this Convention with a view to easing the conditions for extradition or withdrawing its reservations,
 - the general functioning of extradition procedures between the Member States;
- (b) that it will consider, one year after entry into force of this Convention, whether jurisdiction should be given to the Court of Justice of the European Communities.

Izjava Portugalske o izročitvi, ki se zahteva za kaznivo dejanje, za katero je zagrožena kazen dosmrtnega zopora ali priporni nalog

Po vložitvi pridržka glede Evropske konvencije o izročitvi iz leta 1957 v tem smislu, da se ne dovoli izročitev oseb, ki se zahtevajo zaradi kaznivega dejanja, za katero je zgrožena kazen dosmrtni zapor ali priporni nalog, Portugalska izjavlja, da bo v primeru, ko se zahteva izročitev zaradi kaznivega dejanja, za katerega je zagrožena kazen dosmrtni zapor ali varnostni ukrep, v skladu z ustreznimi določbami Ustave Republike Portugalske, kot jih tolmači njeno Ustavno sodišče, izročitev dovolila le, če bo štela, da so podana zadostna zagotovila države članice, ki vlaga zahtevo, da bo v skladu s svojo zakonodajo in prakso v zvezi z izvrševanjem kazni spodbudila uporabo katerih koli ukrepov pomilostitve, do katerih bi zahtevana oseba utegnila biti upravičena.

Portugalska ponovno potrjuje veljavnost obvez, ki jih je prevzela z obstoječimi mednarodnimi sporazumi, katerih pogodbenica je, zlasti člena 5 Konvencije o pristopu Portugalske h Konvenciji o uporabi Schengenskega sporazuma.

Izjava Sveta o nadaljevanju dejavnosti v zvezi s Konvencijo

Svet izjavlja:

- (a) da meni, da so potrebni redni pregledi, na podlagi obvestil, ki jih podajo države članice, glede:
- izvajanja te konvencije,
 - funkcioniranja te konvencije po začetku njene veljavnosti,
 - možnosti, da države članice spremenijo pridržke, vložene v okviru te konvencije, z namenom ublažitve pogojev za izročitev ali umika svojih pridržkov,
- splošnega funkcioniranja postopkov izročitve med državami članicami;
- (b) da bo eno leto po začetku veljavnosti konvencije obravnaval vprašanje, ali bi bilo treba dati jurisdikcijo Sodišču Evropskih skupnosti.

3. člen

Republika Slovenija ob deponiranju listine o pristopu poda naslednje izjave:

V zvezi s členom 7(2) Republika Slovenija izjavlja, da skladno s 47. členom Ustave Republike Slovenije ne bo izročala državljanov Republike Slovenije.

V zvezi s členom 3(3) si Republika Slovenija pridržuje pravico, da ne uporabi odstavka 1 v primeru, da kaznivo dejanje, za katero se zahteva izročitev, ni kaznivo po pravu Republike Slovenije.

V skladu s členom 12 (2) Republika Slovenija izjavlja, da se 15. člen Evropske konvencije o izročitvi še nadalje uporablja, razen v primerih, ko Konvencija o poenostavljenem postopku izročitve med državami članicami določa drugače, ali če oseba soglaša s svojo izročitvijo v tretjo državo članico.

V skladu s členom 13 (2) Republika Slovenija izjavlja, da je osrednji organ, odgovoren za pošiljanje in sprejemanje prošenj za izročitev in potrebne dokumentacije, Ministrstvo za pravosodje Republike Slovenije.

V skladu s členom 14 Republika Slovenija izjavlja, da lahko v okviru odnosov z drugimi državami članicami, ki so podale enako izjavo, njihovi pravosodni organi ali drugi pristojni organi, kadar je to ustrezno, zaprosijo za dodatne informacije v skladu s členom 13 Evropske konvencije o izročitvi neposredno pristojne pravosodne organe.

V skladu s členom 18 (4) Republika Slovenija izjavlja, da se ta konvencija uporablja v odnosih z državami članicami, ki so podale enake izjave, 90 dni po njihovem deponiranju.

4. člen

Za izvajanje konvencije skrbi Ministrstvo za pravosodje.

5. člen

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

Št. 700-01/06-92/1

Ljubljana, dne 1. februarja 2007

EPA 1233-IV

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

28. Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o poenostavljenem postopku izročitve med državami članicami Evropske unije (MKPPI)

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 Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o poenostavljenem postopku izročitve med državami članicami Evropske unije (MKPPI)**

Razlašam Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o poenostavljenem postopku izročitve med državami članicami Evropske unije (MKPPI), ki ga je sprejel Državni zbor Republike Slovenije na seji 1. februarja 2007.

Št. 001-22-22/07

Ljubljana, dne 9. februarja 2007

dr. Janez Drnovšek l.r.
Predsednik
Republike Slovenije

Z A K O N**O RATIFIKACIJI KONVENCIJE, PRIPRAVLJENE NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O POENOSTAVLJENEM POSTOPKU IZROČITVE MED DRŽAVAMI ČLANICAMI EVROPSKE UNIJE (MKPPI)**

1. člen

Ratificira se Konvencija, pripravljena na podlagi člena K.3 Pogodbe o Evropski uniji, o poenostavljenem postopku izročitve med državami članicami Evropske unije, sklenjena 10. marca 1995 v Bruslju.

2. člen

Besedilo konvencije se v izvorniku v angleškem jeziku in v prevodu v slovenskem jeziku glasi:

C O N V E N T I O N**DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, ON SIMPLIFIED EXTRADITION PROCEDURE BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION**

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

REFERRING to the Council Act of 9 March 1995,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation in order to achieve these objectives,

CONVINCED of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

NOTING that, in a large number of extradition proceedings, the person claimed consents to his surrender,

NOTING that it is desirable to reduce to a minimum, in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

CONSIDERING that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

K O N V E N C I J A,**PRIPRAVLJENA NA PODLAGI ČLENA K.3 POGODBE O EVROPSKI UNIJI, O POENOSTAVLJENEM POSTOPKU IZROČITVE MED DRŽAVAMI ČLANICAMI EVROPSKE UNIJE**

VISOKE POGODBENICE te konvencije, države članice Evropske unije SO SE –

SKLICUJOČ SE na Akt Sveta z dne 9. marca 1995,

V ŽELJI izboljšati sodelovanje med državami članicami v kazenskih zadevah glede postopkov in izvrševanja kazni,

OB SPOZNAVANJU pomena izročitve na področju pravosodnega sodelovanja zaradi doseganja teh ciljev,

PREPRIČANE o potrebi po poenostavitvi izročitvenih postopkov, kolikor je to združljivo z njihovimi temeljnimi pravnimi načeli, vključno z načeli Evropske konvencije o varstvu človekovih pravic in temeljnih svoboščin,

OB UGOTOVITVI, da v velikem številu izročitvenih postopkov oseba soglaša s predajo,

OB UGOTOVITVI, da je v takšnih primerih zaželeno v kar največji meri skrajšati čas, potreben za izročitev in čas pripora zaradi izročitve,

GLEDE NA dejstvo, da je zaradi tega smotrno olajšati uporabo Evropske konvencije o izročitvi z 13. decembra 1957 s poenostavitvijo in izboljšavo izročitvenih postopkov,

CONSIDERING that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.

2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

Article 2

Obligation to surrender persons

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

Article 3

Conditions for surrender

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12 (1) of the present Convention.

2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

Article 4

Information to be provided

1. The following information from the requesting State shall be regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5 (2):

- (a) the identity of the person sought;
- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- (d) the nature and legal description of the offence;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (f) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

Article 5

Consent and agreement

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.

2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

GLEDE NA dejstvo, da se določbe Evropske konvencije o izročitvi še naprej uporabljajo za vse zadeve, ki jih ta konvencija ne ureja –

DOGOVORILE O NASLEDNJEM:

ČLEN 1

Splošne določbe

1. Cilj te konvencije je olajšati uporabo Evropske konvencije o izročitvi med državami članicami Evropske unije z dopolnitvijo njenih določb.

2. Odstavek 1 ne vpliva na uporabo ugodnejših določb iz dvostranskih in večstranskih sporazumov, ki veljajo med državami članicami.

ČLEN 2

Obveznost predaje oseb

Države članice se zavezujejo, da si medsebojno po ponostavljenih postopkih, predvidenih s to konvencijo, predajo osebe, ki se jih išče zaradi izročitve, ob upoštevanju soglasja takšnih oseb in privolitve zaprosene države, danih v skladu s to konvencijo.

ČLEN 3

Pogoji predaje

1. Na podlagi člena 2 se vsako osebo, za katero obstaja zahteva po začasnem odvzemu prostosti v skladu s členom 16 Evropske konvencije o izročitvi, preda v skladu s členi 4 do 11 in členom 12(1) te konvencije.

2. V primeru predaje po odstavku 1 ni treba predložiti prošnje za izročitev ali dokumentacije iz člena 12 Evropske konvencije o izročitvi.

ČLEN 4

Informacije, ki jih je treba zagotoviti

1. Kot zadostne se štejejo naslednje informacije, ki jih mora posredovati država prosilka v vednost prijete osebi zaradi uporabe členov 6 in 7 in pristojnim organom iz člena 5(2):

- (a) identiteta iskane osebe;
- (b) organ, ki zahteva odvzem prostosti;
- (c) obstoj naloga za prijetje ali drug dokument z enakim pravnim učinkom ali obstoj izvršljive sodbe;
- (d) vrsto in zakonski opis kaznivega dejanja;
- (e) opis okoliščin, v katerih je bilo storjeno kaznivo dejanje, vključno s časom, krajem in načinom udeležbe iskane osebe;
- (f) če je mogoče, posledice kaznivega dejanja.

2. Ne glede na odstavek 1 se lahko zahteva dodatne informacije, če so informacije iz omenjenega odstavka nezadostne, zaradi česar pristojni organ zaprosene države ne more dovoliti predaje.

ČLEN 5

Soglasje in odobritev

1. Prijeta oseba izrazi svoje soglasje v skladu s členoma 6 in 7.

2. Pristojni organ zaprosene države izda odobritev v skladu s svojimi nacionalnimi postopki.

Article 6

Information to be given to the person

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

Article 7

Establishing consent

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the arrested person shall have the right to legal counsel.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16 (4) of the European Convention on Extradition.

Article 8

Notification of consent

1. The requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.

2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

Article 9

Renunciation of entitlement to the speciality rule

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

- (a) consents to extradition; or
- (b) consents to extradition and expressly renounces his entitlement to the speciality rule.

ČLEN 6

Informiranje osebe

Če se osebi, ki se jo išče zaradi izročitve, odvzame prostost na ozemlju druge države članice, obvesti pristojni organ v skladu z nacionalnim pravom to osebo o zahtevi, ki se nanaša nanjo in o možnosti njenega soglasja k predaji državi prosilki po poenostavljenem postopku.

ČLEN 7

Ugotavljanje soglasja

1. Prijeta oseba izrazi svoje soglasje in, kjer je to primerno, izrecno odpoved pravici do načela specialnosti pred pristojnim pravosodnim organom zaprosene države v skladu z nacionalnim pravom te države.

2. Vsaka država članica sprejme potrebne ukrepe, s katerimi zagotovi, da se soglasje in, kjer je to primerno, odpoved iz odstavka 1 ugotovita na način, na podlagi katerega je razvidno, da ju je oseba izrazila prostovoljno in pri polnem zavedanju posledic. V ta namen ima prijeta oseba pravico do zagovornika.

3. Soglasje in, kjer je to primerno, odpoved po odstavku 1 se po postopku, določenem z notranjim pravom zaprosene države, zapišeta v zapisnik.

4. Soglasja in, kjer je to primerno, odpovedi po odstavku 1 se ne more preklicati. Ob deponiranju svojih listin o ratifikaciji, sprejetju, odobritvi ali pristopu lahko države članice v izjavi navedejo, da se lahko soglasje in, kjer je to primerno, odpoved prekliche v skladu s predpisi, ki se uporabljajo na podlagi nacionalnega prava. V tem primeru se čas med obvestilom o soglasju in njegovem preklicu ne upošteva pri ugotavljanju rokov, predvidenih v členu 16(4) Evropske konvencije o izročitvi.

ČLEN 8

Obvestilo o soglasju

1. Zaprošena država nemudoma obvesti državo prosilko o soglasju osebe. Da bi lahko država prosilka po potrebi predložila prošnjo za izročitev, jo zaprošena država najkasneje v 10 dneh po začasnem odvzemu prostosti obvesti o soglasju ali nesoglasju osebe.

2. Obveščanje iz odstavka 1 poteka neposredno med pristojnimi organi.

ČLEN 9

Odpoved pravici do načela specialnosti

Vsaka država članica lahko ob deponiranju svojih listin o ratifikaciji, sprejetju, odobritvi ali pristopu ali ob katerem koli drugem času izjavi, da določbe iz člena 14 Evropske konvencije o izročitvi ne veljajo, če oseba v skladu s členom 7 te konvencije:

- (a) soglašja z izročitvijo; ali
- (b) soglašja z izročitvijo in se izrecno odpove pravici do načela specialnosti.

Article 10

Notification of the extradition decision

1. Notwithstanding the rules laid down in Article 18 (1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

Article 11

Deadline for surrender

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10 (2).

2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.

3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10 (1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.

4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.

Article 12

Consent given after expiry of the deadline laid down in Article 8 or in other circumstances

1. Where an arrested person has given his consent after expiry of the deadline of 10 days laid down in Article 8, the requested State:

– shall implement the simplified procedure as provided for in this Convention if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by it,

– may use this simplified procedure if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has reached it in the meantime.

2. Where no request for provisional arrest has been made, and where consent has been given after receipt of a request for extradition, the requested State may avail itself of the simplified procedure as provided for in this Convention.

3. Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall state whether it intends to apply paragraph 1, second indent, and paragraph 2 and, if so, under what conditions.

Article 13

Re-extradition to another Member State

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration of the Member State provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to the re-extradition of this person to another Member State, unless the aforementioned declaration provides otherwise.

ČLEN 10

Obvestilo o odločitvi o izročitvi

1. Ne glede na določbe v členu 18(1) Evropske konvencije o izročitvi potekata sporočanje o izročitvenih odločitvah po poenostavljenem postopku in posredovanje informacij glede poenostavljenega izročitvenega postopka neposredno med pristojnim organom zaprosene države in organom države, ki je zahtevala začasen odvzem prostosti.

2. Odločitev iz odstavka 1 se sporoči najkasneje v roku 20 dni po datumu soglasja osebe.

ČLEN 11

Rok za predajo

1. Predaja se opravi v roku 20 dni od datuma, ko je bila odločitev o izročitvi sporočena v skladu s pogoji, določenimi v členu 10(2).

2. Če je oseba v priporu, se jo po izteku roka, določenega v odstavku 1, izpusti na prostost na ozemlju zaprosene države.

3. Če se osebe zaradi višje sile ne more predati v roku, določenem v odstavku 1, organ iz člena 10(1) o tem obvesti drug organ. Oba organa se dogovorita o novem dnevu predaje. V takem primeru se predajo opravi v roku 20 dni po dogovorjenem novem dnevu. Če je oseba po izteku tega roka še vedno v priporu, se jo izpusti.

4. Odstavki 1, 2 in 3 tega člena se ne uporabljajo, če želi zaprosena država uporabiti člen 19 Evropske konvencije o izročitvi.

ČLEN 12

Soglasje dano po izteku roka iz člena 8 ali v drugačnih okoliščinah

1. Če da prijeta oseba svoje soglasje po izteku 10-dnevnega roka, določenega v členu 8, zaprosena država:

– izvede poenostavljen postopek, predviden v tej konvenciji, če še ni prejela zahteve za izročitev v smislu člena 12 Evropske konvencije o izročitvi;

– lahko uporabi poenostavljen postopek, če ji je bila med tem dostavljena prošnja za izročitev v smislu člena 12 Evropske konvencije o izročitvi.

2. Če prošnja za začasen pripor ni bila podana ali če je bilo soglasje dano po prejemu prošnje za izročitev, lahko zaprosena država uporabi poenostavljen postopek, kot ga predvideva ta konvencija.

3. Ob deponiranju svoje listine o ratifikaciji, sprejetju, odobritvi ali pristopu navede vsaka država članica, ali in pod kakšnimi pogoji ima namen uporabiti odstavek 1, druga alineja, in odstavek 2.

ČLEN 13

Nadaljnja izročitev drugi državi članici

Če se v skladu z izjavo države članice iz člena 9 te konvencije za izročeno osebo ne uporabi načelo specialnosti, se za nadaljnjo izročitev te osebe drugi državi članici ne uporablja člen 15 Evropske konvencije o izročitvi, razen če v prej omenjeni izjavi ni določeno drugače.

Article 14
Transit

In the event of transit under the conditions laid down in Article 21 of the European Convention on Extradition, where extradition under the simplified procedure is concerned, the following provisions shall apply:

(a) in an emergency, an application containing the information required in Article 4 may be made to the State of transit by any method which leaves a written record. The State of transit may make its decision known using the same method;

(b) the information referred to in Article 4 must be sufficient to enable the competent authority of the State of transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

Article 15
Determining the competent authorities

Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall indicate in a statement which authorities are competent within the meaning of Articles 4 to 8, 10 and 14.

Article 16
Entry into force

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union. The Secretary-General of the Council shall notify all Member States of such deposit.

2. This Convention shall enter into force 90 days after the date of deposit of the instrument of ratification, acceptance or approval by the last Member State to carry out this formality.

3. Until this Convention enters into force, any Member State may, when depositing its instrument of ratification, acceptance or approval, or at any other date, declare that the Convention shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit of its declaration.

4. Any declaration made pursuant to Article 9 shall take effect 30 days after deposit thereof, but no earlier than the date of the entry into force of this Convention or of the application thereof of the Member State concerned.

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

Article 17
Accession

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

2. The text of this Convention in the language of the acceding State, drawn up by the General Secretariat of the Council of the European Union and approved by all the Member States, shall be equally authentic with the other authentic texts. The Secretary-General shall transmit a certified true copy of the text to each Member State.

3. The instruments of accession shall be deposited with the General Secretariat of the Council of the European Union.

ČLEN 14
Tranzit

V primeru tranzita pod pogoji iz člena 21 Evropske konvencije o izročitvi, se pri izročitvi po poenostavljenem postopku uporabljajo naslednje določbe:

(a) v nujnih primerih se lahko tranzitni državi posreduje vlogo z vsemi informacijami iz člena 4 na kakršen koli način, ki pušča za seboj pisni zapis. Tranzitna država lahko sporoči svojo odločitev na enak način;

(b) informacije iz člena 4 morajo biti zadostne v obsegu, ki pristojnim organom tranzitne države omogoča ugotoviti, ali gre za poenostavljen izročitveni postopek, in sprejeti proti izročeni osebi prisilne ukrepe, ki so potrebni za izpeljavo tranzita.

ČLEN 15
Določanje pristojnih organov

Pri deponiranju svoje listine o ratifikaciji, sprejetju, odobritvi ali pristopu vsaka država članica v izjavi navede pristojne organe v smislu členov 4 do 8 in členov 10 in 14.

ČLEN 16
Začetek veljavnosti

1. To konvencijo se ratificira, sprejme ali odobri. Listine o ratifikaciji, sprejetju ali odobritvi se deponira pri generalnem sekretariatu Sveta Evropske unije. Generalni sekretar Sveta obvesti o deponiranju vse države članice.

2. Ta konvencija začne veljati v roku 90 dni po dnevu deponiranja listine o ratifikaciji, sprejetju ali odobritvi s strani države članice, ki zadnja opravi to formalnost.

3. Do začetka veljavnosti te konvencije lahko vsaka država članica ob deponiranju svoje listine o ratifikaciji, sprejetju ali odobritvi ali ob katerem koli drugem času izjavi, da se konvencija uporablja zanjo v odnosih z državami članicami, ki so podale enako izjavo, v roku 90 dni po dnevu deponiranja njene izjave.

4. Vsaka izjava, podana v skladu s členom 9, začne veljati 30 dni po njenem deponiranju, vendar ne prej kot z dnem začetka veljavnosti te konvencije ali začetka njene uporabe s strani zadevne države članice.

5. Ta konvencija se uporablja le za prošnje, podane po dnevu začetka njene veljavnosti ali uporabe med zaproseno državo in državo prosilko.

ČLEN 17
Pristop

1. K tej konvenciji lahko pristopi vsaka država, ki postane članica Evropske unije.

2. Besedilo te konvencije v jeziku države pristopnice, ki ga pripravi generalni sekretariat Evropske unije in ga potrdijo vse države članice, je enako verodostojno drugim besedilom. Generalni sekretar pošlje vsaki državi članici overjeno kopijo besedila.

3. Pristopne listine se deponira pri Generalnem sekretariatu Sveta Evropske unije.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 16 (3) shall apply to acceding Member States.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done at Brussels, this tenth day of March in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union, which shall transmit a certified copy to each of the Member States.

4. Ta konvencija začne veljati za vsako državo, ki k njej pristopi, 90 dni po deponiranju njene pristopne listine ali po dnevu začetka veljavnosti konvencije, če ta še ni začela veljati ob izteku omenjenega 90-dnevnega roka.

5. Če ta konvencija ob času predložitve njihovih pristopnih listin še ni začela veljati, se za države članice, ki k njej pristopijo, uporablja člen 16(3).

V potrditev tega so spodaj podpisani pooblaščenči podpisali to konvencijo.

V Bruslju, desetega marca leta tisoč devetsto petindevetdeset, v edinem izvorniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer so besedila v vseh teh jezikih enako verodostojna, izvornik pa je deponiran v arhivih generalnega sekretariata Sveta Evropske unije, ki pošlje vsaki državi članici overjeno kopijo.

3. člen

Republika Slovenija ob deponiranju listine o pristopu poda naslednje izjave:

V zvezi s četrnim odstavkom člena 7 konvencije Republika Slovenija izjavlja, da se lahko soglasje osebe, dano v postopku pred sodiščem, prekliče do odločitve ministra, pristojnega za pravosodje.

V zvezi s členom 9 konvencije Republika Slovenija izjavlja, da se določbe 14. člena Evropske konvencije o izročitvi ne uporabijo, če oseba soglaša z izročitvijo in se izrecno odpove pravici do načela specialnosti skladno s členom 7 te konvencije.

V zvezi s tretjim odstavkom člena 12 konvencije Republika Slovenija izjavlja, da se bo odločitev o uporabi druge alineje prvega odstavka člena 12 in drugega odstavka člena 12 sprejela glede na potek postopka pred sodiščem v vsakem posameznem izročitvenem postopku posebej.

V skladu s členom 15 konvencije Republika Slovenija izjavlja, da je pristojni organ za namene člena 4, drugega odstavka člena 5, člena 10 in člena 14 konvencije Ministrstvo za pravosodje.

V skladu s členom 15 konvencije Republika Slovenija izjavlja, do so pristojni organi Republike Slovenije v smislu člena 6, člena 7 in člena 8 konvencije krajevno pristojna okrožna sodišča.

V zvezi s tretjim odstavkom člena 16 konvencije Republika Slovenija izjavlja, da se bo ta konvencija uporabljala v odnosih med Republiko Slovenijo in državami članicami, ki so podale enako izjavo, v roku 90 dni po dnevu deponiranja njene izjave.

4. člen

Za izvajanje konvencije skrbi Ministrstvo za pravosodje.

5. člen

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

Št. 700-01/06-93/1

Ljubljana, dne 1. februarja 2007

EPA 1232-IV

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

29. Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete (BHUČPS)

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 med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete (BHUČPS)**

Razglašam Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete (BHUČPS), ki ga je sprejel Državni zbor Republike Slovenije na seji 1. februarja 2007.

Št. 001-22-21/07
Ljubljana, dne 9. februarja 2007

dr. Janez Drnovšek l.r.
Predsednik
Republike Slovenije

Z A K O N**O RATIFIKACIJI SPORAZUMA MED REPUBLIKO SLOVENIJO IN REPUBLIKO MADŽARSKO O ČEZMEJNEM POLICIJSKEM SODELOVANJU ORGANOV ZA ZATIRANJE KRIMINALITETE (BHUČPS)**

1. člen

Ratificira se Sporazum med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete, podpisan na Brdu pri Kranju 25. oktobra 2006.

2. člen

Besedilo sporazuma se v izvirniku v slovenskem in angleškem jeziku glasi:¹

S P O R A Z U M**med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete**

Republika Slovenija in Republika Madžarska (v nadaljevanju pogodbenici) sta se *ob upoštevanju* prijateljskih vezi med državama, *da bi* v interesu varnosti okrepili ter poglobili sodelovanje organov za zatiranje kriminalitete, *v prepričanju*, da bi celovito razvijali sodelovanje na obmejnih območjih in med organi, pristojnimi za izvajanje tega sporazuma, *da bi* s pomočjo usklajenih dejavnosti še učinkoviteje delovali proti mednarodnemu organiziranemu kriminalu, *ob upoštevanju* svojih mednarodnih obveznosti ter notranjih zakonov in drugih predpisov, *ocenjujoč* rezultate svojega dosedanjega sodelovanja sporazumeli:

**I. poglavje
Splošne določbe****1. člen****Področje sodelovanja**

1. Z namenom varovanja javnega reda in javne varnosti pogodbenici okrepiata sodelovanje na področju preprečevanja, odkrivanja in pregona kaznivih dejanj (v nadaljevanju: zatiranje kriminalitete), ki so podlaga za izdajo evropskega naloga za prijetje, ter mejnega in prometnega policijskega dela. Pogodbenici sodelujeta v skladu s tem sporazumom, pri čemer upoštevata svoje notranje zakone in druge predpise ter mednarodne obveznosti.

A G R E E M E N T**between the Republic of Hungary and the Republic of Slovenia on cross-border co-operation of law enforcement authorities**

The Republic of Slovenia and the Republic of Hungary (hereinafter the Contracting Parties), *considering* the friendly relations between the two states, *with a view to* enhancing and deepening co-operation of law enforcement authorities in the interest of security, *convinced* that mutual co-operation between the border regions and the authorities competent in the implementation of this Agreement shall be developed in a comprehensive manner, *with a view to* combating international organised crime even more efficiently through their co-ordinated action, *taking into account* their international obligations and national laws and regulations, *having taken stock* of the results of their co-operation to date, have agreed as follows:

**Chapter I
General Provisions****Article 1****Scope of Co-operation**

1. With a view to protecting public order and public security, the Contracting Parties shall enhance co-operation in the fields of prevention, detection and prosecution of criminal acts (hereinafter referred to as crime suppression) that constitute grounds for the issuing of the European arrest warrant, and shall improve border and traffic policing. The Contracting Parties shall co-operate in accordance with this Agreement whilst taking account of their national laws and regulations and international obligations.

¹ Besedilo sporazuma v madžarskem jeziku je na vpogled v Sektorju za mednarodno pravo Ministrstva za zunanje zadeve.

2. Pogodbenica lahko delno ali v celoti odkloni sodelovanje ali postavi pogoje zanj, če to ogroža oziroma krši njeno suverenost, notranjo varnost, javni red ali če je v nasprotju z njenimi notranjimi zakoni in drugimi predpisi.

3. Zaposilo, ki se nanaša na vojaško ali politično kaznivo dejanje, se ne pošilja oziroma ga ni moč izpolniti. Dejanja ni mogoče šteti za politično kaznivo dejanje, če je pri njegovi storitvi, upoštevajoč vse okoliščine, namen, motiv kaznivega dejanja, način njegove storitve ter predmete, ki so bili uporabljeni ali namenjeni za storitev, kriminalna narava kaznivega dejanja prevladala nad politično.

4. Sodelovanje ne vsebuje pravne pomoči, ki je v pristojnosti pravosodnih organov pogodbenic.

5. Sodelovanje po tem sporazumu ne vsebuje upravnega sodelovanja organov pogodbenic pri davčnih, pristojbinskih in carinskih upravnih zadevah.

2. člen

Organi za sodelovanje in obmejno območje

1. Policija in drugi organi za zatiranje kriminalitete, ki sodelujejo pri izvajanju tega sporazuma in so v skladu z notranjimi zakoni in drugimi predpisi pogodbenic pooblašteni za zatiranje kriminalitete ter druge naloge po tem sporazumu (v nadaljevanju: pooblašteni organi za sodelovanje), so:

a) za slovensko pogodbenico:

– Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava in njene notranje organizacijske enote ter območne organizacijske enote;

b) za madžarsko pogodbenico:

– Policija, Mejna straža, službe Carinske in finančne straže, ki opravljajo naloge preiskovanja in preprečevanja kriminala, Služba za notranji nadzor.

2. Centralne službe za stike pri izvajanju tega sporazuma so:

a) za slovensko pogodbenico:

– Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;

b) za madžarsko pogodbenico:

– Državna glavna policijska kapitanija, Center za mednarodno sodelovanje na področju kriminalitete.

3. Obmejna območja po tem sporazumu so:

a) za slovensko pogodbenico:

– območje v krajevni pristojnosti Policijske uprave Murska Sobota;

b) za madžarsko pogodbenico:

– območje županije Zala,

– območje županije Vas.

4. Pogodbenici se po diplomatski poti nemudoma pisno obvestita o spremembi centralnih služb za stike oziroma pooblaščenih organov za sodelovanje ter obmejnih območij.

II. poglavje

Splošna pravila sodelovanja organov za zatiranje kriminalitete

3. člen

Sodelovanje na podlagi zaprosila

1. Pri izvajanju tega sporazuma pooblašteni organi za sodelovanje pogodbenic sodelujejo in si pomagajo na podlagi zaprosila.

2. Če ta sporazum ne določa drugače, si pogodbenici zaprosila in odgovore nanje pisno pošiljata in jih sprejemata (sem spada tudi pošiljanje po telefaksu in elektronski telekomunikacijski mreži) prek centralnih služb za stike. V nujnih primerih so zaprosila lahko tudi ustna; ustna zaprosila je treba nemudoma pisno potrditi.

2. Either Contracting Party may refuse co-operation in whole or in part or set certain conditions thereof, if this threatens or violates its sovereignty, internal security, public order or if it is contrary to its national laws and regulations.

3. A request concerning military or political crime shall not be submitted and shall not be complied with. An act shall not be considered a political crime if in the course of perpetration, whilst taking due account of the circumstances, purpose, motive, modus operandi and objects used or planned to be used, its criminal nature outweighs its the political nature.

4. Co-operation shall not comprise legal assistance, which is under the responsibility of the judicial authorities of the Contracting Parties.

5. Co-operation under this Agreement shall not comprise administrative co-operation between the authorities of the Contracting Parties in charge of taxes, levies and customs matters.

Article 2

Co-operating Authorities and the Border Region

1. The police and other law enforcement authorities, which co-operate in the implementation of this Agreement and have been authorised in accordance with the national laws and regulations of the Contracting Parties to suppress crime and perform other duties under this Agreement (hereinafter the authorised co-operating authorities) shall be as follows:

a) for the Slovenian Contracting Party:

– Ministry of the Interior, Police, General Police Directorate and its internal and regional organisational units,

b) for the Hungarian Contracting Party:

– the Police, the Border Guard, the services of the Customs and Finance Guard performing tasks of criminal investigation and crime prevention, the Protection Service of the Policing Agencies.

2. The central contact points for the implementation of this Agreement shall be as follows:

a) for the Slovenian Contracting Party:

– Ministry of the Interior, Police, General Police Directorate;

b) for the Hungarian Contracting Party:

– National Police Headquarters International Law Enforcement Co-operation Center.

3. The following are the border regions under this Agreement:

a) for the Slovenian Contracting Party:

– the region under the competence of the Murska Sobota Police Directorate.

b) for the Hungarian Contracting Party:

– the area of Zala County;

– the area of Vas County.

4. The Contracting Parties shall immediately notify each other of any changes in their central contact points and authorised co-operating authorities and border regions in writing through diplomatic channels.

Chapter II

General Rules of Co-operation between the Law Enforcement Authorities

Article 3

Co-operation based on Request

1. With a view to implementing the provisions of this Agreement, the authorised co-operating authorities of the Contracting Parties shall co-operate and mutually assist each other on the basis of request.

2. Unless otherwise provided in this Agreement, requests and responses thereto shall be sent and received in writing (including transmission by telefax and the electronic telecommunications network) through the central contact points of the Contracting Parties. In urgent cases, requests can also be made verbally; verbal requests shall be confirmed in writing without delay.

3. Izključno centralne službe za stike pogodbenic lahko izpolnijo zaprosila, pri katerih gre za izmenjavo informacij, ki jih je pooblaščen organ za sodelovanje zaprosil pridobil z dovoljenjem pravosodnih organov za odkrivanje kaznivega dejanja, za katero se izreka kazen zavora dve leti ali več, od davčnih služb, ponudnika elektronskih komunikacijskih storitev, organov, ki obdelujejo zdravstvene podatke in druge z njimi povezane podatke ter podatke, ki se kvalificirajo kot gospodarska skrivnost (bančna skrivnost, poslovna skrivnost, tajnost vrednostnih papirjev, zavarovalniška skrivnost, blagajniška skrivnost).

4. Če je na podlagi zakonov in drugih predpisov pogodbenic za pošiljanje oziroma izpolnitev zaprosila potrebno dovoljenje, odobritev, privolitve oziroma soglasje pravosodnih organov, je dovoljeno izpolniti zaprosilo šele po pridobitvi dovoljenja, odobritve, privolitve oziroma soglasja.

5. Pravosodni organi po tem sporazumu so:

a) za Republiko Slovenijo: sodišča in državna tožilstva;

b) za Republiko Madžarsko: sodišča in organi tožilstva.

6. Če pooblaščen organ za sodelovanje zaprosil nima pooblastil ali ni pristojen za reševanje zaprosila, ga pošlje pristojnemu organu in o tem obvesti organ, ki ga je poslal.

7. Če izpolnitev pod pogoji iz zaprosila ni ali je samo delno mogoča, pooblaščen organ za sodelovanje ali centralna služba za stike zaprosil o tem nemudoma obvesti organ, ki ga je poslal.

8. Če je ob prejemu zaprosila očitno, da ne bo izpolnjeno v roku, ki je v njem določen, in je v utemeljitvi roka izrecno navedeno, da bi zamuda ogrozila uspešnost postopka pooblaščenega organa za sodelovanje pogodbenice prosilke, mora pooblaščen organ za sodelovanje ali centralna služba za stike zaprosilne pogodbenice navesti rok, v katerem je mogoča izpolnitev zaprosila.

9. Po obvestilu iz sedmega in osmega odstavka pooblaščen organ za sodelovanje pogodbenice prosilke sporoči, ali naj se zaprosilo kljub temu izpolni. Nato se pooblaščen organa za sodelovanje pogodbenic dogovorita o nadaljnjem reševanju zaprosila.

10. Pri reševanju zaprosil pooblaščen organi za sodelovanje zaprosilne pogodbenice in drugi organi, ki rešujejo zaprosila, ali organi, ki z njimi sodelujejo, ukrepajo v skladu z zaprosilom in v njem navedenimi tehničnimi sredstvi, razen če je to v nasprotju z zakoni in drugimi predpisi zaprosilne pogodbenice.

4. člen

Vsebina zaprosila in jezik

1. Če ni s tem sporazumom določeno drugače, zaprosilo vsebuje najmanj:

- ime pooblaščenega organa za sodelovanje, ki je zaprosilo poslal;
- predmet zaprosila;
- opis in pravno kvalifikacijo dejanja, ki je predmet zaprosila;
- rok za izpolnitev zaprosila in obrazložitev nujnosti reševanja;
- dovoljenje pravosodnih organov, kadar je potrebno;

f) prošnjo za udeležbo člana pooblaščenega organa za sodelovanje pogodbenice prosilke pri izpolnitvi zaprosila, če to zahteva;

g) identifikacijske podatke osebe, če so znani, v obsegu, ki je potreben za izpolnitev zaprosila.

2. Pogodbenici pri izvajanju tega sporazuma uporabljata slovenski in madžarski jezik. Pooblaščen organi za sodelovanje se lahko dogovorijo, da pri svojih stikih uporabljajo drug jezik.

3. Exclusively the central contact points of the Contracting Parties shall execute the requests concomitant with the transfer of data, which the co-operating authorities of the requested Contracting Party obtained from the tax administration, the electronic telecommunications service provider, entities handling health care and related data and data qualified as economic secrets (bank secret, business secret, securities secret, insurance secret, fund secret) with the permission of the judicial authorities in order to investigate criminal acts sanctioned with imprisonment of at least two years.

4. If, according to the laws and regulations of the Contracting Parties, the authorisation, approval, assent or consent of the judicial authorities is required for the transmission or compliance with the request, the request shall be complied with only after such authorisation, approval, assent or consent has been obtained.

5. The judicial authorities under this Agreement shall be:

a) for the Republic of Slovenia: courts and state prosecutors' offices;

b) for the Republic of Hungary: courts and prosecutors' offices.

6. If the authorised co-operating authority of the requested Contracting Party does not have the power or competence to process the request, it shall forward the request to a competent authority and notify the requesting authority thereof.

7. If, according to the conditions set forth in the request, the request cannot, or cannot fully be complied with, the authorised co-operating authority or the central contact point of the requested Contracting Party shall immediately notify the requesting authority thereof.

8. If it is evident that the deadline for compliance with the request specified in it cannot be met, and if the reasons for the deadline indicate explicitly that any delay will lead to substantial impairment of the proceedings of the authorised co-operating authority of the requesting Contracting Party, the authorised co-operating authority or central contact point of the requested Contracting Party shall promptly indicate the estimated time needed for execution of the request.

9. Following the notification referred to in paragraphs (7) and (8) above, the authorised co-operating authorities of the requesting Contracting Party shall indicate whether the request is to be upheld nonetheless. The authorised co-operating authorities of the Contracting Parties shall then make arrangements on how to process the request further.

10. In the course of the execution of requests, the authorised co-operating authorities of the requested Contracting Party and other authorities participating in the execution of the request or co-operating with them shall take action in accordance with the conditions and using the technical instruments indicated in the request provided that it is not contrary to the laws and regulations of the requested Contracting Party.

Article 4

Contents of the Request and Language

1. Unless otherwise specified in this Agreement, the request shall include at least:

- the name of the requesting authorised co-operating authority;
- the subject of the request;
- the description and legal qualification of the act to which the request refers;
- the time limit set for the fulfilment of the request and grounds for the degree of urgency;
- where necessary, the authorisation of the judicial authorities;

f) the request to involve a member of the authorised co-operating authority of the requesting Contracting Party in the execution of the request, if so requested by the requesting Contracting Party;

g) identification data of the person concerned, if known, to the extent necessary for the execution of the request.

2. For the implementation of this Agreement, the Contracting Parties shall use the Hungarian and Slovenian languages. The authorised co-operating authorities may agree to use other languages for their communication.

III. poglavje Oblike sodelovanja

5. člen

Ukrepanje v nujnih primerih

1. Na podlagi zaprosila lahko pooblašteni organi za sodelovanje pogodbenic v skladu s svojimi notranjimi zakoni in drugimi predpisi za zavarovanje sledi in dokazov na svojem državnem območju ugotavljajo identiteto, na javnem kraju opravijo poostreno kontrolo, opravijo pregled zgradb, objektov, krajev, oblačil, paketov in vozil ter primejo iskano osebo in jo pridržijo.

2. O izvedbi ukrepov iz prejšnjega odstavka je treba nemudoma obvestiti pooblašteni organ za sodelovanje pogodbenice prosilke.

6. člen

Izmenjava informacij

Za učinkovito zatiranje kriminalitete pooblašteni organi za sodelovanje pogodbenic na podlagi zaprosila pošljejo zlasti:

- a) podatke o osebah, udeleženi v organiziranem kriminalu, informacije, ki se nanašajo na povezave storilcev s kaznivim dejanjem, o organiziranih kriminalnih združbah in skupinah kriminalcev, značilnem obnašanju storilcev in skupin, o kaznivih dejanjih, ki so v pripravi ali so ostala pri poskusu ali so bila storjena, zlasti pa informacije o času, kraju in načinu storitve dejanja, napadenih objektih, posebnih okoliščinah in izvedenih ukrepih, kadar je to potrebno, za zatiranje kriminalitete;
- b) informacije o metodah in novih oblikah mednarodnega kriminala;
- c) informacije o izsledkih kriminalističnih, kriminoloških raziskav in drugih raziskav, o praksi, delovnih metodah in uporabi sredstev pri preiskavah z namenom njihovega izboljšanja;
- d) informacije o predmetih ali vzorcih predmetov, s katerimi so bila storjena kazniva dejanja ali so na njih sledi kaznivega dejanja, so bili uporabljeni ali namenjeni kot sredstva pri storitvi kaznivega dejanja ali izvirajo iz njega;
- e) informacije o veljavni pravni ureditvi v zvezi s kaznivimi dejanji po tem sporazumu;
- f) informacije o premoženjski koristi, pridobljeni s kaznivim dejanjem ali zaradi njega.

7. člen

Pošiljanje informacij brez zaprosila

Pooblašteni organi za sodelovanje pogodbenic lahko v posameznih primerih tudi brez zaprosila pošiljajo informacije, ki jih potrebujejo pooblašteni organi za sodelovanje druge pogodbenice za zatiranje kriminalitete in odvrnitev nevarnosti, ki ogroža javni red in javno varnost.

8. člen

Neposredna izmenjava informacij

1. Pošiljanje zaprosil in odgovarjanje nanje lahko potekata neposredno med pooblaščenimi organi za sodelovanje, če:

- a) za informacijo prosijo pooblašteni organi za sodelovanje, pristojni v obmejnem območju, ta pa se nanaša izključno na obmejno območje, ali
- b) bi izmenjava informacij prek centralnih služb za stike povzročila zamudo, ki bi ogrozila interese postopka ali uspešno izpolnitev zaprosila.

2. Šteje se, da se informacija nanaša na obmejno območje, zlasti če se podatki nanašajo na:

- a) osebo iz zaprosila, katere prebivališče (kraj prebivanja) je na obmejnem območju, ali se domneva, da se v času zaprosila tam zadržuje;
- b) dejavnost obravnavane osebe v obmejnem območju;
- c) predmet, za katerega se domneva, da je v obmejnem območju;

Chapter III Forms of Co-operation

Article 5

Taking Action in Urgent Cases

1. Upon request, with a view to securing traces and evidence, the authorised co-operating authorities of the Contracting Parties may, in accordance with their internal laws and regulations, within the territory of their own states, carry out identity checks, intensive checks in public places, search buildings, facilities, locations, clothes, packages and vehicles and may apprehend and detain the wanted person.

2. The authorised co-operating authority of the requesting Contracting Party shall be immediately notified of the implementation of the measures specified in Paragraph (1).

Article 6

Exchange of Information

With a view to effectively suppressing crime and in response to a request, the authorised co-operating authorities of the Contracting Parties shall send this information in particular:

- a) data about the persons involved in organised crime, information with regard to perpetrators' connections with the criminal act committed, organised crime associations and groups of criminals, typical conduct of perpetrators and groups, criminal acts that have been planned or attempted or committed, and notably, information about the time, place and modus operandi, the facilities attacked, special circumstances and measures taken, where necessary, for crime suppression;
- b) methods and new forms of international crime;
- c) findings of criminal, criminological and other crime related research, the practice, working methods and use of instruments in investigations with a view to their improvement;
- d) information about the objects, or their reproductions, used for the commission of criminal acts or containing traces of criminal acts, used or intended to be used as instruments of crime, or originating from criminal acts;
- e) legal regulations in place with regard to criminal acts under this Agreement;
- f) proceeds of crime.

Article 7

Transfer of Information without Request

In particular cases, the authorised co-operating authorities may transfer information without prior request if such information is needed by the authorised co-operating authorities of the other Contracting Party for the purposes of crime suppression and to thwart threats to public order and security.

Article 8

Direct Exchange of Information

1. Requests and replies may be exchanged directly between the authorised co-operating authorities if:

- a) the information is requested by the authorised co-operating authorities having competence in the border region, and the information transferred refers solely to the border region or
- b) the exchange of information via the central contact points would cause delay that could jeopardise the interests of the procedure or successful execution of the request.

2. Information shall be regarded as related to the border region, in particular, if the data relate to

- a) a person referred to in the request whose place of residence (place of stay) is in the border region, or it may be presumed that the person concerned is staying there at the time when the request is transmitted;
- b) the activities of the person concerned in the border area;
- c) a thing which is presumably located in the border region;

d) sedež pravne osebe v obmejnem območju in njeno dejavnost.

3. Neposredna izmenjava informacij iz prvega in drugega odstavka vsebuje zlasti:

- a) ugotavljanje in potrditev identitete oseb, kraja in naslova prebivališča;
- b) ugotavljanje obstoja, veljavnosti in omejitev vozniških dovoljenj, dovoljenj za vodno in zračno plovbo;
- c) dajanje identifikacijskih podatkov motornih vozil (registrirana številka, številka šasije, številka motorja);
- d) ugotovitev identitete in iskanje lastnika (upravljavca) ali uporabnika motornih vozil ter vodnih in zračnih plovil;
- e) ugotovitev obstoja orožnih listin, njihove veljavnosti in omejitev;
- f) ugotovitev lastnika, naročnika in uporabnika elektronske telekomunikacijske terminalne opreme;
- g) poizvedbe o predmetih in vzorcih;
- h) iskanje oseb s posebnim strokovnim znanjem.

9. člen

Skupna analiza javne varnosti

Pogodbenici si redno izmenjavata informacije in analize razmer na področju kriminalitete, javnega reda in javne varnosti. Po potrebi skupaj analizirata osrednja vprašanja o razmerah na področju kriminalitete in njenem preprečevanju ter se dogovorita o potrebnih posebnih ukrepih.

10. člen

Iskanje oseb in predmetov

1. Pooblaščen organi za sodelovanje pogodbenic si na zaprosilo v skladu s svojimi notranjimi zakoni in drugimi predpisi pomagajo pri iskanju osebe ali predmeta na neznanem kraju oziroma pri ugotavljanju identitete neznanih oseb ali trupel.

2. Na zaprosilo pogodbenice prosilke lahko pooblaščen organ za sodelovanje zaprošene pogodbenice razpiše tiralico. Če pogoji za razpis tiralice iz katerega koli razloga ne obstajajo več, vključujoč tudi prijetje iz tretjega odstavka, se tiralica nemudoma preklicuje.

3. O prijettju osebe, ki je bilo opravljeno na podlagi razpisane tiralice na zaprosilo pogodbenice prosilke na območju zaprošene pogodbenice, je treba nemudoma obvestiti centralno službo za stike pogodbenice prosilke.

11. člen

Čezmejno tajno opazovanje

1. Pooblaščen organi za sodelovanje pogodbenic so pri preiskovanju na svojem državnem območju pooblaščen nadaljevati tajno opazovanje na območju druge pogodbenice, če gre za osebo, ki je osumljena udeležbe v organizirani kriminalni skupini ali storitve naklepne kaznivega dejanja, za katero je predpisana kazen najmanj pet let zapora, ali osebo, ki je povezana z njo ali se pripravlja, da bo navezala stik z njo, če je centralna služba za stike slednje odobrila na podlagi predhodno poslanega zaprosila. Za dovoljenje se lahko postavijo pogoji.

2. Ob sumu kaznivih dejanj iz prejšnjega odstavka lahko pooblaščen organi za sodelovanje pogodbenic tajno opazujejo osebo, ki je povezana s storilcem, če je mogoče utemeljeno sklepati, da bi s pomočjo te osebe identificirali ali odkrili storilca ali bi jih privedla do storilca.

3. Na zahtevo pooblaščenega organa za sodelovanje zaprošene pogodbenice je treba nadaljevanje tajnega opazovanja nemudoma prepustiti pooblaščenemu organu za sodelovanje zaprošene pogodbenice. Pogodbenici si na zaprosilo lahko vzajemno pomagata pri tajnem opazovanju.

d) the place of establishment of a legal entity located in the border region or its activities.

3. Direct exchange of information from paragraphs (1) and (2) shall extend, in particular, to the following areas:

- a) establishment and confirmation of the identity of persons, their place of stay and address;
- b) establishment of the existence, validity and restrictions of driving licences, shipping and pilot's licences;
- c) transfer of identification data of motor vehicles (registration number, chassis number, engine number);
- d) establishment of the identity and search for the owner (operator) or user of road vehicles, vessels and aircrafts;
- e) establishment of the existence of firearms licences, their validity and restrictions;
- f) identification of the owner, subscriber and user of electronic telecommunication terminal equipment;
- g) inquiries about objects and samples;
- h) search for persons with special expertise.

Article 9

Joint Analyses of Public Security

The Contracting Parties shall regularly exchange information and analyses concerning their crime situation and the situation of public order and public security. They shall jointly analyse core issues of the crime situation and crime prevention and discuss and agree on the action to be taken on an *ad hoc* basis.

Article 10

Wanted Persons and Objects

1. The authorised co-operating authorities of the Contracting Parties shall, upon request and in accordance with their internal laws and regulations, assist one another in searching for persons or objects in unknown locations and in establishing the identity of unknown persons or corpses.

2. At the request of the requesting Contracting Party, the authorised co-operating authorities of the requested Contracting Party may issue an arrest warrant. If the grounds for the arrest warrant cease to exist for any reason whatsoever, including arrest under paragraph (3), the arrest warrant shall be withdrawn immediately.

3. The central contact point of the requesting Contracting Party shall be immediately notified of the arrest of a person based on the arrest warrant issued upon request of the requesting Contracting Party in the territory of the requested Contracting Party.

Article 11

Cross-border Surveillance

1. In the course of investigation in their national territory, the authorised co-operating authorities of the Contracting Parties shall be authorised to continue surveillance in the territory of the other Contracting Party if its central contact point has authorised this in response to a prior request and if this concerns a person who has been suspected of engagement in an organised criminal group or suspected of intentionally committing a criminal act sanctioned with imprisonment of at least five years or a person who has been associated with them or is about to establish contact with them. Conditions may be attached to the authorisation.

2. In case of suspicion of criminal acts specified in Paragraph (1), the authorised co-operating authorities of the Contracting Parties may pursue the surveillance of the person in contact with the perpetrator when there is reason to believe that this person may assist in the identification or finding of the perpetrator or may lead to the perpetrator.

3. Upon request of the authorised co-operating authorities of the requested Contracting Party, the continuation of surveillance shall be transferred immediately to the authorised co-operating authority of the requested Contracting Party. Upon request, the Contracting Parties may mutually assist one another in conducting surveillance.

4. Dovoljenje za tajno opazovanje velja za celotno območje pogodbenic. Pri tajnem opazovanju se skupna državna meja pogodbenic lahko prestopi tudi zunaj mejnih prehodov in obratovalnega časa.

5. Če bi zaradi zamude nastala nevarnost ali bili ogroženi interesi zatiranja kriminalitete, se tajno opazovanje lahko izvaja tudi brez predhodnega dovoljenja iz prvega odstavka. V tem primeru se ob prestopu državne meje nemudoma obvesti pristojni pooblaščen organ za sodelovanje zaprosene pogodbenice. Zaprošilo se potem nemudoma pošlje centralni službi za stike zaprosene pogodbenice. V zaprosilu se navedejo razlogi za prestop državne meje brez predhodnega dovoljenja.

6. Pristojna pooblaščen organa za sodelovanje iz prejšnjega odstavka sta:

- a) za slovensko pogodbenico:
 - Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;
- b) za madžarsko pogodbenico:
 - Glavna državna policijska kapitanija.

7. Tajno opazovanje iz petega odstavka je treba prekiniti takoj, če to zahteva pooblaščen organ za sodelovanje zaprosene pogodbenice ali če dovoljenje, potrebno za izpolnitev zaprosila, ni bilo pridobljeno v petih urah po prestopu državne meje.

8. Tajno opazovanje se lahko izvaja samo pod temi pogoji:

a) uradnik izvaja tajno opazovanje skladno s tem členom in notranjimi zakoni in drugimi predpisi tiste pogodbenice, na območju katere deluje, poleg tega ravna skladno z navodili krajevno pristojnega pooblaščenega organa za sodelovanje;

b) razen v primeru iz petega odstavka mora imeti uradnik, ki izvaja tajno opazovanje, pri sebi dokument, ki potrjuje, da je bilo tajno opazovanje dovoljeno;

c) uradnik, ki izvaja tajno opazovanje, mora biti vedno zmožen izkazati, da opravlja uradno nalogo;

d) uradnik, ki izvaja tajno opazovanje, ne sme vstopiti v zasebno stanovanje ali v prostore, ki niso javno dostopni, lahko pa vstopi v prostore za delo, obratovalne in poslovne prostore, ki so javno dostopni med delovnim časom;

e) uradnik, ki izvaja tajno opazovanje, pripravi poročilo za centralno službo za stike zaprosene pogodbenice;

f) če so za izvajanje tajnega opazovanja potrebna tudi tehnična sredstva, se smejo uporabljati, če to dovoljujejo zakoni in drugi predpisi zaprosene pogodbenice. V zaprosilu iz prvega odstavka se navedejo tehnična sredstva, ki se bodo uporabljala za tajno opazovanje;

g) pri uporabi vozil za tajno opazovanje veljajo prometni predpisi zaprosene pogodbenice.

12. člen

Čezmejno zasledovanje (zasledovanje po vroči sledi)

1. Pooblaščen organ za sodelovanje pogodbenice prosilke lahko brez predhodnega dovoljenja druge pogodbenice nadaljuje zasledovanje osebe na območju zaprosene pogodbenice, če je ta oseba na območju pogodbenice prosilke storila ali poskusila storiti kaznivo dejanje, ki je podlaga za izdajo evropskega naloga za prijetje, in

- a) so jo pri tem zalotili ali
- b) je na begu iz pridržanja, pripora ali prestajanja zaporne kazni in če bi zamuda zaradi obratila pooblaščenemu organu za sodelovanje zaprosene pogodbenice močno otežila prijetje storilca oziroma bi močno ogrozila interese zatiranja kriminalitete ter če se domneva, da pooblaščen organ za sodelovanje zaprosene pogodbenice ne bi mogel prevzeti zasledovanja v primernem času.

4. The authorisation for surveillance shall be valid to the entire territory of the states of the Contracting Parties. In the course of surveillance the common state border of the Contracting Parties may also be crossed outside border crossing points and business hours.

5. In the event that a delay would give rise to danger or jeopardise the interests of criminal investigation, surveillance may be continued even without the advance authorisation stipulated in Paragraph (1). In this case the competent authorised co-operating authorities of the requested Contracting Party shall be notified immediately upon crossing the state border. The request shall be sent subsequently but without delay to the central contact point of the requested Contracting Party. The request shall indicate the reasons for crossing the border without prior authorisation.

6. The competent authorised co-operating authorities referred to in Paragraph (5) shall be:

- a) for the Slovenian Contracting Party:
 - Ministry of the Interior, Police, General Police Directorate;
- b) for the Hungarian Contracting Party:
 - National Police Headquarters.

7. Surveillance according to Paragraph (5) shall cease immediately if so requested by the authorised co-operating authority of the requested Contracting Party, or where the authorisation, necessary for the execution of the request, has not been obtained within five hours from crossing the border.

8. Surveillance may be carried out only under the following conditions:

a) the officers conducting surveillance shall comply with the provisions of this Article and with the internal laws and regulations of the Contracting Party on whose territory they are operating; they shall act in accordance with the instructions of the authorised co-operating authority with territorial competence;

b) except in situations provided for in Paragraph (5), the officer conducting surveillance shall carry a document verifying that the surveillance has been authorised;

c) the officer conducting surveillance must be able at all times to prove that he is acting in an official capacity;

d) the officer conducting surveillance may not enter a private home or places not accessible to the public, but may enter work premises, service and business premises and areas which are accessible to the public during working hours;

e) the officer conducting surveillance shall submit a report to the central contact point of the requested Contracting Party;

f) when technical instruments are also needed for conducting surveillance, they may be used when that is permitted under the laws and regulations of the requested Contracting Party. The request according to Paragraph (1) shall specify the technical instruments of surveillance to be applied;

g) the use of vehicles for surveillance shall be subject to the traffic regulations of the requested Contracting Party.

Article 12

Cross-border Pursuit (Hot Pursuit)

1. The authorised co-operating authority of the requesting Contracting Party may, without prior authorisation of the other Contracting Party, continue the pursuit in the territory of the requested Contracting Party if the person concerned committed or attempted to commit, in the territory of the requesting Contracting Party, a criminal act which serves as the basis for issuing the European arrest warrant and:

- a) was caught in the act or
- b) escaped from detention, provisional custody or while serving a sentence involving deprivation of liberty and if the delay caused by notifying the authorised co-operating authority of the requested Contracting Party would render the arrest of the perpetrator substantially more difficult or severely jeopardise the interests of crime suppression and it is probable that the authorised co-operating authority of the requested Contracting Party would not be able to take over the pursuit in time.

2. V primerih iz prejšnjega odstavka se takoj, ko je mogoče, obvesti pristojni pooblaščen organ za sodelovanje zaprosene pogodbenice, vendar najpozneje pri prestopu državne meje.

3. Pristojni pooblaščen organi za sodelovanje iz prejšnjega odstavka so:

a) za slovensko pogodbenico:
– Policijska uprava Murska Sobota;

b) za madžarsko pogodbenico, odvisno od kraja prestopa državne meje:

– Glavna policijska kapitanija županije Zala,
– Glavna policijska kapitanija županije Vas.

4. Zasedovanje se nemudoma prekine, če to zahteva pooblaščen organ za sodelovanje zaprosene pogodbenice.

5. Če uradnik pogodbenice prosilke, ki izvaja zasedovanje, to zahteva, pooblaščen organ za sodelovanje zaprosene pogodbenice zasedovano osebo prime, da bi ugotovil njeno identiteto ali ji odvzel prostost.

6. Če zahteva za prekinitev zasedovanja ni dana in če pooblaščen organ za sodelovanje ne more pravočasno prevzeti zasedovanja, sme uradnik pogodbenice prosilke, ki izvaja zasedovanje, zasedovano osebo pridržati na kraju samem. O tem ukrepu se nemudoma obvesti pooblaščen organ za sodelovanje zaprosene pogodbenice.

7. Zasedovanje se lahko izvaja na celotnem območju pogodbenic brez časovne omejitve.

8. Zasedovanje se lahko izvaja pod temi pogoji:

a) uradnik, ki izvaja zasedovanje, mora ravnati v skladu s tem sporazumom in zakoni ter drugimi predpisi pogodbenice, na območju katere izvaja zasedovanje;

b) zasedovanje se lahko izvaja le na kopnem;

c) uradnik, ki izvaja zasedovanje, ne sme vstopiti v zasebno stanovanje ali prostore, lahko pa vstopi v prostore za delo, obratovalne in poslovne prostore, ki so javno dostopni med delovnim časom;

d) uradnik, ki izvaja zasedovanje, mora biti vedno zmožen izkazati, da opravlja uradno nalogo;

e) pri uporabi vozil med zasedovanjem veljajo prometni predpisi zaprosene pogodbenice. Za prepoznavo je treba na vozilu uporabljati razpoznavni znak;

f) uradnik, ki izvaja zasedovanje, mora biti nedvoumno razpoznaven po uniformi ali dopolnilnih označbah, nameščenih na vozilu;

g) predmeti, ki jih ima prijeta oseba, se po možnosti shranijo na varnem do prihoda pristojnih pooblaščenih organov za sodelovanje;

h) če so za izvajanje zasedovanja potrebna tudi tehnična sredstva, se smejo uporabljati, če to dovoljujejo zakoni in drugi predpisi zaprosene pogodbenice;

i) uradnik, ki izvaja zasedovanje, po končanem zasedovanju poroča pristojnemu pooblaščenemu organu za sodelovanje ali centralni službi za stike zaprosene pogodbenice. Na zahtevo teh organov ostane dosegljiv, dokler niso okoliščine zasedovanja ustrezno razjasnjene. Ta pogoj velja tudi za primere, ko zasedovana oseba ni bila prijeta.

9. Osebo, ki so jo prijeli med zasedovanjem, zasliši pristojni pooblaščen organ za sodelovanje zaprosene pogodbenice. Osebo svobodo prijete osebe je moč omejiti v skladu z zakoni in drugimi predpisi zaprosene pogodbenice.

10. O zasedovanju je treba obvestiti tudi centralno službo za stike pogodbenice.

2. In the cases referred to in Paragraph (1), the competent authorised co-operating authority of the requested Contracting Party shall be notified as soon as possible, but not later than at the time of crossing the state border.

3. The competent authorised co-operating authorities under Paragraph (2) shall be:

a) for the Slovenian Contracting Party:

– the Murska Sobota Police Directorate;

b) for the Hungarian Contracting Party, depending on the place of crossing the state border:

– Zala County Police Directorate,

– Vas County Police Directorate.

4. The hot pursuit shall cease immediately if so required by the authorised co-operating authority of the requested Contracting Party.

5. If the pursuing officer of the requesting Contracting Party so requests, the authorised co-operating authority of the requested Contracting Party shall challenge the pursued person in order to establish the person's identity or to make an arrest.

6. If no request to cease the hot pursuit is made and if the authorised co-operating authority is unable to intervene quickly enough, the pursuing officers of the requesting Contracting Party may detain the person pursued on the spot. The competent authorised co-operating authority of the requested Contracting Party shall be immediately notified of this action.

7. The pursuit may be carried out in the entire territory of the Contracting Parties without limits in time.

8. The pursuit may be carried out according to the following conditions:

a) the pursuing officer must comply with the provisions of this Agreement and with the laws and regulations of the Contracting Party in whose territory he is operating;

b) the pursuit may be carried out exclusively on land;

c) the pursuing officer may not enter private homes or premises, but may enter work, plant and business premises open to the public during working hours;

d) the pursuing officers must at all times be able to prove that they are acting in an official capacity;

e) in using vehicles in the course of pursuit, the traffic rules of the requested Contracting Party shall be observed. A vehicle must be identifiable by means of an accessory fitted to the vehicle;

f) the pursuing officer shall be identifiable unambiguously by his uniform or accessories fitted to the vehicle;

g) objects in possession of the arrested individual shall preferably be stored in a safe place until the arrival of the authorised co-operating authorities;

h) if technical instruments are required for the conduct of hot pursuit, they may be used if this is enabled under the laws and regulations of the requested Contracting Party;

i) after completion of the pursuit, the pursuing officers shall report on their mission to the competent authorised co-operating authority or central contact point of the requested Contracting Party. At the request of those authorities, they shall remain at their disposal until the circumstances surrounding their action have been sufficiently clarified. This condition shall apply even where the hot pursuit has not resulted in the arrest of the person pursued.

9. The person arrested in the course of the pursuit shall be questioned by the authorised co-operating authority of the requested Contracting Party. The person's freedom may be restricted in accordance with the laws and regulations of the requested Contracting Party.

10. The central contact point of the Contracting Party shall be notified of the pursuit.

13. člen**Kontrolirana pošiljka**

1. Pod pogoji iz tega člena pooblašteni organi za sodelovanje pogodbenic na podlagi zaprosila omogočijo kontrolirano pošiljko na območju svoje države. Kontrolirana pošiljka je prikrita dejavnost pooblaščenih organov za sodelovanje, pri kateri se v okviru mednarodnega sodelovanja na območje pogodbenic omogoči vnos stvari, s katerimi razpolaga opazovana oseba, na območje pogodbenic in iznos s tega območja v drugo državo ter prevoz čez območje pogodbenic z namenom odkrivanja kaznivih dejanj in identifikacije čim širšega kroga oseb, udeleženi pri storitvi kaznivega dejanja.

2. Zaposilo za kontrolirano pošiljko, poslano centralnim službam za stike, poleg podatkov iz prvega odstavka 4. člena tega sporazuma vsebuje tudi podatke o:

a) vsebini pošiljke, predvideni poti in času trajanja ter načinu prevoza, identifikaciji prevoznega sredstva,

b) načinu spremstva,

c) tehničnih sredstvih, ki bodo v uporabi,

d) številu sodelujočih v spremstvu iz pogodbenice prosilke,

e) načinu vzdrževanja stikov med udeleženci kontrolirane pošiljke,

f) okoliščinah predaje in prevzema pošiljke,

g) ukrepov ob prijemu,

h) ukrepov ob nepričakovanih okoliščinah.

3. Če bi zamuda povzročila tveganje ali ogrozila interese zatiranja kriminalitete, lahko pooblašteni organi za sodelovanje pogodbenice pošljejo ali sprejmejo zaprosilo za kontrolirano pošiljko tudi neposredno. Zaposilo je treba nato nemudoma poslati centralni službi za stike pogodbenic. Zaposilu je treba priložiti dokumente, ki potrjujejo kontrolirano pošiljko.

4. Pooblašteni organi za sodelovanje se vsakokrat dogovorijo o datumu in načinu izvedbe kontrolirane pošiljke ter o stopnji svojega sodelovanja. Pooblašteni organ za sodelovanje zaprosene pogodbenice lahko omeji ali odkloni kontrolirano pošiljko, če pomeni nesprejemljivo tveganje za udeležene osebe oziroma splošno varnost.

5. Ukaze v zvezi s kontrolirano pošiljko odreja pooblašteni organ za sodelovanje zaprosene pogodbenice. O identiteti osebe, ki odreja ukaze, je treba obvestiti pogodbenico prosilko. Kontrolirana pošiljka se izvaja na način, da jo je mogoče vsak čas prestreči. Pooblašteni organi za sodelovanje pogodbenice prosilke lahko spremljajo pošiljko tudi po prevzemu, uradnih pooblastil pa ne smejo izvajati. Pooblašteni organi za sodelovanje pogodbenice prosilke morajo pri tem ravnati v skladu s tem členom in zakoni ter drugimi predpisi zaprosene pogodbenice ter navodili vodje pooblaščenega organa za sodelovanje zaprosene pogodbenice.

6. Pogodbenici zagotavljata izvedbo kontrolirane pošiljke tudi iz tretje v nadaljnjo državo. V tem primeru za predhodno soglasje teh držav poskrbi pogodbenica prosilka in o tem obvesti zaproseno pogodbenico.

7. Udeležba tajnega delavca v spremstvu kontrolirane pošiljke je mogoča samo z dovoljenjem pravosodnega organa pogodbenice, ki uporablja tajnega delavca.

Article 13**Controlled Delivery**

1. Based on request, the authorised co-operating authorities of the Contracting Parties shall enable controlled delivery within the territory of their own states in accordance with the conditions set forth in this Article. Controlled delivery is a covert activity of the authorised co-operating authorities, in the course of which – within the framework of international co-operation – they enable the passing of a thing in possession of a person subject to surveillance to and from the territory of the Contracting Parties to another state and its transit through the territory of the Contracting Parties with a view to enabling the detection of criminal acts and the identification of persons participating in the perpetration of criminal acts in the widest range possible.

2. In addition to the data set forth in Article 4 (1) of this Agreement, the request sent to the central contact points for controlled delivery shall include:

a) the content of the consignment, the expected route of travel, the time frame and means of transportation, the information enabling the identification of a vehicle;

b) the mode of escort;

c) the technical instruments to be used;

d) the number of participants in the escort on the part of the requesting Contracting Party;

e) the mode of maintaining contact with the participants of the controlled delivery;

f) the circumstances of handing over and taking over the consignment;

g) the measures to be carried out upon arrest;

h) the measures to be carried out in unexpected circumstances.

3. If the delay could pose a risk or threaten the interests of crime suppression activities, the request for controlled delivery may be directly sent or received by the authorised co-operating authorities. Such a request shall be sent subsequently as soon as possible to the central contact points of the Contracting Parties. The request shall contain documents substantiating controlled delivery.

4. The authorised co-operating authorities shall agree on the date and modus operandi of the controlled delivery and the extent of their involvement on each occasion. The authorised co-operating authority of the requested Contracting Party may restrict or refuse controlled delivery if it could endanger the persons participating in it or public security to an unacceptable extent.

5. The authorised co-operating authority of the requested Contracting Party shall be in command of the controlled delivery; the requesting Contracting Party shall be informed of the person in charge. The controlled delivery shall be carried out in a manner that will allow easy interception at any time. Following takeover, the authorised co-operating authority of the requesting Contracting Party may escort the consignment but may not exercise official powers. In the course of this, the authorised co-operating authority of the requesting Contracting Party shall act in accordance with the provisions of this Article, the laws and regulations of the requested Contracting Party and the instructions of the person in charge of the authorised co-operating authority of the requested Contracting Party.

6. The Contracting Parties shall also enable the execution of controlled deliveries starting out from a third country to a further country. In this case, the requesting Contracting Party shall obtain the prior authorisation of the states concerned, of which the requested Contracting Party shall be notified.

7. The participation of an undercover agent in the controlled delivery is possible only with the authorisation of the judicial authorities of the Contracting Party which is using the undercover agent.

14. člen

Uporaba tajnih delavcev

1. Pogodbenici na podlagi zaprosila, poslanega centralnim službam za stike, vsaka na svojem državnem območju dovolita delovanje tajnih delavcev pogodbenice prosilke, če je to potrebno zaradi uspešnega odkritja kaznivnega dejanja, za katero se izdaja evropski nalog za prijetje in je bilo storjeno ali je v pripravi na območju pogodbenice prosilke, če odkritje kaznivnega dejanja ni mogoče brez tajnega delavca ali je to bistveno oteženo. Na zaprosilo pogodbenice prosilke je mogoče uporabiti tajnega delavca zaprosene pogodbenice na njenem območju.

2. Tajni delavec iz tega sporazuma je uradnik poklicne sestave pooblaščenega organa za sodelovanje za zatiranje kriminalitete, ki deluje tajno z namenom zbiranja prikritih informacij.

3. Če je za uporabo tajnega delavca potrebno dovoljenje pravosodnih organov pogodbenic, je tajnega delavca mogoče uporabiti samo po pridobitvi dovoljenja. Soglasje vsakokrat velja za celotno državno območje pogodbenice.

4. Zaposilo za uporabo tajnega delavca vsebuje poleg podatkov iz prvega odstavka 4. člena tega sporazuma še:

- a) čas trajanja uporabe tajnega delavca,
- b) pogoje uporabe tajnega delavca,
- c) pravice in dolžnosti tajnega delavca,
- d) ukrepe, če je razkrita identiteta tajnega delavca,

e) navodila o pravih kazenske odgovornosti ter odgovornosti tajnega delavca za povzročeno škodo pri delovanju.

5. Uporaba tajnega delavca se vedno omeji na posamičen primer in traja določen čas, vendar največ šest mesecev. Podaljša se lahko največ za dve leti. Uporabo tajnega delavca pripravijo pooblašteni organi za sodelovanje pogodbenic usklajeno. Tajni delavec sme svojo dejavnost začeti po posebnem dogovoru organov za sodelovanje in pridobitvi dovoljenja iz tretjega odstavka. Ta dogovor mora vsebovati tudi podatke iz četrtega in enajstega odstavka.

6. Tajnega delavca usmerja pooblašteni organ za sodelovanje pogodbenice prosilke, če opravlja svoje delo na območju druge pogodbenice po nalogu in na zaprosilo pogodbenice prosilke. Pooblašteni organi za sodelovanje pogodbenic se lahko dogovorijo, da tajni delavec, ki ga je dala na voljo zaprosena pogodbenica, ukrepa po nalogu in navodilih pooblaščenega organa za sodelovanje pogodbenice prosilke na območju zaprosene pogodbenice. Če je utemeljeno, se lahko pooblašteni organi za sodelovanje pogodbenic dogovorijo tudi drugače, kot je navedeno.

7. Na zaprosilo pooblaščenega organa za sodelovanje zaprosene pogodbenice se delovanje tajnega delavca nemudoma prekine.

8. V primeru iz šestega odstavka pooblašteni organ za sodelovanje zaprosene pogodbenice ugotovi, ali je uporaba tajnega delavca potrebna, in določi pogoje za njegovo uporabo ter uporabo informacij, pridobljenih med preiskavo. O tem je treba obvestiti pooblašteni organ za sodelovanje pogodbenice prosilke.

9. Zaprošena pogodbenica lahko ponudi kadrovsko, organizacijsko in tehnično pomoč za dejavnost tajnega delavca. Pooblašteni organ za sodelovanje zaprosene pogodbenice mora storiti vse za varnost tajnega delavca pogodbenice prosilke.

Article 14

Use of Undercover Agents

1. Based on the request submitted to the central contact point, either Party shall allow the operation of undercover agents of the requesting Party in its national territory if this is necessary for the successful detection of a criminal act, which serves as a basis for the issuing of the European arrest warrant and has been committed or the preparations thereof have taken place in the territory of the requesting Contracting Party, provided that the detection of the criminal act would not be possible or would be substantially more difficult without the use of the undercover agent. At the request of the requesting Contracting Party, it shall be possible to use the undercover agent of the requested Contracting Party in its territory.

2. For the purposes of this Agreement, an undercover agent is a member of the regular staff of the authorised co-operating authority performing tasks of criminal investigation, acting undercover to gather intelligence information.

3. If an authorisation of the judicial authorities is needed for the use of the undercover agent, it shall be possible to use them only after such authorisation has been obtained. The authorisation shall always cover the entire national territory of the Contracting Party concerned.

4. The request to use an undercover agent shall include, in addition to the data stipulated in Article 4 of this Agreement:

- a) the duration of the use of the undercover agent;
- b) the conditions of the use of the undercover agent;
- c) the rights and duties of the undercover agent;
- d) the measures to be taken in case the identity of the undercover agent has been disclosed;

e) information concerning the relevant provisions of legal regulations specifying the criminal liability and civil liability of the undercover agent for damage caused within his scope of operation.

5. An undercover agent shall be used on a case-by-case basis for a specific period of time, which shall not exceed 6 months. The use of the undercover agent may be extended for maximum 2 years. Activities for the use of the undercover agent shall be co-ordinated by the authorised co-operating authorities of the Contracting Parties. The undercover agent may commence his activities following the *ad hoc* arrangement between the authorised co-operating authorities and after obtaining the authorisation according to Paragraph (3) hereof. This arrangement shall contain the information set forth in Paragraphs (4) and (11).

6. When operating in the territory of the other Contracting Party on assignment and in response to the request of the requesting Contracting Party, the undercover agent shall be instructed by the authorised co-operating authority of the requesting Contracting Party. The authorised co-operating authorities of the Contracting Parties may also agree that the undercover agent of the requested Contracting Party take action on assignment and under the instructions of the authorised co-operating authority of the requesting Contracting Party in the territory of the requested Contracting Party. In justified cases, the authorised co-operating authorities of the Contracting Parties may also make different arrangements.

7. The activities of the undercover agent shall be immediately suspended if so requested by the authorised co-operating authority of the requested Contracting Party.

8. In the case according to the second sentence of Paragraph (6), the need to use an undercover agent, the conditions of use and the use made of information acquired through the investigation shall be determined by the authorised co-operating authority of the requested Contracting Party. The authorised co-operating authority of the requesting Contracting Party shall be notified of this.

9. The requested Contracting Party may provide human resources as well as organisational and technical assistance for the activities of the undercover agent. The authorised co-operating authority of the requested Contracting Party shall do whatever is necessary to ensure the safety of the undercover agent of the requesting Contracting Party.

10. Po koncu uporabe tajnega delavca se o rezultatih uporabe nemudoma v pisni obliki obvesti pooblaščen organ za sodelovanje zaprosene pogodbenice.

11. Za dejavnost tajnega delavca se uporabljajo notranji zakoni in drugi predpisi zaprosene pogodbenice pod pogojem, da niso v nasprotju z zakoni in drugimi predpisi pogodbenice prosilke.

15. člen

Sodelovanje pri programu zaščite

1. Pogodbenici lahko prek svojih pristojnih organov med kazenskim postopkom zaprosita za preselitev prič, žrtev oziroma oškodovancev in obdolžencev ter z njimi povezanih drugih zaščiteneh oseb (v nadaljevanju: osebe) z območja ene na območje druge pogodbenice in zagotovitev zaščite tudi po tem. Ta ukrep ne sme ovirati kazenskega postopka na območju pogodbenic.

2. Zaposilo za predajo ali prevzem zaščite mora poleg podatkov iz prvega odstavka 4. člena tega sporazuma vsebovati tudi:

- a) zaposilo, ki se nanaša na tajnost,
- b) status oseb v kazenskem postopku,

c) informacijo o ogroženosti osebe ter njeni stopnji,

d) razlog za preselitev osebe na območje zaprosene pogodbenice,

e) predlagano obliko in stopnjo zaščite,

f) potreben čas trajanja namestitve na območju zaprosene pogodbenice in možnost za njegovo podaljšanje.

3. Po odobritvi zaprosila se organi pogodbenic, določeni za izvajanje zaščite, neposredno dogovorijo o predaji oziroma prevzemu zaščite, njenem načinu, času trajanja ter načinu vzdrževanja zvez. Dokumenti, ki so potrebni za izvajanje zaščite, so priloga k temu dogovoru.

4. Stroške prevoza, zdravstvenega in socialnega zavarovanja poravnava pogodbenica prosilka. Zaprošena pogodbenica poravnava stroške za plače sodelavcev, ki ščitijo osebe.

5. Oseba je lahko deležna le tistih oblik zaščite, ki jih določajo notranji zakoni in drugi predpisi o zaščiti prič zaprosene pogodbenice.

6. Če zaščita po predaji ni mogoča ali pa je ni več mogoče zagotoviti, organ za izvajanje zaščite zaprosene pogodbenice nemudoma obvesti ustrezní organ v pogodbenici prosilki.

7. Oseba spoštuje zakone in druge predpise zaprosene pogodbenice. Če oseba krši zakone in druge predpise zaprosene pogodbenice ali ne spoštuje pravil obnašanja, ki so bila določena zanjo, organ zaprosene pogodbenice, ki izvaja zaščito, o tem nemudoma obvesti ustrezní organ v pogodbenici prosilki.

8. Če oseba stori dejanje, ki neupravičeno in močno ogroža sodelavce zaprosene pogodbenice, ki izvajajo zaščito, organ zaprosene pogodbenice nemudoma da pobudo za vrnitev osebe, ustrezní organ v pogodbenici prosilki pa to izvede.

9. Pristojna pooblaščená organa za sodelovanje pri izvanju tega člena sta:

a) za slovensko pogodbenico:
– Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;

b) za madžarsko pogodbenico:
– Glavna državna policijska kapitanija.

10. The authorised co-operating authority of the requested Contracting Party shall be notified in writing of the results achieved through the use of the undercover agent.

11. The use of the undercover agent shall be subject to the national laws and regulations of the requested Contracting Party provided that they do not conflict with the laws and regulations of the requesting Contracting Party.

Article 15

Co-operation in the Witness Protection Programme

1. In the course of criminal proceedings, the Contracting Parties may request via their authorised co-operating authorities that witnesses, victims and suspects and, in view of them, other persons under protection (hereinafter the persons concerned) be transferred from the territory of one Contracting Party to the territory of another Contracting Party and that they be granted protection thereafter. This procedure must not obstruct the criminal proceedings in the territories of the Contracting Parties.

2. In addition to the data specified in Article 4 (1) of this Agreement, the request for handing over or taking over protection shall include:

a) request for confidentiality;

b) the status of the persons concerned in the criminal proceedings;

c) information concerning the threat to the person and its severity;

d) the reasons for moving the person concerned to the territory of the requested Contracting Party;

e) the recommended form and level of protection;

f) the necessary duration of stay in the territory of the requested Contracting Party and the possibility of extension.

3. After the request has been approved, the authorities in charge of providing protection shall directly agree on the handing over and taking over protection, its mode and duration and ways of maintaining contact. The documents required for performing protection shall constitute an annex to this arrangement.

4. The costs of transfer and social insurance shall be covered by the requesting Contracting Party. The requested Contracting Party shall cover the cost of salaries of the personnel protecting the persons concerned.

5. The person concerned may only benefit from the forms of protection that are provided for by the national laws and regulations on witness protection of the requested Contracting Party.

6. If after the transfer the protection can no longer be guaranteed, or cannot be guaranteed at all, the authority of the requested Contracting Party in charge of carrying out protection shall immediately inform its counterpart at the requesting Contracting Party.

7. The person concerned shall comply with the laws and regulations of the requested Contracting Party. If the person concerned violates the laws and regulations of the requested Contracting Party or fails to respect the rules of behaviour determined specifically for him, the authority of the requested Contracting Party in charge of protection shall immediately inform its counterpart at the requesting Contracting Party.

8. In the event of an act of the person concerned that would unjustifiably and severely jeopardise the staff members of the requested Contracting Party performing protection, this authority of the requested Contracting Party shall immediately initiate the return of the person concerned and its counterpart at the requesting Contracting Party shall comply with this initiative.

9. The competent authorised co-operating authorities for the implementation of this Article shall be:

a) for the Slovenian Contracting Party:
– Ministry of the Interior, Police, General Police Directorate;

b) for the Hungarian Contracting Party:
– National Police Headquarters.

16. člen

Ustanovitev skupne kriminalistične preiskovalne skupine

1. Centralne službe za stike pogodbenic lahko v skladu z notranjimi zakoni in drugimi predpisi za uspešno preiskovanje kaznivih dejanj iz prvega odstavka 1. člena tega sporazuma s posebnim dogovorom ustanovijo skupno kriminalistično preiskovalno skupino, zlasti če je preiskava kaznivega dejanja, ki poteka na območju več držav članic Evropske unije, posebno zapletena ali je potrebna uskladitev dela.

2. Dogovor mora vsebovati zlasti:

- a) opis kaznivega dejanja, zaradi katerega se ustanovi skupna kriminalistična preiskovalna skupina,
- b) delovno področje,
- c) sestavo kriminalistične preiskovalne skupine,
- d) ime vodje kriminalistične preiskovalne skupine,
- e) čas trajanja delovanja in pogoje za podaljšanje,

f) pravice in dolžnosti napotnega člana skupne kriminalistične preiskovalne skupine,

- g) pogoje delovanja,
- h) organizacijske ukrepe in kritje stroškov delovanja,

i) informacije v zvezi s pravili o kazenskoopravni odgovornosti ter odgovornosti za škodo, ki jo je v okviru svojega delovanja povzročil napoteni član skupne kriminalistične preiskovalne skupine.

3. Če je za udeležbo napotnega člana pogodbenice prosilke v skupni kriminalistični preiskovalni skupini v posebnem postopku te skupine potrebno dovoljenje v skladu z notranjimi zakoni in drugimi predpisi zaprosene pogodbenice, je udeležba mogoča samo po pridobitvi dovoljenja.

4. Pooblaščen organ za sodelovanje zaprosene pogodbenice po svojih možnostih zagotavlja namestitvene, organizacijske, tehnične in infrastrukturne možnosti, potrebne za delovanje skupne kriminalistične preiskovalne skupine. Skupno kriminalistično preiskovalno skupino vodi imenovani član pooblaščenega organa za sodelovanje zaprosene pogodbenice.

5. Napoteni član pogodbenice prosilke v skupni kriminalistični preiskovalni skupini ne sme samostojno izvajati pooblastil na območju zaprosene pogodbenice.

6. Član pooblaščenega organa za sodelovanje pogodbenice prosilke, napoten v skupno kriminalistično preiskovalno skupino, lahko izroči članom skupne kriminalistične preiskovalne skupine iz zaprosene pogodbenice vse netajne podatke in informacije, ki jih ima, v enakih primerih in pod enakimi pogoji kot svojemu pooblaščenemu organu za sodelovanje.

7. Vodja službe, ki je ustanovila skupno kriminalistično preiskovalno skupino, dovoli, da ima napoteni član druge pogodbenice na razpolago tajne podatke, ki so jih kot take določili pooblaščen organi za sodelovanje. Za dajanje podatkov, ki so jih določili organi, ki niso udeleženi pri sodelovanju, je treba pridobiti dovoljenje, kot določajo notranji zakoni in drugi predpisi pogodbenic.

8. Podatki ali informacije, ki so na razpolago skupni kriminalistični preiskovalni skupini, se lahko uporabijo izključno za:

- a) preiskovanje tistega kaznivega dejanja, za katero je bila skupna kriminalistična preiskovalna skupina ustanovljena;
- b) odkrivanje in preiskovanje drugih kaznivih dejanj s predhodnim soglasjem pogodbenice, ki je podatek ali informacijo dala;
- c) preprečevanje kaznivih dejanj, ki neposredno in močno ogrožajo javno varnost, s predhodnim soglasjem pogodbenice, ki pošilja podatke in informacije, pa tudi v kazenskem postopku, ki je bil uveden zaradi teh kaznivih dejanj.

9. Napoteni član pooblaščenega organa pogodbenice prosilke, ki sodeluje v skupni kriminalistični preiskovalni skupini, ki deluje na območju zaprosene pogodbenice, lahko uporabi drugo osebo, ki sodeluje s pooblaščenim organom za sodelovanje njegove države.

Article 16

Establishment of Joint Crime Detection Teams

1. In order to successfully detect criminal acts referred to in Article 1 (1) of this Agreement, joint crime detection teams may be set up via the central contact points of the Contracting Parties, in accordance with their national laws and regulations, by *ad hoc* arrangement, particularly if the detection of a criminal act extending to the territories of several EU Member States is particularly complicated or requires co-ordination.

2. Such arrangement shall include in particular:

a) the description of the criminal act for the detection of which the crime detection team is set up;

b) the scope of activities;

c) the composition of the joint crime detection team;

d) the leader of the joint crime detection team;

e) the duration of operation and the conditions of extension;

f) the rights and duties of the seconded member of the joint crime detection team;

g) the conditions of operation;

h) organisational measures and bearing the costs of operation;

i) information concerning the rules governing the criminal liability of the seconded member of the joint crime detection team as well as his civil liability for damage caused within the scope of his operation.

3. To the extent that a certain procedure of the joint crime detection team requires that the seconded member has an authorisation to join the team in accordance with the national laws and regulations of the requested Contracting Party, this member may participate only after such authorisation has been granted.

4. The authorised co-operating authority of the requested Contracting Party shall, within its limits of possibility, provide accommodation and the organisational, technical and infrastructural facilities necessary for the operation of the joint crime detection team. The joint crime detection team shall be headed by the appointed member of the authorised co-operating authority of the requested Contracting Party.

5. A member of the requesting Contracting Party seconded to the joint crime detection team shall not exercise his powers independently in the territory of the requested Contracting Party.

6. The member of the authorised co-operating authority of the requesting Contracting Party seconded to the joint crime detection team may transfer non-classified data and information in his possession to the members of the requested Contracting Party participating in the joint crime detection team in the same cases and under the same conditions as in the case of transferring such information to his own authorised co-operating authority.

7. The head of the authority setting up the joint crime detection team shall grant permission to render classified data required for the work of the joint crime detection team available to the seconded member of the other Contracting Party in the case of data classified by the authorised co-operating authorities. To transfer data classified by authorities that do not participate in this co-operation, the permission specified in the internal laws and regulations of the Contracting Parties shall be obtained.

8. The data and information made available to the joint crime detection team may be used exclusively for the following purposes:

a) to detect a criminal act for which the joint crime detection team was set up;

b) to detect or investigate other criminal acts with the prior approval of the Contracting Party transferring the data or information;

c) to prevent criminal acts directly and severely jeopardising public security and – with the advance approval of the Contracting Party transferring the data or information – in the course of criminal procedures initiated on account of such criminal acts.

9. The seconded member of the authorised co-operating authority of the requesting Contracting Party participating in the joint crime detection team which is operating in the territory of the requested Contracting Party may use another person who is co-operating with the authorised co-operating authority of his state.

10. Pogodbenici se zavezujeata, da bosta sodelujočo osebo iz devetega odstavka oziroma podatek, ki ga zagotovi, zaščitili vsaj tako, kot to predvidevajo zakoni in drugi predpisi njenih držav za zaščito sodelavcev, ki sodelujejo z organi za zatiranje kriminalitete, ter podatkov, ki jih te osebe pošiljajo.

17. člen

Prikrito zbiranje informacij

1. Pooblaščen organi za sodelovanje pogodbenc lahko pri preiskovanju kriminalitete v skladu z zaprosilom, poslanim prek centralnih služb za stike, ter v skladu z notranjimi zakoni in drugimi predpisi svojih držav prikrito zbirajo informacije in se o ugotovitvah zbiranja medsebojno obveščajo.

2. Zaposilo, ki se nanaša na prikrito zbiranje informacij, mora vsebovati poleg navedenega v prvem odstavku 4. člena tega sporazuma, še:

- a) navedbo sredstva ali načina;
- b) čas trajanja tajnega ukrepa;
- c) podatke, ki bodo zapisani in poslani;
- d) način pošiljanja podatkov;
- e) način zagotavljanja pomoči pri morebitnem tajnem zbiranju informacij v drugi državi;
- f) kopijo dovoljenja organa pristojnega za prikrito zbiranje podatkov v zvezi z odkrivanjem kaznivega dejanja, ki poteka v državi pogodbenici prosilki.

3. Če je za začetek reševanja zaprosila, ki se nanaša na prikrito zbiranje podatkov, potrebno dovoljenje pravosodnih organov v skladu z notranjimi zakoni in predpisi pogodbenc, je treba kopijo dovoljenja poslati zaproseni pogodbenici. Če za reševanje zaprosila tako dovoljenje ni potrebno, pogodbenica prosilka o tem v zaprosilu obvesti centralno službo za stike zaprosene pogodbenice. Pooblaščen organ za sodelovanje zaprosene pogodbenice začne reševati zaprosilo v skladu z notranjimi zakoni in drugimi predpisi svoje države in po pridobitvi dovoljenja svojega pravosodnega organa, če je to potrebno.

4. Pogodbenici se zavezujeata, da osebi, ki sodeluje z organi za zatiranje kriminalitete, oziroma za podatek, ki ga pošilja, zagotovita vsaj tako zaščito, kot jo določajo zakoni in drugi predpisi njenih držav za osebe, ki sodelujejo z organi za zatiranje kriminalitete, ter podatke, ki so jih priskrbeli.

18. člen

Napotitev uradnikov za zvezo

1. Pogodbenica lahko z odobritvijo centralne službe za stike druge pogodbenice za določen čas napoti uradnike za zvezo k policijskim in drugim organom za zatiranje kriminalitete druge pogodbenice.

2. Namen napotitve uradnikov za zvezo je pospešitev sodelovanja na podlagi tega sporazuma med pogodbenicama ter sprotno zagotavljanje pomoči pri:

- a) izmenjavi informacij za preprečevanje in zatiranje kaznivih dejanj;
- b) izpolnjevanju zaprosil v zvezi s kaznivimi dejanji;
- c) sodelovanju v zvezi z nadzorom zunanjih meja Evropske unije in izvajanju sporazumov o ponovnem prevzemu oseb;
- d) pošiljanje informacij, potrebnih za izvajanje nalog organov, pristojnih za odpravljanje nevarnosti, ki ogrožajo javni red.

3. Uradniki za zvezo svetujejo in pomagajo organom za zatiranje kriminalitete, niso pa pooblaščen za samostojno izvajanje ukrepov za njeno preprečevanje in zatiranje.

4. Uradnik za zvezo opravlja naloge na podlagi navodil pooblaščenega organa za sodelovanje pogodbence, ki napoti uradnika za zvezo, ter v skladu z dogovorom s pooblaščenim organom za sodelovanje pogodbence, ki uradnika sprejme. Uradnik za zvezo o svoji dejavnosti redno obvešča centralno službo za stike pogodbence, ki uradnika sprejme.

10. The Contracting Parties undertake to grant at least the same level of protection to the co-operating person according to Paragraph (9) and the data provided by him as that stipulated by the laws and regulations of their states for the protection of persons co-operating with their law enforcement authorities and the data provided by them.

Article 17

Covert Gathering of Information

1. In accordance with requests received via their central contact points, the authorised co-operating authorities of the Contracting Parties may, in the course of crime detection and in accordance with the internal laws and regulations of their states, covertly gather information and inform each other of the results.

2. In addition to the data set forth in Article 4 (1) of this Agreement, the request for covert gathering of information shall include:

- a) indication of the instrument or method;
- b) the duration of the covert measure;
- c) the scope of data to be recorded and transferred;
- d) the manner of transferring the data;
- e) the manner of providing assistance in the event of the covert gathering of information in the other country;
- f) a copy of the authorisation by the authority in charge of the covert gathering of information related to the detection of a criminal act in progress in the state of the requesting Contracting Party.

3. To the extent that the national laws and regulations of the Contracting Parties require the authorisation of the judicial authorities for compliance with a request for the covert gathering of information, a copy of the authorisation shall be sent to the requested Contracting Party. If no such authorisation is required the requesting Contracting Party shall inform the central contact point of the requested Contracting Party thereof in the request. The authorised co-operating authority of the requested Contracting Party shall begin processing the request in accordance with its national laws and regulations and, when needed, after obtaining the authorisation from its judicial authority.

4. The Contracting Parties undertake to grant at least the same level of protection to the person co-operating with the law enforcement authorities and the data provided by him as that stipulated by the laws and regulations of their states for the protection of persons co-operating with their law enforcement authorities and the data provided by them.

Article 18

Secondment of Liaison Officers

1. Each Contracting Party may, with the authorisation of the central contact point of the other Contracting Party, second liaison officers to work with the police and other law enforcement authorities of the other Contracting Party for a specified period.

2. The secondment of liaison officers is intended to accelerate co-operation between the Contracting Parties under this Agreement and to provide continuous assistance in:

- a) exchanging information for the purposes of the prevention and suppression of criminal acts;
- b) executing requests related to criminal acts;
- c) co-operation related to the surveillance of the external borders of the European Union and implementation of readmission agreements;
- d) transferring the information needed for the operation of the authorities in charge of preventing threats to public order.

3. Liaison officers shall provide advice and assistance to law enforcement authorities and shall not be empowered to take independent action in order to prevent and suppress crime.

4. The liaison officer shall perform his duties in accordance with the instructions of the seconding authorised co-operating authority of the Contracting Party and in accordance with the arrangement made with the authorised co-operating authority of the Contracting Party to which he is seconded. The liaison officer shall regularly inform the central contact point of the Contracting Party to which he is seconded about his activities.

5. Pristojni ministri pogodbenic se lahko dogovorijo, da uradnik za zvezo posamezne pogodbenice, ki deluje v tretji državi, zastopa interese druge pogodbenice v tej tretji državi za izvajanje tega sporazuma.

6. Pristojni ministri pogodbenic se dogovorijo o podrobnih pogojih delovanja uradnika za zvezo.

19. člen

Sodelovanje v skupnih kontaktnih službah

1. Pogodbenici lahko zaradi lažje izmenjave informacij in sodelovanja pooblaščenih organov za sodelovanje ustanovita skupne kontaktne službe v bližini skupne državne meje.

2. V skupnih kontaktnih službah delajo uradniki pooblaščenih organov za sodelovanje pogodbenic na podlagi svojih pooblastil v neposredni bližini. Neposredno si izmenjavajo informacije ter pomagajo usklajevati sodelovanje po tem sporazumu.

3. Sodelovanje lahko zajema tudi pripravo in udeležbo pri predaji ali ponovnem prevzemu oseb na podlagi veljavnih mednarodnih sporazumov, sklenjenih med pogodbenicama.

4. Uradniki, ki opravljajo službo v skupnih kontaktnih službah, niso pooblašteni za ukrepanje, razen pooblastil, navedenih v drugem in tretjem odstavku. Uradnike, ki delajo v skupnih kontaktnih službah, vodijo njihovi nacionalni organi.

5. Pogodbenici se o krajih ustanovitve skupnih kontaktnih služb, pogojih ustanovitve, načinu sodelovanja in stroških dogovorita v posebni mednarodni pogodbi.

6. Pogodbenici se lahko dogovorita, da pri delu v skupnih kontaktnih službah sodeluje tudi uradnik organa za zatiranje kriminalitete tretje države.

20. člen

Skupne obmejne patrulje

1. Zaradi zagotovitve javne varnosti in javnega reda, zatiranja kaznivih dejanj ter nadzora skupne državne meje lahko pooblašteni organi za sodelovanje pogodbenic v oddaljenosti do deset kilometrov od mejne črte v notranjost državnega območja pogodbenic izvajajo skupno patroljiranje. V to območje spada naselje znotraj teh desetih kilometrov, in sicer do svoje upravne meje, tudi če presega to razdaljo.

2. Pri skupnem patroljiranju so tudi uradniki pooblaščenega organa za sodelovanje druge pogodbenice pooblašteni, da ugotavljajo istovetnost oseb in jih, če se skušajo izogniti preverjanju, primejo skladno s svojimi notranjimi zakoni in drugimi predpisi.

3. Samo uradniki pooblaščenega organa za sodelovanje tiste pogodbenice, na katere državnem območju se izvaja skupno patroljiranje, so pooblašteni, da izvajajo druge ukrepe in uporabljajo prisilna sredstva.

4. Pooblašteni organi za sodelovanje pri izvajanju tega člena so:

- a) za slovensko pogodbenico:
 - Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;
- b) za madžarsko pogodbenico:
 - Državno poveljstvo mejne straže,
 - Državna glavna policijska kapitanija,
 - Državno poveljstvo carinske in finančne straže.

21. člen

Sodelovanje pri zagotavljanju javne varnosti ob večjih prireditvah

1. Pooblašteni organi za sodelovanje pogodbenic si medsebojno pomagajo pri policijskem varovanju prireditvev, za katere se pričakuje, da bo udeležba večja in bosta ogrožena javna varnost in prometni red druge pogodbenice, in sicer zlasti:

5. The competent Ministers of the Contracting Parties may agree that the liaison officer of a Contracting Party operating in a third state represent the interests of the other Contracting Party in this third state with a view to implementing this Agreement.

6. The detailed conditions of the operation of the liaison officer shall be agreed upon by the competent Ministers of the Contracting Parties.

Article 19

Co-operation at Joint Contact Stations

1. In order to facilitate the exchange of information and the co-operation of the authorised co-operating authorities, the Contracting Parties may establish joint contact stations in the vicinity of the common state border.

2. At joint contact stations, the officers of the authorised co-operating authorities of the Contracting Parties shall perform duties within their powers in close proximity. They shall directly exchange information and help co-ordinate co-operation activities under this Agreement.

3. Co-operation may involve preparation and participation in the surrender or readmission of persons within the framework of the international agreements in force concluded between the Contracting Parties.

4. The officers performing their duties at joint contact stations shall not act beyond the powers referred to in Paragraphs (2) and (3). The officers at joint contact stations shall be under the command of their national authorities.

5. The Contracting Parties shall define the locations of joint contact stations, the conditions of their establishment, the manner of co-operation and financial arrangements in a separate international agreement.

6. The Contracting Parties may agree that officers of law enforcement authorities of third states co-operate in the activities taking place at joint contact stations.

Article 20

Joint Border Patrols

1. With a view to ensuring public security and public order, suppressing criminal acts and performing surveillance of the common state border, the authorised co-operating authorities of the Contracting Parties may perform joint patrolling within the 10-kilometre stretch of land spanning inland from the common border line of the Contracting Parties. This area shall include all settlements within these 10 kilometres up to their administrative borders even if these extend beyond the specified distance.

2. When performing joint patrolling, the officers of the authorised co-operating authorities of the other Contracting Party shall also be empowered to check the identity of persons and, if these attempt to evade such checks, apprehend them in accordance with their national laws and regulations.

3. Only the officers of the co-operating authority of the Contracting Party in whose state territory the joint patrol service is being performed shall be authorised to take other action and to apply means of restraint.

4. The authorised co-operating authorities for the purposes of this Article are:

- a) for the Slovenian Contracting Party:
 - Ministry of the Interior, Police, General Police Directorate;
- b) for the Hungarian Contracting Party:
 - National Headquarters of the Border Guard;
 - National Police Headquarters;
 - National Headquarters of the Customs and Finance Guard.

Article 21

Co-operation for Public Security at Major Events

1. The authorised co-operating authorities of the Contracting Parties shall mutually assist each other in providing police protection at events where high attendance is expected and public security and the traffic order of the other Contracting Party might be threatened, in particular by means of:

- a) s hitrim medsebojnim obveščanjem,
- b) izvajanjem medsebojno usklajenih policijskih ukrepov,
- c) zagotavljanjem strokovnjakov in opreme.

2. Pooblaščen organa za sodelovanje pri izvajanju tega člena sta:

- a) za slovensko pogodbenico:
 - Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;
- b) za madžarsko pogodbenico:
 - Državna glavna policijska kapitanija.

22. člen

Sodelovanje pri zagotavljanju varnosti v cestnem prometu

1. Sodelovanje pri zagotavljanju varnosti v cestnem prometu vsebuje:

a) vzajemno obveščanje o okoliščinah, pomembnih za cestni promet, kot so gostota prometa, prometni zastoji, ovire, vplivi izrednih vremenskih razmer, in ukrepih, kot so ukrepi za usmerjanje in omejevanje prometa, ter zagotavljanje nemotnega poteka prometa in čezmejnega prometa motornih vozil;

b) izmenjavo informacij o kaznivih dejanjih v zvezi s cestnim prometom in poglavitnih načinov storitve;

c) vzajemno obveščanje o izkušnjah, pridobljenih pri prometnopolicijskem delu;

d) izmenjavo izkušenj o prometni varnosti.

2. Pooblaščen organa za sodelovanje pri izvajanju tega člena sta:

- a) za slovensko pogodbenico:
 - Ministrstvo za notranje zadeve, Policija, Generalna policijska uprava;
- b) za madžarsko pogodbenico:
 - Državna glavna policijska kapitanija.

23. člen

Sodelovanje pri usposabljanju, izpopolnjevanju in preprečevanju kriminalitete

1. Sodelovanje pristojnih organov pogodbenic pri usposabljanju in izpopolnjevanju vsebuje:

- a) izmenjavo učnih načrtov in učnih snovi;
- b) izvajanje skupnih seminarjev in predavanj ter organizacijo skupnih tečajev;
- c) povabilo predstavnikov druge pogodbenice kot opazovalcev, prikaz vaj in posebnih akcij;

d) omogočanje udeležbe na tečajih predstavnikom druge pogodbenice.

2. Pri izvajanju tega sporazuma nacionalni točki za stike za preprečevanje kriminalitete (nacionalna točka za stike Evropske mreže za preprečevanje kriminalitete) sodelujeta pri odkrivanju in medsebojni izmenjavi metod za preprečevanje kriminalitete, ki so se uveljavile na nacionalni ravni, ter pri organizaciji strokovnega svetovanja, ki je potrebno za izvajanje metod za preprečevanje kriminalitete.

3. Predstavniki pogodbenic, vodje izobraževalnih ustanov in ustanov za usposabljanje bodo po potrebi organizirali delovna srečanja za usklajevanje in pospešeno izvajanje ukrepov.

IV. poglavje

Pravna razmerja pri izvajanju postopkov na območju druge pogodbenice

24. člen

Pravila vstopa, izstopa in prebivanja

1. Če ta sporazum ne ureja drugače, lahko uradniki pooblaščenega organa za sodelovanje pogodbenice za izvajanje svojih nalog iz tega sporazuma vstopajo na območje druge pogodbenice z veljavno službeno izkaznico s fotografijo, se tam zadržujejo do izvedbe službene naloge in nato izstopijo.

- a) rapid exchange of information;
- b) mutually co-ordinated police action;
- c) providing experts and equipment.

2. The authorised co-operating authorities for the purposes of this Article are:

- a) for the Slovenian Contracting Party:
 - Ministry of the Interior, Police, General Police Directorate;
- b) for the Hungarian Contracting Party:
 - National Police Headquarters.

Article 22

Co-operation in Ensuring Road Safety

1. Co-operation in ensuring road safety shall comprise:

a) mutual exchange of information on circumstances relevant to road traffic such as traffic density, traffic jams and obstructions on the roadway, impact of adverse weather conditions and measures taken, such as those introduced to divert and restrict traffic and ensure uninterrupted traffic flow and cross-border motor vehicle traffic;

b) exchange of information on criminal acts related to road traffic and the most common modes of perpetration;

c) sharing experience gained in traffic policing;

d) exchange of experience in road safety.

2. The authorised co-operating authorities for the implementation of this Article are:

- a) for the Slovenian Contracting Party:
 - Ministry of the Interior, Police, General Police Directorate;
- b) for the Hungarian Contracting Party:
 - National Police Headquarters.

Article 23

Co-operation in Training, Further Training and Crime Prevention

1. Co-operation of the competent authorities of the Contracting Parties in the field of training and further training shall comprise:

a) exchanging course syllabuses and teaching materials;

b) implementing joint seminars and lectures, and organisation of joint courses;

c) inviting representatives of the other Contracting Party to participate as observers, presentation of drills and special training exercises;

d) enabling representatives of the other Contracting Party to participate in courses.

2. The national law enforcement contact points for the implementation of this Agreement (the national contact point of the European Crime Prevention Network) shall co-operate in developing and exchanging crime prevention methods proven at the national level and in the organisation of activities relating to expert consulting for the implementation of crime prevention methods.

3. The representatives of the Contracting Parties, heads of education centres and training institutions shall organise working meetings as the need arises for the purpose of co-ordinating and facilitating the implementation of these measures.

Chapter IV

Legal Relations in the Course of Procedures in the Territory of the other Contracting Party

Article 24

Rules of Entry, Exit and Stay

1. Unless otherwise specified in the provisions of this Agreement, officers of the authorised co-operating authority of the Contracting Party may enter the territory of the other Contracting Party with a view to performing duties under this Agreement with a valid service pass with a photo and may stay there until completing their assignment and then exit.

2. Tajni delavec iz 14. člena tega sporazuma lahko brez posebnega dovoljenja s prirejeno listino vstopi na območje zaprosene pogodbenice in se tam zadržuje do izvedbe službene naloge, toda najdlje za čas, določen v petem odstavku 14. člena tega sporazuma, in nato izstopi. Centralni službi za stike pogodbenic si vzajemno pošljeta vzorčne izvode prirejenih listin.

25. člen

Pravila za nošenje uniforme, uporabo prisilnih sredstev in službenega orožja

1. Če ta sporazum ne ureja drugače, je uradnik pooblaščenega organa za sodelovanje pogodbenice prosilke na območju zaprosene pogodbenice upravičen:

- a) nositi uniformo;
- b) storilca, ki ga je zalotil med storitvijo kaznivega dejanja ali je poskušal pobegniti, prijeti in pridržati, vendar ga mora nemudoma predati pristojnemu krajevnemu pooblaščenemu organu za sodelovanje zaprosene pogodbenice.

2. Uradnik pooblaščenega organa pogodbenice prosilke na območju zaprosene pogodbenice pri opravljanju svojih nalog iz tega sporazuma ter pri vstopu in izstopu lahko nosi svoje službeno orožje in potrebno službeno opremo.

3. Uradnik pooblaščenega organa za sodelovanje pogodbenice prosilke lahko pri izvajanju nalog iz tega sporazuma na območju zaprosene pogodbenice v skladu z zakoni in drugimi predpisi te države in ob upoštevanju načela sorazmernosti uporablja ta prisilna sredstva: fizično silo, sredstva za vklepanje, kemična ali električna sredstva za pasivizacijo, gumijevko in službenega psa.

4. Uradnik lahko na območju zaprosene pogodbenice uporablja službeno orožje samo v zakonitem silobranu oziroma skrajni sili.

5. Vodja pooblaščenega organa za sodelovanje zaprosene pogodbenice pouči tujega uradnika, ki ukrepa na njenem državnem območju, pod kakšnimi pogoji se uporabljajo prisilna sredstva iz tega člena.

26. člen

Službena razmerja in zaščita članov organov za zatiranje kriminalitete

1. Za službeno pravno razmerje, delovno razmerje in disciplinsko odgovornost uradnika pooblaščenega organa za sodelovanje pogodbenice prosilke veljajo zakoni in drugi predpisi njegove države.

2. Pri opravljanju nalog iz tega sporazuma zaprosena pogodbenica na svojem območju članu pooblaščenega organa za sodelovanje druge pogodbenice zagotovi enako zaščito in pomoč kot članu svojega pooblaščenega organa za sodelovanje.

27. člen

Kazenskoppravna odgovornost

Uradniki pooblaščenega organa za sodelovanje, ki opravljajo naloge po tem sporazumu na območju druge pogodbenice, se zaradi kaznivih dejanj, ki so jih storili ali so bila storjena zoper njih, obravnavajo enako kot uradniki pogodbenice, na območju katere delujejo.

28. člen

Odškodninska odgovornost

1. Ko uradnik pogodbenice opravlja svoje naloge na območju druge pogodbenice v skladu s tem sporazumom, je pogodbenica pošiljateljica odgovorna za škodo, ki jo je povzročil med svojim delovanjem, v skladu z zakoni in drugimi predpisi pogodbenice, na območju katere je bila povzročena škoda.

2. The undercover agent referred to in Article 14 of this Agreement may, without special authorisation, enter the territory of the requested Contracting Party with covert documents and may stay there until completing the assignment, but not longer than for the period specified in Article 14 (5) of this Agreement, and then exit. The central contact points of the Contracting Parties shall mutually exchange specimens of covert documents.

Article 25

Rules with regard to Wearing Uniforms, Using Means of Restraint and Service Weapons

1. Unless otherwise specified in the provisions of this Agreement, the officer of the authorised co-operating authority of the requesting Contracting Party operating in the territory of the requested Contracting Party shall be entitled:

- a) to wear a uniform;
- b) to apprehend and detain the perpetrator who has been caught in the act or attempted to escape, in which case the officer shall immediately hand over the perpetrator to the local authorised co-operating authority of the requested Contracting Party.

2. The officer of the authorised co-operating authority of the requesting Contracting Party may carry his service weapons and other necessary equipment while performing his duties under this Agreement in the territory of the requested Contracting Party and upon entering and exiting.

3. While carrying out duties in the territory of the requested Contracting Party in accordance with this Agreement, the officer of the authorised co-operating authority of the requesting Contracting Party may, in accordance with the laws and regulations of the state of the requested Contracting Party and the principle of proportionality, use the following means of restraint: physical force, handcuffs, chemical or electrically charged incapacitating device, truncheon and police service dog.

4. The officer may use service weapons in the territory of the requested Contracting Party solely for legitimate self-defence or as a last resort.

5. The head of the authorised co-operating authority of the requested Contracting Party shall instruct the foreign officer operating in the territory of his state about the conditions attached to the use of means of restraint under this Article.

Article 26

Service Relations and Protection of Members of Law Enforcement Authorities

1. The service relationship, employment and disciplinary liability of the member of the co-operating authority of the requesting Contracting Party shall be governed by the laws and regulations of his own state.

2. In its territory, the requested Contracting Party shall guarantee the same level of protection and assistance to the member of the authorised co-operating authority of the other Contracting Party as to the member of its own authorised co-operating authority.

Article 27

Criminal Liability

The officers of the authorised co-operating authority performing their activities in the territory of the other Contracting Party under this Agreement shall be treated the same way with respect to criminal acts committed by them or against them as the officers of the Contracting Party according to the place of their activities.

Article 28

Civil Liability

1. When the officers of a Contracting Party are operating in the territory of the other Contracting Party under this Agreement, the first Contracting Party shall be liable for any damage caused by them in the course of their operations, in accordance with the laws and regulations of the Contracting Party in whose territory the damage was caused.

2. Pogodbenica, na območju katere je bila povzročena škoda iz prejšnjega odstavka, povrne škodo pod istimi pogoji, kot da bi jo povzročil njen uradnik.

3. Pogodbenica, katere uradnik je povzročil škodo tretji osebi na območju druge pogodbenice, slednji v celotnem obsegu povrne znesek odškodnine, ki jo je pogodbenica plačala oškodovancem ali drugim upravičenim osebam na podlagi pravice oškodovanca.

4. Ne glede na uveljavljanje pravic proti tretjim osebam, razen določb prejšnjega odstavka, se pogodbenici v primeru iz prvega odstavka vzajemno odpovedujeta zahtevku za povračilo škode, ki sta jo utrpeli ena od druge, razen če je bila škoda povzročena naklepno ali iz hude malomarnosti.

2. The Contracting Party in whose territory the damage referred to in Paragraph (1) was caused shall make good such damage under the conditions applicable to damage caused by its own officers.

3. The Contracting Party whose officers have caused damage to a third person in the territory of the other Contracting Party shall reimburse the latter in full any sums it has paid to the injured parties or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of the provisions of Paragraph (3), each Contracting Party shall refrain from requesting reimbursement of damages it has sustained from the other Contracting Party in the case provided for by Paragraph (1) save where the damage was caused intentionally or by gross negligence.

V. poglavje Varstvo podatkov

29. člen

Osebni podatki, ki jih je mogoče pošiljati

Pogodbenici si lahko za izvajanje tega sporazuma pošiljata:

a) osebne identifikacijske podatke posameznikov, ki so sodelovali pri storitvi kaznivega dejanja, in drugih oseb, ki so povezane s kaznivim dejanjem: priimek, prejšnji priimek, ime, druga imena (psevdonim, porogljiv vzdevek, vzdevek), spol, čas in kraj rojstva, prebivališče, sedanje ali morebitno prejšnje državljanstvo ter biometrične podatke posameznika v skladu z zakoni in drugimi predpisi, ki urejajo potne dokumente, ali drugimi pravnimi predpisi;

b) podatke dokumenta, ki potrjuje identiteto posameznika iz točke a, in sicer potnega lista oziroma drugega potovalnega dokumenta (številka, datum izdaje, izdajatelj, kraj izdaje, čas veljavnosti, območna veljavnost);

c) podatke, ki se nanašajo na prstne odtise in odtise dlani, profile ali vzorce DNK, osebne opise, fotografije oseb, ki so sodelovale pri storitvi kaznivega dejanja;

d) osebne podatke iz informacij, navedenih v tretjem odstavku 8. člena tega sporazuma;

e) osebne podatke, ki jih zbirata in pošiljata pogodbenici v skladu s tem sporazumom.

30. člen

Pravila ravnanja s podatki

V okviru sodelovanja po tem sporazumu ter ob upoštevanju Konvencije Sveta Evrope o varstvu posameznikov glede na avtomatsko obdelavo osebnih podatkov, ki je bila sestavljena 28. januarja 1981 v Strasbourgu, ter Dodatnega protokola h Konvenciji o varstvu posameznikov glede na avtomatsko obdelavo osebnih podatkov, ki se nanaša na nadzorne organe in čezmejni prenos podatkov, sestavljenega 8. novembra 2001 v Strasbourgu, pooblaščen organi za sodelovanje pogodbenic ravnanje s podatki v skladu s temi določbami:

a) v zaprosilu je treba označiti vrsto in namen uporabe zahtevanih podatkov;

b) pogodbenica, ki podatke prejme (v nadaljevanju prejemnica), lahko uporabi osebne podatke samo za namene tega sporazuma in pod pogoji, ki jih je določila pogodbenica, ki je podatke poslala (v nadaljevanju pošiljateljica). Na zahtevo pošiljateljice mora prejemnica poslati informacije o uporabi izročeni osebnih podatkov;

c) pred pošiljanjem mora pošiljateljica, potem ko je ugotovila, da je izročitev podatkov nujna in je v sorazmerju z označenim namenom ter v skladu z njenimi notranjimi zakoni in drugimi predpisi, preveriti pravilnost podatkov, ki bodo poslani;

Chapter V Data Protection

Article 29

Transferable Personal Data

For the purposes of implementing the provisions of this Agreement, the Contracting Parties may transfer the following personal data:

a) personal identification data of individuals who have participated in the commission of a criminal act and their contacts with regard to this criminal act: surname, previous surname, forename, other names (alias, mock name, nickname), gender, date and place of birth, residence, current and any previous nationalities, and biometrical data in accordance with the laws and regulations governing travel documents and other legal regulations;

b) data of the document confirming the identity of the individual referred to in Point a) above, i.e. a passport or other travel document (number, date of issue, name of issuing authority, place of issue, period of validity, territorial validity);

c) data including fingerprints and palm prints, DNA profiles or samples, personal descriptions and photographs of persons who participated in the commission of criminal acts;

d) personal data contained in the information referred to in Article 8 (3) of this Agreement;

e) personal data gathered and transferred by the co-operating Contracting Parties under this Agreement.

Article 30

Rules of Data Handling

Under the co-operation specified in this Agreement, the co-operating authorities of the Contracting Parties shall act in accordance with the following provisions concerning data handling, taking into account the provisions of the Council of Europe Convention for Protection of Individuals with regard to Automatic Processing of Personal Data signed in Strasbourg on 28 January 1981 and its Additional Protocol regarding supervisory authorities and the transborder data flows signed in Strasbourg on 8 November 2001:

a) The request shall indicate the type of data required and the purpose of their use.

b) The receiving Contracting Party (hereinafter the recipient) may use personal data solely for the purposes specified in this Agreement and under the conditions defined by the sending Contracting Party (hereinafter the sender). At the sender's request, the recipient shall provide information on the use made of such personal data.

c) Prior to the transfer of the data, the sender, having ascertained that the transfer of the data was necessary for the purpose indicated, was proportionate to it and was in line with its internal laws and regulations, shall make sure that the data to be transferred are correct.

d) pri pošiljanju podatkov pošiljateljica navede rok za izbris ali uničenje podatkov v skladu s svojimi veljavnimi notranjimi zakoni in drugimi predpisi. Če pošiljateljica sporoči prejemnici poseben rok za hrambo podatkov, ga prejemnica upošteva;

e) osebne podatke je mogoče poslati izključno pooblaščenim organom za sodelovanje iz 2. člena tega sporazuma. Pošiljanje podatkov drugim organom je mogoče le s predhodnim pisnim soglasjem pošiljateljice na podlagi preučitve pogojev pod točko c;

f) o podatkih, ki so bili poslani in prejeti na podlagi tega sporazuma, morajo organi, ki podatke obdelujejo, voditi evidenco, ki vsebuje vsaj: namen in vsebino poslanih podatkov, organ prejemnice ter datum pošiljanja. Elektronsko pošiljanje podatkov se samodejno evidentira. Evidence se hranijo najmanj pet let, evidenca o poslanih občutljivih podatkih se hrani toliko časa, kot določajo notranji zakoni in drugi predpisi, ki urejajo te podatke. Podatki iz evidence se lahko uporabljajo izključno za preverjanje upoštevanja pravil, ki se nanašajo na varstvo podatkov.

31. člen

Obveščanje posameznika, na katerega se nanašajo osebni podatki

Prejemnica se mora posvetovati s pošiljateljico o tem, ali lahko obvesti posameznika, na katerega se nanašajo osebni podatki, o njegovih osebnih podatkih, ki so v evidenci, in o namenu njihove uporabe. Prejemnica se v tej zadevi ravna po navodilih pošiljateljice.

32. člen

Ravnanje s podatki v postopku na območju druge pogodbenice

1. Pri izvajanju tega sporazuma je nadziranje obdelave osebnih podatkov, ki so bili zbrani v postopku na območju druge pogodbenice, naloga pristojnih organov tiste pogodbenice, za katero so bili zbrani. Obdelava podatkov poteka v skladu z notranjimi zakoni in drugimi predpisi te pogodbenice. Pri tem je treba upoštevati zahteve o ravnanju s podatki, ki jih je določil organ, ki je podatke poslal.

2. Člani pooblaščenega organa za sodelovanje, ki opravljajo svoje naloge na območju druge pogodbenice, nimajo neposrednega dostopa do elektronsko obdelanih podatkov te pogodbenice.

33. člen

Varstvo tajnih podatkov

1. Pogodbenici pri izvajanju tega sporazuma za varovanje prejetih tajnih podatkov uporabljata te določbe:

a) za prejete tajne podatke, ki so bili tako označeni na podlagi zakonov in drugih predpisov pogodbenice, ki jih pošlje (v nadaljevanju pošiljateljica), mora pogodbenica, ki jih prejme (v nadaljevanju prejemnica), zagotoviti enako zaščito kot za podatke, ki so opremljeni z oznako tajnosti po svojih zakonih in drugih predpisih v skladu s preglednico ustreznih, ki je priloga tega sporazuma. Ta priloga je sestavni del tega sporazuma;

b) pogodbenici obdelujeta tajne podatke v skladu z zakoni in drugimi predpisi, ki se nanašajo na tajne podatke, kot so določeni v preglednici ustreznih, navedeni v točki a;

c) pošiljateljica nemudoma pisno obvesti prejemnico o spremembah v zvezi s podatki oziroma o spremembi oznake tajnosti, času veljavnosti tajnih podatkov, prenehanju tajnosti. Prejemnica v skladu z obvestilom spremeni oznako tajnosti, čas veljavnosti oziroma preneha obravnavati podatek kot tajen;

d) pošiljateljica označi čas veljavnosti tajnega podatka;

d) When transferring the data, the sender shall indicate the deadline for the deletion or destruction of data as provided for by its national laws and regulations. If the sender notified the recipient to observe the time limit for data storage, the recipient shall comply with it.

e) Personal data may be transferred solely to the authorised co-operating authorities referred to in Article 2 of this Agreement. Transfer of data to other authorities is possible only with the prior written authorisation of the sender and after the consideration of conditions referred to in Point c).

f) The data processing authorities shall keep record of the data transferred and received in accordance with this Agreement, containing at least the following: the purpose and contents of the transferred data, the receiving authority and the date of transfer. On-line transmission of data shall be logged automatically. Logs shall be kept for at least five years whereas the records containing sensitive data shall be kept for as long as provided for by the relevant national laws and regulations governing such data. The data of these records may only be used to supervise compliance with the rules of data protection.

Article 31

Informing the Data Subject

The recipient shall consult the sender about whether it may inform the data subject about his/her personal data kept in the records and the purpose of their use. The recipient shall comply with the sender's instructions in this respect.

Article 32

Data Handling in the Course of Procedures Carried out in the Territory of the Other Contracting Party

1. In the course of the implementation of this Agreement, supervision of the handling of personal data obtained in the course of procedures carried out in the territory of the other Contracting Party shall be the task of the competent authorities of the Contracting Party for whom these personal data were obtained. The handling of the data shall be effected in accordance with the internal laws and regulations of this Contracting Party. In the course of this, the requirements of data handling specified by the authority transferring the personal data shall be adhered to.

2. Members of the authorised co-operating authorities operating in the territory of the other Contracting Party shall not have direct access to automatically processed data of this Contracting Party.

Article 33

Protection of Classified Information

1. While implementing this Agreement, the Contracting Party shall use the following provisions to protect received classified information:

a) The information classified according to the laws and regulations of the Contracting Party transferring the classified information (hereinafter the sender) shall be granted the same level of protection by the Contracting Party receiving the classified information (hereinafter the recipient) as the protection accorded to the information supplied with the classification marking in accordance with its own laws and regulations based on the table of equivalence constituting the annex to this Agreement. This annex shall constitute an integral part of this Agreement.

b) Both Contracting Parties shall process classified information in accordance with the laws and regulations related to the classified information specified in the table of equivalence referred to in Point a).

c) The sender shall immediately notify the recipient in writing of any changes in the information, the marking of classified information, its validity period and declassification. The recipient shall modify the classification marking or validity period or declassify the information in accordance with the notification.

d) The sender shall indicate the validity period of classified information.

e) tajni podatki se lahko uporabijo samo v tiste namene, za katere so bili poslani. Dostop do njih se omeji samo na tiste osebe, ki so pooblaščenice za dostop skladno z notranjimi zakoni in drugimi predpisi;

f) poslane tajne podatke je organom, ki niso navedeni v tem sporazumu, dovoljeno poslati samo s predhodnim pisnim soglasjem pošiljateljice;

g) prejemnica o vsaki kršitvi pravnih predpisov, ki urejajo varstvo tajnih podatkov, nemudoma obvesti pošiljateljico. Obvestilo vsebuje okoliščine kršitve ustreznih zakonov in drugih predpisov, posledice in ukrepe, ki so bili uvedeni za omejitev posledic, in preprečitev kršitve teh predpisov v prihodnje;

h) pošiljanje dokumentov, podatkov, informacij in tehničnih naprav tretji državi je po tem sporazumu mogoče samo ob pisnem soglasju pristojnega organa pošiljateljice;

i) dostop do tajnih podatkov, potrebnih za delo skupne kriminalistične preiskovalne skupine, ustanovljene v skladu s 16. členom tega sporazuma, napotenemu uradniku druge pogodbenice dovoli vodja organa, ki je ustanovil to skupino, če gre za podatke, ki so jih za tajne označili pooblaščenice organi za sodelovanje po tem sporazumu. Za pošiljanje tajnih podatkov, ki so jih označili za tajne organi, ki niso udeleženci sodelovanja, je potrebno njihovo soglasje.

2. O organih, ki so bili določeni za nadzor varstva tajnih podatkov, poslanih na podlagi tega sporazuma, se pogodbenici po diplomatski poti obvestita v tridesetih dneh po začetku veljavnosti tega sporazuma.

VI. poglavje Končne določbe

34. člen

Skupna komisija

1. Pogodbenici za spodbujanje in ocenjevanje sodelovanja iz tega sporazuma ustanovita skupno komisijo. O njeni sestavi se obvestita po diplomatski poti.

2. Skupna komisija se srečuje po potrebi in se sestaja izmenično v Republiki Sloveniji in Republiki Madžarski.

3. Skupna komisija lahko da predlog pristojnim vladnim organom pogodbenic za reševanje vprašanj v zvezi z izvajanjem tega sporazuma in krepitevjo sodelovanja.

35. člen

Stroški

Če se centralni službi za stike pogodbenic ne dogovorita drugače ali če ta sporazum tega ne ureja drugače, pogodbenici sami poravnata lastne stroške, ki nastanejo pri ukrepanju pooblaščenih organov za sodelovanje pri izvajanju tega sporazuma.

36. člen

Razmerje do drugih mednarodnih sporazumov

Ta sporazum ne vpliva na obveznosti, ki sta jih pogodbenici prevzeli v drugih dvo- ali večstranskih mednarodnih sporazumih.

37. člen

Reševanje sporov

1. Morebitne spore v zvezi z razlago ali uporabo tega sporazuma pogodbenici rešujeta s pogajanjem v okviru skupne komisije, ki sta jo ustanovili na podlagi 34. člena tega sporazuma.

e) Classified information may be used solely for the purposes for which it was transferred. Access to classified information shall be limited to those persons who have been authorized to have access in accordance with the national laws and regulations.

f) The classified information transferred may be transmitted to authorities other than those specified in this Agreement only with prior written authorisation of the sender.

g) Any violation of the laws and regulations governing the protection of classified information on the part of the recipient shall be immediately made known to the sender. The notification shall extend to the circumstances pertaining to the violation of the regulations, the consequences and the measures taken to alleviate the impact, as well as the measures introduced to prevent any further violation of the relevant laws and regulations.

h) The transfer of documents, data, information and technical devices to a third country under this Agreement shall be possible only with the prior written authorisation of the competent sending authority.

i) Access to classified information necessary for the work of the joint crime detection team set up pursuant to Article 16 of this Agreement shall be granted to the seconded officer of the other Contracting Party by the leader of the authority that set up the joint crime detection team in the case of information classified by the authorised co-operating authorities specified in this Agreement. To transfer information classified by authorities not participating in the co-operation, the consent of the classifier shall be obtained.

2. The Contracting Parties shall notify each other about the authorities in charge of supervising the protection of classified information through diplomatic channels within thirty days of the entry into force of this Agreement.

Chapter VI Final Provisions

Article 34

Joint Committee

1. The Contracting Parties shall set up a Joint Committee to facilitate and evaluate the co-operation under this Agreement. They shall notify each other of the composition of the Committee through diplomatic channels.

2. The Joint Committee shall meet when necessary and shall hold its meetings alternately in the Republic of Slovenia and in the Republic of Hungary.

3. The Joint Committee may put forward proposals to the competent governmental authorities of the Contracting Parties with regard to resolving issues related to the implementation of this Agreement and enhancement of co-operation.

Article 35

Costs

Unless otherwise agreed by the central contact points of the Contracting Parties or unless otherwise provided for in this Agreement, both Contracting Parties shall bear the costs incurred in the course of the actions of their own co-operating authorities.

Article 36

Relations to Other International Agreements

The provisions of this Agreement shall not affect the obligations undertaken by the Contracting Parties under other bilateral or multilateral international agreements.

Article 37

Settlement of Disputes

1. Any disputes related to the interpretation or application of this Agreement shall be settled through negotiations within the framework of the Joint Committee set up by the Contracting Parties in accordance with Article 34 of this Agreement.

2. Če skupna komisija ne more razrešiti spornega vprašanja, se spor reši po diplomatski poti.

38. člen

Začetek veljavnosti sporazuma in druge določbe

1. Sporazum je treba ratificirati. Veljati začne devetdeseti dan po prejemu zadnjega uradnega obvestila, s katerim se pogodbenici po diplomatski poti obvestita, da so končani notranjepravni postopki za začetek veljavnosti tega sporazuma.

2. 12. člen tega sporazuma se začne uporabljati dan po razglasitvi sklepov Sveta Evropske unije, ki pogodbenicama odobri celovito prevzemanje Konvencije o izvajanju Schengenskega sporazuma z dne 14. junija 1985 o postopni odpravi kontrol na skupnih mejah, podpisane dne 19. junija 1990 v Schengnu (v nadaljevanju: Schengenska konvencija), ter pravnih aktov, ki temeljijo na teh dveh dokumentih oziroma so drugače povezani z njima.

3. Od datuma iz prejšnjega odstavka, se čezmejno tajno opazovanje uporabi ob sumu kaznivih dejanj, ki so podlaga za izdajo evropskega naloga za prijetje.

4. Od datuma iz drugega odstavka, se določbe tega sporazuma, ki se nanašajo na skupno patroljo v zvezi z nadzorom skupne državne meje, lahko uporabljajo, če je uveden ukrep, določen v drugem odstavku 2. člena Schengenske konvencije.

5. Biometrični podatki iz točke a 29. člena tega sporazuma se začnejo pošiljati, ko madžarska pogodbenica po diplomatski poti obvesti slovensko pogodbenico, da so izpolnjeni notranjepravni postopki za izvajanje tega člena.

6. Sporazum je sklenjen za nedoločen čas. Vsaka pogodbenica ga lahko po diplomatski poti kadar koli pisno odpove. V tem primeru preneha veljati naslednji dan po poteku šestih mesecev od dneva, ko je bilo prejeto uradno obvestilo o odpovedi.

7. Pogodbenici lahko odložita izvajanje tega sporazuma deloma ali v celoti, če krši ali ogroža njuno suverenost, varnost, javni red ali če je v nasprotju z njunimi zakoni in drugimi predpisi. O sprejetju ali preklicu takih ukrepov se pogodbenici nemudoma obvestita po diplomatski poti. Odložitev izvajanja tega sporazuma ali njen preklic začne veljati z dnem prejema obvestila.

8. Sočasno z začetkom veljavnosti tega sporazuma preneha veljati Dogovor med Vlado Republike Slovenije in Vlado Republike Madžarske o sodelovanju v boju proti terorizmu, ilegalnemu prometu z mamili in organiziranem kriminalu, ki je bil podpisan 19. maja 1993 v Budimpešti.

9. Za registracijo tega sporazuma pri Sekretariatu Združenih narodov v skladu s 102. členom Ustanovne listine Združenih narodov poskrbi madžarska pogodbenica. Madžarska pogodbenica o registraciji nemudoma obvesti slovensko.

Sestavljeno v/na Brdu 25. oktobra 2006 v dveh izvornikih v slovenskem, madžarskem in angleškem jeziku, pri čemer so besedila v vseh treh jezikih enako verodostojna. Pri sporu v zvezi z razlago tega sporazuma prevlada angleško besedilo.

Za Republiko Slovenijo
Dragutin Mate l.r.

Za Republiko Madžarsko
Dr. Petrètei József l.r.

2. If the Joint Committee is unable to decide the disputed issue, the dispute shall be resolved through diplomatic channels.

Article 38

Entry into Force and Other Provisions

1. This Agreement shall be subject to ratification. This Agreement shall enter into force on the ninetieth day following the receipt of the last notification by which the Contracting Parties inform each other through diplomatic channels that they have fulfilled the internal legal procedures required for the entry into force of this Agreement.

2. Article 12 of this Agreement shall be applied by the Contracting Parties from the day following the date of promulgation of the decisions of the Council of the European Union approving the full application of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 (hereinafter the Schengen Implementation Convention) and the legal instruments based on them or otherwise related to them.

3. As from the date specified in Paragraph (2) of this Article, cross-border surveillance shall be applied in cases of suspicion of criminal acts constituting the basis for issuing the European arrest warrant.

4. As from the date specified in Paragraph (2) of this Article, the provisions of this Agreement concerning the joint patrols related to the supervision of the common border may be applied only in the event of the introduction of the measure specified in Article 2 (2) of the Schengen Implementation Convention.

5. The transfer of biometric data referred to in Point a) of Article 29 of this Agreement shall be effected when the Hungarian Contracting Party has notified the Slovenian Contracting Party through diplomatic channels that all internal legal procedures required for the implementation of this Article have been completed.

6. This Agreement shall be concluded for an indefinite period of time. Each Contracting Party may at any time denounce the Agreement by written notification through diplomatic channels. In such a case the Agreement shall cease to have effect on the day following the expiry of six months from the date when the notification of denunciation was received.

7. Either of the Contracting Parties may suspend, in part or in whole, the application of this Agreement if it violates or threatens its sovereignty, security, public order, or if it conflicts with its laws and regulations. The Contracting Parties shall immediately notify each other of the adoption or withdrawal of such measures through diplomatic channels. Any suspension of the application of this Agreement or its withdrawal shall become effective on the date of receiving the notification.

8. Upon the entry into force of this Agreement, the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Hungary on co-operation in combating terrorism, illegal trafficking in drugs, and organised crime, signed at Budapest on 19 May 1993, shall cease to have effect.

9. The Hungarian Contracting Party shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the United Nations Charter. The Hungarian Contracting Party shall immediately notify the Slovenian Contracting Party of the registration.

Done at Brdo on 25th October 2006 in two original copies, in the Slovenian, Hungarian and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Agreement the English text shall prevail.

For the Republic of Slovenia
Dragutin Mate m.p.

For the Republic of Hungary
Dr. Petrètei József m.p.

Priloga
k prvemu odstavku 33. člena Sporazuma med
Republiko Slovenijo in Republiko Madžarsko o
čezmejnem policijskem sodelovanju organov za
zatiranje kriminalitete

Oznake tajnih podatkov in njihove ustreznice

Upoštevač točko a prvega odstavka 33. člena Sporazuma med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete pogodbenici v skladu z notranjimi zakoni in drugimi predpisi Republike Slovenije in Republike Madžarske ugotovita, da so spodaj navedene oznake tajnih podatkov ustrezne:

v Republiki Sloveniji	v Republiki Madžarski	angleška ustreznica
STROGO TAJNO	"Szigorúan Titkos!"	TOP SECRET
TAJNO	"Titkos!"	SECRET
ZAUPNO	"Bizalmas!"	CONFIDENTIAL
INTERNO	"Korlátozott terjesztésű!"	RESTRICTED

Annex
to Article 33 (1) of the Agreement between the
Republic of Slovenia and the Republic of Hungary
on cross-border co-operation of law enforcement
authorities

Classification markings and their equivalents

Referring to Article 33 (1) (a) of the Agreement between the Republic of Slovenia and the Republic of Hungary on cross-border co-operation of law enforcement authorities in accordance with the national laws and regulations of the Republic of Slovenia and the Republic of Hungary, the Contracting Parties establish that the following markings of classified information are equivalent:

In the Republic of Slovenia	In the Republic of Hungary	English equivalent
STROGO TAJNO	„Szigorúan titkos!”	TOP SECRET
TAJNO	„Titkos!”	SECRET
ZAUPNO	„Bizalmas!”	CONFIDENTIAL
INTERNO	„Korlátozott terjesztésű!”	RESTRICTED

3. člen

Za izvajanje sporazuma skrbi Ministrstvo za notranje zadeve.

4. člen

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

Št. 200-10/06-40/1
 Ljubljana, dne 1. februarja 2007
 EPA 1231-IV

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

VSEBINA

- | | | |
|-----|--|-----|
| 26. | Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljenega na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti, Protokola, pripravljenega na podlagi člena K.3 Pogodbe o Evropski uniji, o razlagi Konvencije o zaščiti finančnih interesov Evropskih skupnosti s predhodnim odločanjem Sodišča Evropskih skupnosti, in Drugega protokola, pripravljenega na podlagi člena K.3 Pogodbe o Evropski uniji, h Konvenciji o zaščiti finančnih interesov Evropskih skupnosti (MKZFIES) | 765 |
| 27. | Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o izročitvi med državami članicami Evropske unije (MKIDEU) | 785 |
| 28. | Zakon o ratifikaciji Konvencije, pripravljene na podlagi člena K.3 Pogodbe o Evropski uniji, o poenostavljenem postopku izročitve med državami članicami Evropske unije (MKPPI) | 794 |
| 29. | Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Republiko Madžarsko o čezmejnem policijskem sodelovanju organov za zatiranje kriminalitete (BHUČPS) | 800 |

