



Treaty Series No. 2 (2007)

## Protocol

established by the Council, in accordance with  
Article 34 of the Treaty on European Union,  
to the Convention on Mutual Assistance in Criminal  
Matters between the Member States of the  
European Union

Luxembourg, 16 October 2001

[The United Kingdom instrument of adoption was deposited on 15 March 2006 and the Protocol  
entered into force for the United Kingdom on 13 June 2006]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
March 2007*

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**PROTOCOL ESTABLISHED BY THE COUNCIL IN ACCORDANCE WITH  
ARTICLE 34 OF THE TREATY ON EUROPEAN UNION TO THE CONVENTION  
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER  
STATES OF THE EUROPEAN UNION**

HAVE AGREED UPON THE FOLLOWING PROVISIONS, which shall be annexed to, and form an integral part of, the Convention on mutual assistance in criminal matters between the Member States of the European Union of 29 May 2000<sup>1</sup>, hereinafter referred to as the “2000 Mutual Assistance Convention”:

ARTICLE 1

**Request for information on bank accounts**

1. Each Member State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the identified accounts.

The information shall also, if requested and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3. The obligation set out in this Article shall apply only if the investigation concerns:

- an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State, or
- an offence referred to in Article 2 of the 1995 Convention on the establishment of a European Police Office (Europol Convention)<sup>2</sup>, or in the Annex to that Convention, as amended, or
- to the extent that it may not be covered by the Europol Convention, an offence referred to in the 1995 Convention on the protection of the European Communities’ financial interests, the 1996 Protocol thereto, or the 1997 Second Protocol thereto.

4. The authority making the request shall, in the request:

- state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence;
- state on what grounds it presumes that banks in the requested Member State hold the account and, to the extent available, which banks may be involved;
- include any information available which may facilitate the execution of the request.

5. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

6. The Council may decide, pursuant to Article 34(2)(c) of the Treaty of European Union, to extend the scope of paragraph 3.

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<sup>1</sup> European Communities No. 7 (2001) Cm 5229.

<sup>2</sup> Treaty Series No. 103 (2000) Cm 4837.

## ARTICLE 2

### **Requests for information on banking transactions**

1. On request by the requesting State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.
2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.
3. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.
4. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

## ARTICLE 3

### **Requests for the monitoring of banking transactions**

1. Each Member State shall undertake to ensure that, at the request of another Member State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State.
2. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.
3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.
4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Member States.

## ARTICLE 4

### **Confidentiality**

Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the requesting State in accordance with Articles 1, 2 or 3 or that an investigation is being carried out.

## ARTICLE 5

### **Obligation to inform**

If the competent authority of the requested Member State in the course of the execution of a request for mutual assistance considers that it may be appropriate to undertake investigations not initially foreseen, or which could not be specified when the request was made, it shall immediately inform the requesting authority accordingly in order to enable it to take further action.

## ARTICLE 6

### **Additional requests for mutual assistance**

1. Where the competent authority of the requesting Member State makes a request for mutual assistance which is additional to an earlier request, it shall not be required to provide information already provided in the initial request. The additional request shall contain information necessary for the purpose of identifying the initial request.
2. Where, in accordance with the provisions in force, the competent authority which has made a request for mutual assistance participates in the execution of the request in the requested Member State, it may, without prejudice to Article 6(3) of the 2000 Mutual Assistance Convention, make an additional request directly to the competent authority of the requested Member State while present in that State.

## ARTICLE 7

### **Banking secrecy**

A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.

## ARTICLE 8

### **Fiscal offences**

1. Mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence.
2. If a Member State has made the execution of a request for search and seizure dependent on the condition that the offence giving rise to the request is also punishable under its law, this condition shall be fulfilled, with regard to offences referred to in paragraph 1, if the offence corresponds to an offence of the same nature under its law.

The request may not be refused on the ground that the law of the requested Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Member State.

3. Article 50 of the Schengen Implementation Convention is hereby repealed.

## ARTICLE 9

### **Political offences**

1. For the purposes of mutual legal assistance between Member States, no offence may be regarded by the requested Member State as a political offence, 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 13(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 of 27 January 1977<sup>1</sup>;and
  - (b) offences of conspiracy or association—which correspond to the description of behaviour referred to in Article 3(4) of the Convention of 27 September 1996<sup>2</sup> relating

<sup>1</sup> Treaty Series No. 93 (1978) Cmnd 7390.

<sup>2</sup> European Communities Series No. 003 (1997) Cm 3533.

to extradition between the Member States of the European Union—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. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to mutual legal assistance between Member States.

## ARTICLE 10

### **Forwarding refusals to the Council and involvement of Eurojust**

1. If a request is refused on the basis of:
  - Article 2(b) of the European Mutual Assistance Convention or Article 22(2)(b) of the Benelux Treaty, or
  - Article 51 of the Schengen Implementation Convention or Article 5 of the European Mutual Assistance Convention, or
  - Article 1(5) or Article 2(4) of this Protocol,

and the requesting Member State maintains its request, and no solution can be found, the reasoned decision to refuse the request shall be forwarded to the Council for information by the requested Member State, for possible evaluation of the functioning of judicial cooperation between Member States.

2. The competent authorities of the requesting Member State may report to Eurojust, once it has been established, any problem encountered concerning the execution of a request in relation to the provisions referred to in paragraph 1 for a possible practical solution in accordance with the provisions laid down in the instrument establishing Eurojust.

## ARTICLE 11

### **Reservations**

No reservations may be entered in respect of this Protocol, other than those provided for in Article 9(2).

## ARTICLE 12

### **Territorial application**

The application of this Protocol to Gibraltar will take effect when the 2000 Mutual Assistance Convention has taken effect in Gibraltar, in accordance with Article 26 of that Convention.

## ARTICLE 13

### **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 constitutional procedures for the adoption of this Protocol.

3. This Protocol shall enter into force in the eight Member States concerned ninety days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Protocol, which is the eighth to complete that formality. If, however, the 2000 Mutual Assistance Convention has not entered into force on that date, this Protocol shall enter into force on the date on which that Convention enters into force.

4. Any notification by a Member State subsequent to the entry into force of this Protocol under paragraph 3 shall have the effect that, ninety days after such notification, this Protocol shall enter into force as between that Member State and those Member States for which this Protocol has already entered into force.

5. Before the entry into force of this Protocol pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Protocol in its relations with Member States which have made the same declaration. Such declarations shall take effect ninety days after the date of deposit thereof.

6. Notwithstanding paragraphs 3 to 5, the entry into force or application of this Protocol shall not take effect in relations between any two Member States before the entry into force or application of the 2000 Mutual Assistance Convention between these Member States.

7. This Protocol shall apply to mutual assistance initiated after the date on which it enters into force, or is applied pursuant to paragraph 5, between the Member States concerned.

#### ARTICLE 14

##### **Acceding States**

1. This Protocol shall be open to accession by any State which becomes a member of the European Union and which accedes to the 2000 Mutual Assistance Convention.

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

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

5. Where this Protocol is not yet in force at the time of the deposit of their instrument of accession, Article 13(5) shall apply to acceding Member States.

6. Notwithstanding paragraphs 4 and 5, the entry into force or application of this Protocol with respect to the acceding State shall not take effect before the entry into force or application of the 2000 Mutual Assistance Convention with respect to that State.

#### ARTICLE 15

##### **Position of Iceland and Norway**

Article 8 shall constitute measures amending or based upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis<sup>1</sup> (hereinafter referred to as the "Association Agreement").

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<sup>1</sup> OJ L 176, 10.7.1999, p. 36.

## ARTICLE 16

### **Entry into force for Iceland and Norway**

1. Without prejudice to Article 8 of the Association Agreement, the provision referred to in Article 15 shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Protocol has already entered into force pursuant to Article 13(3) or (4).
2. Any entry into force of this Protocol for a Member State after the date of entry into force of the provision referred to in Article 15 for Iceland and Norway, shall render that provision also applicable in the mutual relations between that Member State and Iceland and Norway.
3. The provision referred to in Article 15 shall in any event not become binding on Iceland and Norway before the entry into force of the provisions referred to in Article 2(1) of the 2000 Mutual Assistance Convention with respect to those two States.
4. Without prejudice to paragraphs 1, 2 and 3, the provision referred to in Article 15 shall enter into force for Iceland and Norway not later than on the date of entry into force of this Protocol for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Protocol.

## ARTICLE 17

### **Depositary**

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

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

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

Done at Luxembourg on the sixteenth day of October in the year two thousand and one 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, the original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

**[Here follow the signatures]**



## NOTIFICATIONS AND EFFECTIVE DATES

<i>State</i>	<i>Action</i>	<i>Date</i>	<i>Effective Date</i>
Austria	Notification	04 Apr 2005	05 Oct 2005
Belgium	Notification	25 May 2005	05 Oct 2005
Cyprus	Notification	03 Nov 2005	01 Feb 2006
Czech Republic	Notification	14 Mar 2006	12 Jun 2006
Germany	Notification	04 Nov 2005	02 Feb 2006
Denmark	Notification	01 Mar 2005	05 Oct 2005
Spain	Notification	05 Jan 2005	05 Oct 2005
France	Notification	10 May 2005	05 Oct 2005
United Kingdom	Notification	15 Mar 2006	13 Jun 2006
Hungary	Notification	25 Aug 2005	23 Nov 2005
Lithuania	Notification	28 May 2004	05 Oct 2005
Latvia	Notification	14 Jun 2004	05 Oct 2005
Netherlands	Notification	02 Apr 2004	05 Oct 2005
Poland	Notification	28 Jul 2005	26 Oct 2005
Sweden	Notification	07 Jul 2005	05 Oct 2005
Finland	Notification	21 Feb 2005	05 Oct 2005
Slovenia	Notification	28 Jun 2005	05 Oct 2005
Slovakia	Notification	03 Jul 2006	01 Oct 2006

## Declarations

### Austria

Re Article 1(5) of the Protocol: Austria declares in accordance with Article 1(5) that it makes the execution of a request under Article 1 dependent on the same conditions as it applies in respect of requests for search and seizure.

Re Article 2(4) of the Protocol: Austria declares in accordance with Article 2(4) that it makes the execution of a request under Article 2 dependent on the same conditions as it applies in respect of requests for search and seizure.

### Belgium

“In accordance with Article 24 of the Convention, the Kingdom of Belgium states that the competent authorities for the application of the Convention are the judicial authorities and, where the intervention of a central authority is required, the Directorate-General of Legislation, Fundamental Freedoms and Rights at the Federal Department of Justice (Service public fédéral Justice, Direction générale de la Législation et des Libertés et Droits fondamentaux, Autorité centrale d’entraide pénale, Boulevard de Waterloo 115, 1000 Bruxelles). As stated in the Declaration made in connection with the 1959 Convention on Mutual Assistance, the Kingdom of Belgium defines “judicial authorities” as “members of the judicial authority responsible for delivering rulings, examining magistrates and members of the Public Prosecutor’s Office”. The Kingdom of Belgium does not designate any non-judicial authority for the application of the Convention.”

### Czech Republic

In accordance with Article 6(7) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that it is not bound by the first sentence of Article 6(5) of the Convention.

In accordance with Article 6(7) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that, pursuant to Article 6(6) of the Convention, requests made

by administrative authorities under Article 3(1) of the Convention are sent to the judicial authorities of the Czech Republic, and therefore cannot be sent directly to the administrative authorities of the Czech Republic.

In accordance with Article 9(6) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the consent stipulated in Article 9(3) of the Convention will be required before an agreement is concluded on the temporary transfer of an individual under Article 9(1) of the Convention.

In accordance with Article 24(1)(b) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the judicial authority competent to deal with requests for controlled under Article 12 of the Convention is the Regional Prosecutor's Office in Prague, Husova 11, 110 01 Prague 1, tel.: +420 222 111 700, fax: +420 222 220 075.

In accordance with Article 24(1)(b) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the judicial authority competent to deal with requests to set up joint investigation teams under Article 13 of the Convention is the Supreme Prosecutor's Office of the Czech Republic, International Department, Jezuitsk— 4, 660 55 Brno, tel.: +420 542 512 416, fax: +420 542 512 414.

In accordance with Article 24(1)(b) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the judicial authority competent to deal with requests for covert investigations under Article 14 of the Convention is the Chief Prosecutor's Office in Prague, n—mesti Hrdinu 1300, 140 65 Prague 4, tel.: +420 261 196 111, fax: +420 241 401 400.

In accordance with Article 24(1)(b) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the central authority referred to in Article 6(8) of the Convention is the Ministry of Justice of the Czech Republic.

In accordance with Article 24(1)(e) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000), the Czech Republic declares that the contact point referred to in Article 20(4)(d) of the Convention is the Police Headquarters of the Czech Republic, International Police Cooperation Division, Interpol Bureau, Strojnická 27, 170 89 Prague 7, tel.: +420 974 834 380, fax: +420 974 834 716.

## **Denmark**

Ratification of the Protocol (notification of adoption) by Denmark:—Denmark has completed its constitutional procedures for the adoption of the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;—Denmark is entering a reservation under Article 9(2) of the Protocol, so as to make Article 9(1) applicable only in relation to: (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977; and (b) offences of conspiracy or association—which correspond to the description of behaviour referred to in Article 3(4) of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union—to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;—in Denmark's case, the Protocol does not, for now, apply to the Faroe Islands or Greenland.

## **Spain**

In accordance with Article 13(5), Spain declares that, pending its entry into force, this Protocol will apply in its relations with Member States which have made the same declaration. This declaration will take effect ninety days after the date of its deposit.

## **France**

Article 9(2): In accordance with Article 9(2), France declares that it will apply Article 9(1) only in relation to the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977 and to offences of conspiracy or association to commit one or more of those offences. Article 13(5): France declares that, in accordance with Article 13(5), it will apply the Protocol in its relations with Member States which have made a similar declaration.

## **Latvia**

In accordance with paragraph 2 of Article 9 of the Protocol the Republic of Latvia declares that it applies the provision of the paragraph 1 of Article 9 of the said Protocol only in relation to the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and to offences of conspiracy or association, which correspond to the description of behaviour referred to in Article 3(4) of the Convention relating to extradition between the Member States of the European Union, to commit one or more of the offences referred to in Article 1 and 2 of the European Convention on Suppression of Terrorism.

## **Netherlands**

Declaration: “In accordance with Article 13(5), the Kingdom of the Netherlands declares that, until it enters into force, the Protocol will be applied in the Netherlands’ relations with Member States which have made a similar declaration.”

## **Sweden**

Statements:

- (a) The authorities (public prosecutors and courts) designated by Sweden as competent judicial authorities under Article 24 of the 1959 European Convention on Mutual Assistance in Criminal Matters are competent for the application of the EU Convention of 29 May 2000 on Mutual Assistance in Criminal Matters and the Protocol of 16 October 2001 to that Convention.
- (b) In addition: (1) under Article 24(1)(b) of the Convention, the Ministry of Justice is the competent central authority; (2) under Article 24(1)(c) of the Convention, the following police and customs authorities are competent: (i) the National Police Board, the police authorities, the Customs Board and the Coast Guard for controlled deliveries (Article 12); (ii) the National Police Board, the police authorities, the Customs Board and the Coast Guard for joint investigation teams (Article 13), and (iii) the National Police Board and the police authorities for covert investigations (Article 14); under Article 24(1)(e) of the Convention, public prosecutors are competent.

## **Finland**

“Article 13(5) of the Protocol Before the Protocol enters into force between States, Finland will apply the Protocol in its relations with Member States which have made the same declaration”.



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