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**AN BILLE CUSTAM AGUS MÁIL (CÚNAMH  
FRITHPHÁIRTEACH), 2000  
CUSTOMS AND EXCISE (MUTUAL ASSISTANCE)  
BILL, 2000**

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*Mar a tionscnaíodh  
As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Conventions, Agreement and Protocols to have force of law.
3. Designation of national authority.
4. Designation of competent customs administration.
5. Application of Data Protection Act, 1988.
6. Designation of national supervisory authority.
7. Special forms of co-operation.
8. Regulations.
9. Offences.
10. Interpretation of Conventions.
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FIRST SCHEDULE

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TENTH SCHEDULE

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Act Referred to

Data Protection Act, 1988

1988, No. 25





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FRITHPHÁIRTEACH), 2000**  
**CUSTOMS AND EXCISE (MUTUAL ASSISTANCE)**  
**BILL, 2000**

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# **BILL**

*entitled*

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AN ACT TO GIVE THE FORCE OF LAW TO THE CONVEN-  
TION DRAWN UP ON THE BASIS OF ARTICLE K.3 OF  
10 THE TREATY ON EUROPEAN UNION ON THE USE OF  
INFORMATION TECHNOLOGY FOR CUSTOMS PUR-  
POSES DONE AT BRUSSELS ON THE 26TH DAY OF  
JULY, 1995, THE AGREEMENT ON PROVISIONAL  
APPLICATION BETWEEN CERTAIN MEMBER STATES  
15 OF THE EUROPEAN UNION OF THE CONVENTION  
DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE  
TREATY ON EUROPEAN UNION ON THE USE OF  
INFORMATION TECHNOLOGY FOR CUSTOMS PUR-  
POSES DONE AT BRUSSELS ON THE 26TH DAY OF  
20 JULY, 1995, THE CONVENTION DRAWN UP ON THE  
BASIS OF ARTICLE K.3 OF THE TREATY ON EURO-  
PEAN UNION ON MUTUAL ASSISTANCE AND CO-  
OPERATION BETWEEN CUSTOMS ADMINISTRATIONS  
DONE AT BRUSSELS ON THE 18TH DAY OF  
25 DECEMBER, 1997, 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  
30 CONVENTION ON THE USE OF INFORMATION TECH-  
NOLOGY FOR CUSTOMS PURPOSES DONE AT BRUS-  
SELS ON THE 29TH DAY OF NOVEMBER, 1996 AND  
THE PROTOCOL DRAWN UP ON THE BASIS OF  
ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION  
ON THE SCOPE OF THE LAUNDERING OF PROCEEDS  
35 IN THE CONVENTION ON THE USE OF INFORMATION  
TECHNOLOGY FOR CUSTOMS PURPOSES AND THE  
INCLUSION OF THE REGISTRATION NUMBER OF THE  
MEANS OF TRANSPORT IN THE CONVENTION DONE  
40 AT BRUSSELS ON THE 12TH DAY OF MARCH, 1999  
AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**1.—(1) In this Act—**

“the Agreement” means the Agreement on provisional application between certain Member States of the European Union of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes done at Brussels on the 26th day of July, 1995; 5

“the CIS Convention” means the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, done at Brussels on the 26th day of July, 1995, as amended by the 1999 Protocol; 10

“Customs Information System” has the same meaning as it has in the CIS Convention;

“the Customs Co-operation Convention” means the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and co-operation between customs administrations, done at Brussels on the 18th day of December, 1997; 15

“the Minister” means the Minister for Finance;

“the 1996 Protocol” means 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 CIS Convention, done at Brussels on the 29th day of November, 1996; 20

“the 1999 Protocol” means the Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, on the scope of the laundering of proceeds in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention, done at Brussels on the 12th day of March, 1999. 25

**(2) In this Act—**

(a) a reference to a section or a Schedule is a reference to a section of or Schedule to this Act unless it is indicated that reference to some other enactment is intended; 30

(b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended; and 35

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any enactment including this Act.

Conventions, Agreement and Protocols to have force of law.

**2.—(1) Subject to the provisions of this Act, the Agreement, the CIS Convention, the 1996 Protocol, the 1999 Protocol and the Customs Co-operation Convention shall have the force of law in the State and judicial notice shall be taken of them. 40**

(2) For convenience of reference there are set out in the *First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth* Schedules respectively, to this Act— 45

(a) the text in the English language of the CIS Convention,

- (b) the text in the English language of the Agreement,
- (c) the text in the English language of the 1996 Protocol,
- (d) the text in the English language of the Customs Co-operation Convention,
- 5 (e) the text in the English language of the 1999 Protocol,
- (f) the text in the Irish language of the CIS Convention,
- (g) the text in the Irish language of the Agreement,
- (h) the text in the Irish language of the 1996 Protocol,
- 10 (i) the text in the Irish language of the Customs Co-operation Convention,
- (j) the text in the Irish language of the 1999 Protocol.

**3.**—The Revenue Commissioners are hereby designated as the national authority for the purposes of Articles 7(1) and 8(2) of the CIS Convention. Designation of national authority.

15 **4.**—The Revenue Commissioners are hereby designated as the competent customs administration for the purposes of Article 10 of the CIS Convention. Designation of competent customs administration.

20 **5.**—(1) For the purposes of this Act, the CIS Convention and the Customs Co-operation Convention, the Data Protection Act, 1988, shall apply and have effect, with any necessary modifications, to the collection, processing, keeping, use or disclosure of personal data included in or received from the Customs Information System. Application of Data Protection Act, 1988.

25 (2) Without prejudice to the generality of *subsection (1)*, for the purposes of Article 21 of the CIS Convention, section 7 of the Data Protection Act, 1988, shall apply as regards the liability of the State for injury caused to a person through the use of the Customs Information System in the State.

30 (3) Without prejudice to the generality of *subsection (1)*, for the purposes of Article 25 of the Customs Co-operation Convention, section 7 of the Data Protection Act, 1988, shall apply as regards the liability of the State for injury caused to a person through the processing of data communicated in the State.

35 **6.**—The Data Protection Commissioner is hereby designated as the national supervisory authority for the purposes of the CIS Convention and the Customs Co-operation Convention. Designation of national supervisory authority.

**7.**—(1) Subject to *subsection (2)*, the State shall not be bound by Articles 20, 21 and 23 of the Customs Co-operation Convention or any part of those Articles. Special forms of co-operation.

40 (2) The Government may, by order, provide that the State shall be bound by Articles 20, 21 or 23 or any part of those Articles.

Regulations.

**8.—(1)** The Minister may make regulations for the purpose of enabling this Act and the Customs Co-operation Convention to have full effect.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may— 5

(a) specify that processing of personal data by the authority in the State receiving the data shall be authorised only for the purpose of preventing and detecting infringements of national customs provisions and prosecuting and punishing infringements of Community and national customs provisions, 10

(b) provide that personal data may be forwarded by the authority in the State receiving the data without the consent of the authority supplying them to its customs administrations, its investigative authorities and its judicial bodies to enable them to prosecute and punish infringements of national and Community customs provisions; in all other cases consent to forward such data being necessary, 15

(c) provide for an individual's right to have personal data which have been communicated and found to be inaccurate, corrected or erased, 20

(d) provide for the recording by the communicating and recipient authorities of any personal data forwarded or received pursuant to the application of the Customs Co-operation Convention, 25

(e) specify that the person in respect of whom personal data have been communicated may establish what data have been communicated and the use to which they have been put as well as setting out the circumstances under which this right may be restricted, 30

(f) provide that personal data communicated shall be kept only for the period necessary for the purposes for which they were communicated.

(3) In this section references to personal data shall be construed as references to non-automated personal data. 35

(4) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to be necessary or expedient for the purposes of the regulations.

(5) Where the Minister proposes to make regulations under this section he or she shall, before doing so, consult with such other (if any) Minister of the Government as the Minister considers appropriate having regard to the function of that other Minister of the Government in relation to the proposed regulations. 40

Offences.

**9.—**Without prejudice to the generality of *section 5(1)*, any person who uses personal data from the Customs Information System other than for the purpose of the aim specified in Article 2(2) of the CIS Convention shall, save where such use is in accordance with and is subject to the conditions specified in Article 8(1) of that Convention, be guilty of an offence under the Data Protection Act, 1988. 45



**10.**—(1) For the purposes of Article 2 of the 1996 Protocol, paragraph (2)(a) of that Article shall apply in the State. Interpretation of Conventions.

5 (2) (a) Where a declaration is made pursuant to Article 2 of the 1996 Protocol specifying that paragraph (2)(b) of that Article shall apply in the State, the Minister may by order declare that the declaration (the text of which shall be set out in the order) has been made.

(b) On the commencement of an order under *paragraph (a), subsection (1)* shall cease to have effect.

10 (3) For the purposes of Article 26 of the Customs Co-operation Convention, paragraph (5)(a) of that Article shall apply in the State.

15 (4) (a) Where a declaration is made pursuant to Article 26(4) of the Customs Co-operation Convention specifying that paragraph (5)(b) of that Article shall apply in the State, the Minister may by order declare that the declaration (the text of which shall be set out in the order) has been made.

(b) On the commencement of an order under *paragraph (a), subsection (3)* shall cease to have effect.

20 (5) Judicial notice shall be taken of any ruling or decision of, or expression of opinion by, the Court of Justice of the European Communities on any question as to the meaning or effect of any provision of the CIS Convention or the Customs Co-operation Convention.

25 **11.**—A draft of every order or regulation proposed to be made under this Act shall be laid before each House of the Oireachtas and the order or, as the case may be, regulation shall not be made unless a resolution approving of the draft has been passed by each such House. Laying of orders and regulations before Houses of the Oireachtas.

30 **12.**—(1) This Act may be cited as the Customs and Excise (Mutual Assistance) Act, 2000. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may fix by order either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

FIRST SCHEDULE

THE TEXT IN THE ENGLISH LANGUAGE OF THE  
CIS CONVENTION

**CONVENTION DRAWN UP ON THE BASIS OF ARTICLE  
K.3 OF THE TREATY ON EUROPEAN UNION, ON THE  
USE OF INFORMATION TECHNOLOGY FOR CUSTOMS  
PURPOSES** 5

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, 10

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

CONSIDERING that customs administrations are responsible, together with other competent authorities, at the external frontiers of the Community and within the territorial limit thereof, for the prevention, investigation and suppression of offences against not only Community rules, but also against national laws, in particular those laws covered by Articles 36 and 223 of the Treaty establishing the European Community, 15 20

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

CONVINCED that it is necessary to reinforce co-operation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities, using new technology for the management and transmission of such information, subject to the provisions of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, 25 30

BEARING IN MIND that the customs administrations in their day-to-day work have to implement both Community and non-Community provisions, and that there is consequently an obvious need to ensure that the provisions of mutual assistance and administrative co-operation in both sectors evolve as far as possible in parallel, 35

HAVE AGREED ON THE FOLLOWING PROVISIONS:

CHAPTER I

Definitions 40

*Article 1*

For the purposes of this Convention,

1. The term 'national laws' means laws or regulations of a Member State, in the application of which the customs administration of that Member State has total or partial competence, concerning: 45

- the movement of goods subject to measures of prohibition, restriction or control, in particular those measures covered by Articles 36 and 223 of the Treaty establishing the European Community;
  - 5 — the transfer, conversion, concealment, or disguise of property or proceeds derived from, obtained directly or indirectly through or used in, illicit international drug trafficking.
2. The term ‘personal data’ means any information relating to an identified or identifiable individual.
- 10 3. The term ‘supplying Member State’ means a State which includes an item of data in the Customs Information System.

## CHAPTER II

### Establishment of a Customs Information System

#### *Article 2*

- 15 1. The customs administrations of the Member States shall set up and maintain a joint automated information system for customs purposes, hereinafter referred to as the ‘Customs Information System’.
2. The aim of the Customs Information System, in accordance with the provisions of this Convention, shall be to assist in  
20 preventing, investigating and prosecuting serious contraventions of national laws by increasing, through the rapid dissemination of information, the effectiveness of the co-operation and control procedures of the customs administrations of the Member States.

## CHAPTER III

- 25 Operation and Use of the Customs Information System

#### *Article 3*

1. The Customs Information System shall consist of a central database facility and it shall be accessible via terminals in each Member State. It shall comprise exclusively data necessary to achieve its aim  
30 as stated in Article 2(2), including personal data, in the following categories:
- (i) commodities;
  - (ii) means of transport;
  - (iii) businesses;
  - 35 (iv) persons;
  - (v) fraud trends;
  - (vi) availability of expertise.
2. The Commission shall ensure the technical management of the infrastructure of the Customs Information System in accordance with  
40 the rules provided for by the implementing measures adopted within the Council.

The Commission shall report on the management to the committee referred to in Article 16.

3. The Commission shall communicate to that committee the practical arrangements adopted for the technical management.

#### *Article 4*

The Member States shall determine the items to be included in the Customs Information System relating to each of the categories (i) to (vi) in Article 3 to the extent that this is necessary to achieve the aim of the system. No items of personal data shall be included in any event within categories (v) and (vi) of Article 3. The items of information included in respect of persons shall comprise no more than:

- (i) name, maiden name, forenames and aliases;
- (ii) date and place of birth;
- (iii) nationality;
- (iv) sex;
- (v) any particular objective and permanent physical characteristics;
- (vi) reason for inclusion of data;
- (vii) suggested action;
- (viii) a warning code indicating any history of being armed, violent or escaping.

In any case personal data listed in Article 6, first sentence of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, hereinafter referred to as the '1981 Strasbourg Convention', shall not be included.

#### *Article 5*

1. Data in categories (i) - (iv) of Article 3 shall be included in the Customs Information System only for the purpose of sighting and reporting, discreet surveillance or specific checks.

2. For the purpose of the suggested actions referred to in paragraph 1, personal data within any of the categories (i) - (iv) of Article 3 may be included in the Customs Information System only if, especially on the basis of prior illegal activities, there are real indications to suggest that the person concerned has committed, is in the act of committing, or will commit serious contraventions of national laws.

#### *Article 6*

1. If the suggested actions referred to in Article 5 (1) are carried out, the following information may in whole, or in part, be collected and transmitted to the supplying Member State:

- (i) the fact that the commodity, means of transport, business or person reported has been found;
- (ii) the place, time and reason for the check;

- (iii) the route and destination of the journey;
- (iv) persons accompanying the person concerned or occupants of the means of transport;
- (v) the means of transport used;
- 5 (vi) objects carried;
- (vii) the circumstances under which the commodity, means of transport, business or person was found.

When such information is collected in the course of discreet surveillance steps must be taken to ensure that the discreet nature of the surveillance is not jeopardized.

2. In the context of a specific check referred to in Article 5(1) persons, means of transport and objects may be searched to the extent permissible and in accordance with the laws, regulations, and procedures of the Member State in which the search takes place. If the specific check is not permitted by the law of a Member State, it shall automatically be converted by that Member State into sighting and reporting.

#### *Article 7*

1. Direct access to data included in the Customs Information System shall be reserved exclusively for the national authorities designated by each Member State. These national authorities shall be customs administrations, but may also include other authorities competent, according to the laws, regulations and procedures of the Member State in question, to act in order to achieve the aim stated in Article 2(2).

2. Each Member State shall send the other Member States and the committee referred to in Article 16 a list of its competent authorities which have been designated in accordance with paragraph 1 to have direct access to the Customs Information System stating, for each authority which data it may have access to and for what purposes.

3. Notwithstanding the provisions of paragraphs 1 and 2, Member States may, by unanimous agreement, permit access to the Customs Information System by international or regional organizations. Such agreement shall take the form of a protocol to this Convention. In reaching their decision the Member States shall take account of any reciprocal arrangements and any opinion of the Joint Supervisory Authority referred to in Article 18 on the adequacy of data protection measures.

#### *Article 8*

1. The Member States may only use data obtained from the Customs Information System in order to achieve the aim stated in Article 2(2); however they may use it for administrative or other purposes with the prior authorization of and subject to any conditions imposed by the Member State which included it in the system. Such other use shall be in accordance with the laws, regulations and procedures of the Member State which seeks to use it and should take into account Principle 5.5. of the Recommendation R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe.

2. Without prejudice to paragraphs 1 and 4 of this Article and Article 7(3), data obtained from the Customs Information System shall only be used by national authorities in each Member State designated by the Member State in question, which are competent, in accordance with the laws, regulations and procedures of that Member State, to act in order to achieve the aim stated in Article 2(2). 5

3. Each Member State shall send the other Member States and the committee referred to in Article 16 a list of the competent authorities it has designated in accordance with paragraph 2.

4. Data obtained from the Customs Information System may, with the prior authorization of, and subject to any conditions imposed by, the Member State which included it in the System, be communicated for use by national authorities other than those designated under paragraph 2, non-Member States, and international or regional organizations wishing to make use of them. Each Member State shall take special measures to ensure the security of such data when it is being transmitted or supplied to services located outside its territory. Details of such measures must be communicated to the Joint Supervisory Authority referred to in Article 18. 10 15

*Article 9* 20

1. The inclusion of data in the Customs Information System shall be governed by the laws, regulations and procedures of the supplying Member State unless this Convention lays down more stringent provisions.

2. The use of data obtained from the Customs Information System, including performance of any action under Article 5 suggested by the supplying Member State, shall be governed by the laws, regulations and procedures of the Member State using such data, unless this Convention lays down more stringent provisions. 25

*Article 10* 30

1. Each of the Member States shall designate a competent customs administration which shall have national responsibility for the Customs Information System.

2. This administration shall be responsible for the correct operation of the Customs Information System within the Member State and shall take the measures necessary to ensure compliance with the provisions of this Convention. 35

3. The Member States shall inform one another of the competent administration referred to in paragraph 1.

CHAPTER IV 40

Amendment of Data

*Article 11*

1. Only the supplying Member State shall have the right to amend, supplement, correct, or delete data which it has included in the Customs Information System. 45

2. Should a supplying Member State note, or have drawn to its attention, that the data it included are factually inaccurate or were included, or are stored contrary to this Convention, it shall amend, supplement, correct or delete the data, as appropriate, and shall  
5 advise the other Member States accordingly.

3. If one of the Member States has evidence to suggest that an item of data is factually inaccurate, or was included or is stored on the Customs Information System, contrary to this Convention, it shall advise the supplying Member State as soon as possible. The  
10 latter shall check the data concerned and, if necessary, correct or delete the item without delay. The supplying Member State shall advise the other Member States of any correction or deletion effected.

4. If, when including data in the Customs Information System, a  
15 Member State notes that its report conflicts with a previous report as to content or suggested action, it shall immediately advise the Member State which made the previous report. The two Member States shall then attempt to resolve the matter. In the event of disagreement, the first report shall stand, but those parts of the new  
20 report which do not conflict shall be included in the System.

5. Subject to the provisions of this Convention, where in any Member State a court, or other competent authority within that Member State, makes a final decision as to amendment, supplementation, correction, or deletion, of data in the Customs Information System, the Member States undertake mutually to enforce  
25 such a decision. In the event of conflict between such decisions of courts or other competent authorities in different Member States, including those referred to in Article 15(4) concerning correction or deletion, the Member State which included the data in question shall  
30 delete it from the System.

## CHAPTER V

### Retention of Data

#### *Article 12*

1. Data included in the Customs Information System shall be kept  
35 only for the time necessary to achieve the purpose for which it was included. The need for its retention, shall be reviewed at least annually by the supplying Member State.

2. The supplying Member State may, within the review period, decide to retain data until the next review if its retention is necessary  
40 for the purposes for which it was included. Without prejudice to Article 15, if there is no decision to retain data it shall automatically be transferred to that part of the Customs Information System to which access shall be limited in accordance with paragraph 4.

3. The Customs Information System shall automatically inform  
45 the supplying Member State of a scheduled transfer of data from the Customs Information System under paragraph 2, giving one month's notice.

4. Data transferred under paragraph 2 shall continue to be retained for one year within the Customs Information System, but,  
50 without prejudice to Article 15, shall be accessible only to a representative of the committee referred to in Article 16 or to the supervisory authorities referred to in Articles 17(1) and 18(1). During that period they may consult the data only for the purposes of checking its accuracy and lawfulness, after which it must be deleted.

## CHAPTER VI

### Personal Data Protection

#### *Article 13*

1. Each Member State intending to receive personal data from, or include it in, the Customs Information System shall, no later than the time of entry into force of this Convention, adopt the national legislation sufficient to achieve a level of protection of personal data at least equal to that resulting from the principles of the 1981 Strasbourg Convention. 5

2. A Member State shall receive personal data from, or include it in, the Customs Information System only where the arrangements for the protection of such data provided for in paragraph 1 have entered into force in the territory of that Member State. The Member State shall also have previously designated a national supervisory authority or authorities in accordance with Article 17. 10 15

3. In order to ensure the proper application of the data protection provisions in this Convention, the Customs Information System shall be regarded in every Member State as a national data file subject to the national provisions referred to in paragraph 1 and any more stringent provisions contained in this Convention. 20

#### *Article 14*

1. Subject to Article 8(1), each Member State shall ensure that it shall be unlawful under its laws, regulations and procedures for personal data from the Customs Information System to be used other than for the purpose of the aim stated in Article 2(2). 25

2. Data may be duplicated only for technical purposes, provided that such duplication is necessary for direct searching by the authorities referred to in Article 7. Subject to Article 8(1), personal data included by other Member States may not be copied from the Customs Information System into other national data files. 30

#### *Article 15*

1. The rights of persons with regard to personal data in the Customs Information System, in particular their right of access, shall be put into effect in accordance with the laws, regulations and procedures of the Member State in which such rights are invoked. 35

If laid down in the laws, regulations and procedures of the Member State concerned, the national supervisory authority provided for in Article 17 shall decide whether information is to be communicated and the procedures for so doing.

A Member State which has not supplied the data concerned may only communicate data if it has first given the supplying Member State an opportunity to adopt its position. 40

2. A Member State, to which an application for access to personal data is made, shall refuse access if access may undermine the performance of the legal task specified in the report pursuant to Article 5(1), or in order to protect the rights and freedoms of others. Access shall be refused in any event during the period of discreet surveillance or sighting and reporting. 45



3. In each Member State, a person may, according to the laws, regulations and procedures of the Member State concerned, have personal data relating to himself corrected or deleted if that data is factually inaccurate, or was included or is stored in the Customs Information System contrary to the aim stated in Article 2(2) of this Convention or to the provisions of Article 5 of the 1981 Strasbourg Convention.

4. In the territory of each Member State, any person may, in accordance with the laws, regulations and procedures of the Member State in question, bring an action or, if appropriate, a complaint before the courts or the authority competent under the laws, regulations and procedures of that Member State concerning personal data relating to himself on the Customs Information System, in order to:

- (i) correct or delete factually inaccurate personal data;
- (ii) correct or delete personal data included or stored in the Customs Information System contrary to this Convention;
- (iii) obtain access to personal data;
- (iv) obtain compensation pursuant to Article 21(2).

The Member States concerned undertake mutually to enforce the final decisions taken by a court, or other competent authority, pursuant to (i), (ii) and (iii).

5. The references in this Article and in Article 11(5) to a 'final decision' do not imply any obligation on the part of any Member State to appeal against a decision taken by a court or other competent authority.

## CHAPTER VII

### Institutional Framework

#### *Article 16*

1. A Committee consisting of representatives from the Customs Administrations of the Member States shall be set up. The Committee shall take its decisions unanimously where the provisions of the first indent of paragraph 2 are concerned and by a two-thirds majority where the provisions of the second indent of paragraph 2 are concerned. It shall adopt its rules of procedure unanimously.

2. The Committee shall be responsible:

- for the implementation and correct application of the provisions of this Convention, without prejudice to the powers of the authorities referred to in Articles 17(1) and 18(1);
- for the proper functioning of the Customs Information System with regard to technical and operational aspects. The Committee shall take all necessary steps to ensure that the measures set out in Articles 12 and 19 are properly implemented with regard to the Customs Information System. For the purpose of applying this paragraph, the Committee may have direct access to, and use of, data from the Customs Information System.

3. The Committee shall report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary.

4. The Commission shall be party to the Committee's proceedings. 5

## CHAPTER VIII

### Personal Data Protection Supervision

#### *Article 17*

1. Each Member State shall designate a national supervisory authority or authorities responsible for personal data protection to carry out independent supervision of such data included in the Customs Information System. 10

The supervisory authorities, in accordance with their respective national laws shall carry out independent supervision and checks, to ensure that the processing and use of data held in the Customs Information System do not violate the rights of the person concerned. For this purpose the supervisory authorities shall have access to the Customs Information System. 15

2. Any person may ask any national supervisory authority to check personal data relating to himself on the Customs Information System and the use which has been or is being made of that data. That right shall be governed by the laws, regulations and procedures of the Member State in which the request is made. If the data has been included by another Member State, the check shall be carried out in close co-ordination with that Member State's national supervisory authority. 20 25

#### *Article 18*

1. A Joint Supervisory Authority shall be set up, consisting of two representatives from each Member State drawn from the respective independent national supervisory authority or authorities. 30

2. The Joint Supervisory Authority shall perform its task in accordance with the provisions of this Convention and of the 1981 Strasbourg Convention taking into account Recommendation R (87) 15 of 17 September 1987, of the Committee of Ministers of the Council of Europe. 35

3. The Joint Supervisory Authority shall be competent to supervise operation of the Customs Information System, to examine any difficulties of application or interpretation which may arise during its operation, to study problems which may arise with regard to the exercise of independent supervision by the national supervisory authorities of the Member States, or in the exercise of rights of access by individuals to the System, and to draw up proposals for the purpose of finding joint solutions to problems. 40

4. For the purpose of fulfilling its responsibilities, the Joint Supervisory Authority shall have access to the Customs Information System. 45

5. Reports drawn up by the Joint Supervisory Authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports.

## CHAPTER IX

### Security of the Customs Information System

#### *Article 19*

1. All necessary administrative measures to maintain security shall  
5 be taken:

(i) by the competent authorities of the Member States in  
respect of the terminals of the Customs Information Sys-  
tem in their respective States;

10 (ii) by the Committee referred to in Article 16 in respect of the  
Customs Information System and the terminals located  
on the same premises as the System and used for techni-  
cal purposes and the checks required by paragraph 3.

2. In particular the competent authorities and the committee  
referred to in Article 16 shall take measures:

15 (i) to prevent any unauthorized person from having access to  
installations used for the processing of data;

(ii) to prevent data and data media from being read, copied,  
modified or removed by unauthorized persons;

20 (iii) to prevent the unauthorized entry of data and any unauthor-  
ized consultation, modification, or deletion of data;

(iv) to prevent data in the Customs Information System from  
being accessed by unauthorized persons by means of data  
transmission equipment;

25 (v) to guarantee that, with respect to the use of the Customs  
Information System, authorized persons have right of  
access only to data for which they have competence;

(vi) to guarantee that it is possible to check and establish to  
which authorities data may be transmitted by data trans-  
mission equipment;

30 (vii) to guarantee that it is possible to check and establish a pos-  
teriori what data has been introduced into the Customs  
Information System, when and by whom, and to monitor  
interrogation;

35 (viii) to prevent the unauthorized reading, copying, modification  
or deletion of data during the transmission of data and  
the transport of data media.

3. The committee referred to in Article 16 shall monitor interro-  
gation of the Customs Information System for the purpose of checking  
that searches made were admissible and were made by authorized  
40 users. At least 1% of all searches made shall be checked. A record  
of such searches and checks shall be maintained in the System, shall  
be used only for the abovementioned purpose by the said committee  
and the supervisory authorities referred to in Articles 17 and 18, and  
shall be deleted after six months.

*Article 20*

The competent customs administration referred to in Article 10(1) of this Convention shall be responsible for the security measures set out in Article 19, in relation to the terminals located in the territory of the Member State concerned, the review functions set out in Article 12(1) and (2), and otherwise for the proper implementation of this Convention so far as is necessary under the laws, regulations and procedures of that Member State. 5

CHAPTER X

Responsibilities and Liabilities 10

*Article 21*

1. Each Member State shall be responsible for the accuracy, currency and lawfulness of data it has included in the Customs Information System. Each Member State shall also be responsible for complying with the provisions of Article 5 of the 1981 Strasbourg Convention. 15

2. Each Member State shall be liable, in accordance with its own laws, regulations and procedures for injury caused to a person through the use of the Customs Information System in the Member State concerned. 20

This shall also be the case where the injury was caused by the supplying Member State entering inaccurate data or entering data contrary to this Convention.

3. If the Member State against which an action in respect of inaccurate data is brought is not the Member State which supplied it, the Member States concerned shall seek agreement as to what proportion, if any, of the sums paid out in compensation shall be reimbursed by the supplying Member State to the other Member State. Any such sums agreed shall be reimbursed on request. 25

*Article 22* 30

1. The costs incurred in connection with the operation and use of the Customs Information System by the Member States on their territories shall be borne by each of them.

2. Other expenditure incurred in the implementation of this Convention, except for that which cannot be kept separate from the operation of the Customs Information System for the purpose of applying the customs and agricultural rules of the Community, shall be borne by the Member States. Each Member State's share shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the costs are incurred. 35 40

For the purpose of applying this paragraph, the expression 'gross national product' means the gross national product determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices or any amending or replacing Community instrument. 45

## CHAPTER XI

### Implementation and Final Provisions

#### *Article 23*

5 The information provided for under this Convention shall be exchanged directly between the authorities of the Member States.

#### *Article 24*

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

10 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.

15 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 25*

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

20 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.

25 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 of ninety days.

#### *Article 26*

30 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.

#### *Article 27*

35 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 this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice. 5

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. 10

SECOND SCHEDULE

THE TEXT IN THE ENGLISH LANGUAGE OF THE  
AGREEMENT

**AGREEMENT ON PROVISIONAL APPLICATION  
BETWEEN CERTAIN MEMBER STATES OF THE  
EUROPEAN UNION OF THE CONVENTION DRAWN UP  
ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON  
EUROPEAN UNION ON THE USE OF INFORMATION  
TECHNOLOGY FOR CUSTOMS PURPOSES**

- 5
- 10 THE KINGDOM OF BELGIUM,  
THE KINGDOM OF DENMARK,  
THE FEDERAL REPUBLIC OF GERMANY,  
THE HELLENIC REPUBLIC,  
THE KINGDOM OF SPAIN,
- 15 THE FRENCH REPUBLIC,  
IRELAND,  
THE ITALIAN REPUBLIC,  
THE GRAND DUCHY OF LUXEMBOURG,  
THE KINGDOM OF THE NETHERLANDS,
- 20 THE REPUBLIC OF AUSTRIA,  
THE PORTUGUESE REPUBLIC,  
THE REPUBLIC OF FINLAND,  
THE KINGDOM OF SWEDEN,  
THE UNITED KINGDOM OF GREAT BRITAIN AND  
25 NORTHERN IRELAND,

Member States of the European Union and signatories of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes, of 26 July 1995, hereinafter referred to as the 'Convention',

- 30 HAVING REGARD to the importance of early application of the Convention;

- WHEREAS, pursuant to Article K.7 of the Treaty on European Union, the provisions of Title VI of that Treaty do not prevent the establishment or development of closer cooperation between two or  
35 more Member States insofar as such cooperation does not conflict with, or impede, that provided for in Title VI of the said Treaty;

- WHEREAS provisional application between certain Member States of the European Union of the Convention would not conflict with, or impede, the cooperation provided for in Title VI of the Treaty on  
40 European Union,

HAVE AGREED AS FOLLOWS:

*Article 1*

For the purposes of this Agreement:

- ‘Convention’ means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes; 5
- ‘High Contracting Parties’ means the Member States of the European Union, parties to the Convention;
- ‘Parties’ means the Member States of the European Union, parties to this Agreement. 10

*Article 2*

The Convention shall apply provisionally between the High Contracting Parties parties to this Agreement as of from the first day of the third month following the deposit of the instrument of approval, acceptance or ratification of this Agreement by the eighth High Contracting Party to do so. 15

*Article 3*

The transitional provisions necessary for provisional application of the Convention shall be adopted by common accord amongst the High Contracting Parties between which the Convention is to apply provisionally and in consultation with the other High Contracting Parties. During this period of provisional application, the functions of the Committee provided for in Article 16 of the Convention shall be exercised by the High Contracting Parties acting by common accord in close association with the Commission of the European Communities. Article 7(3) and Article 16 of the Convention shall not be implemented during that period. 20 25

*Article 4*

1. This Agreement shall be open for signing by the Member States signatories of the Convention. It shall be subject to approval, acceptance or ratification. It shall enter into force on the first day of the third month following the deposit of the instrument of approval, acceptance or ratification by the eighth High Contracting Party to do so. 30

2. For any High Contracting Party depositing its instrument of approval, acceptance or ratification at a later date, this Agreement shall enter into force on the first day of the third month following such deposit. 35

3. Instruments of approval, acceptance or ratification shall be deposited with the Secretary-General of the Council of the European Union, who shall act as depositary. 40



*Article 5*

5 This Agreement, drawn up 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, shall be deposited with the Secretary-General of the Council of the European Union, who shall transmit a certified copy to each of the Parties.

*Article 6*

10 This Agreement shall expire upon entry into force of the Convention.

15 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.

THIRD SCHEDULE

THE TEXT IN THE ENGLISH LANGUAGE OF THE 1996  
PROTOCOL

**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 USE OF  
INFORMATION TECHNOLOGY FOR CUSTOMS PURPOSES** 5

THE HIGH CONTRACTING PARTIES, 10

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  
use of information technology for customs purposes. 15

*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 use of information technology for customs purposes under the  
conditions specified in either paragraph 2(a) or paragraph 2(b). 20

2. A Member State making a declaration under paragraph 1 may  
specify that either: 25

(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 Commu-  
nities to give a preliminary ruling on a question raised in a  
case pending before it and concerning the interpretation  
of the Convention on the use of information technology  
for customs purposes if that court or tribunal considers  
that a decision on the question is necessary to enable it  
to give judgment, or 30 35

(b) any court or tribunal of that State may request the Court of  
Justice of the European Communities to give a prelimi-  
nary ruling on a question raised in a case pending before  
it and concerning the interpretation of the Convention on  
the use of information technology for customs purposes  
if that court or tribunal considers that a decision on the  
question is necessary to enable it to give judgment. 40

*Article 3*

1. The Protocol on the Statute of the Court of Justice of the Euro-  
pean Communities and the Rules of Procedure of that Court of Jus-  
tice shall apply. 45

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 under Article 1.

#### *Article 4*

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 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 use of information technology for customs purposes.

#### *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 use of information technology for customs purposes in accordance with Article 25 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. 5

2. The depositary shall publish in the Official Journal of the European Communities the notifications, instruments or communications concerning 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. 10

FOURTH SCHEDULE

THE TEXT IN THE ENGLISH LANGUAGE OF THE  
CUSTOMS COOPERATION CONVENTION

5 **CONVENTION DRAWN UP ON THE BASIS OF ARTICLE  
K.3 OF THE TREATY ON EUROPEAN UNION, ON  
MUTUAL ASSISTANCE AND COOPERATION BETWEEN  
CUSTOMS ADMINISTRATIONS**

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

10 REFERRING to the Act of the Council of the European Union of 18 December 1997;

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

15 CONSIDERING that customs administrations are responsible on the customs territory of the Community and, in particular at its points of entry and exit, for the prevention, investigation and suppression of offences not only against Community rules, but also against national laws, in particular the cases covered by Articles 36  
20 and 223 of the Treaty establishing the European Community;

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

25 CONSIDERING that particular forms of cooperation involving cross-border actions for the prevention, investigation and prosecution of certain infringements of both the national legislation of the Member States and Community customs regulations should be regulated, and that such cross-border actions must always be carried out in compliance with the principles of legality (conforming with  
30 the relevant law applicable in the requested Member State and with the directives of the competent authorities of that Member State), subsidiarity (such actions to be launched only if it is clear that other less significant actions are not appropriate) and proportionality (the scale and duration of the action to be determined in the light of the  
35 seriousness of the presumed infringement);

CONVINCED that it is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange data concerned with illicit trafficking activities;

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

45 HAVE AGREED ON THE FOLLOWING PROVISIONS:

## TITLE I — GENERAL PROVISIONS

### *Article 1*

#### *Scope*

1. Without prejudice to the competencies of the Community, the Member States of the European Union shall provide each other with mutual assistance and shall cooperate with one another through their customs administrations, with a view to: 5

- preventing and detecting infringements of national customs provisions, and
- prosecuting and punishing infringements of Community and national customs provisions. 10

2. Without prejudice to Article 3, this Convention shall not affect the provisions applicable regarding mutual assistance in criminal matters between judicial authorities, more favourable provisions in bilateral or multilateral agreements between Member States governing cooperation as provided for in paragraph 1 between the customs authorities or other competent authorities of the Member States, or arrangements in the same field agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance. 15 20

### *Article 2*

#### *Powers*

The customs administrations shall apply this Convention with the limits of the powers conferred upon them under national provisions. Nothing in this Convention may be construed as affecting the powers conferred under national provisions upon the customs administrations within the meaning of this Convention. 25

### *Article 3*

#### *Relationship to mutual assistance provided by the judicial authorities* 30

1. This Convention covers mutual assistance and cooperation in the framework of criminal investigations concerning infringements of national and Community customs provisions, concerning which the applicant authority has jurisdiction on the basis of the national provisions of the relevant Member State. 35

2. Where a criminal investigation is carried out by or under the direction of a judicial authority, that authority shall determine whether requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable concerning mutual assistance in criminal matters or on the basis of this Convention. 40

### *Article 4*

#### *Definitions*

For the purposes of this Convention, the following definitions shall apply: 45

1. 'National customs provisions': all laws, regulations and administrative provisions of a Member State the application of which comes

wholly or partly within the jurisdiction of the customs administration of that Member State concerning:

- 5 — cross-border traffic in goods subject to bans, restrictions or controls, in particular under Articles 36 and 223 of the Treaty establishing the European Community;
- non-harmonised excise duties;
- 2. 'Community customs provisions':
  - 10 — the body of Community provisions and associated implementing provisions governing the import, export, transit and presence of goods traded between Member States and third countries, and between Member States in the case of goods that do not have Community status within the meaning of Article 9(2) of the Treaty establishing the European Community or goods subject to additional controls or investigations for the purposes of establishing their Community status;
  - 15 — the body of provisions adopted at Community level under the common agricultural policy and the specific provisions adopted with regard to goods resulting from the processing of agricultural products;
  - 20 — the body of provisions adopted at Community level for harmonised excise duties and for value-added tax on importation together with the national provisions implementing them;
- 3. 'infringements': acts in conflict with national or Community customs provisions, including, inter alia:
  - 25 — participation in, or attempts to commit, such infringements,
  - participation in a criminal organization committing such infringements,
  - the laundering of money deriving from the infringements referred to in this paragraph;
- 30 4. 'mutual assistance': the granting of assistance between customs administrations as provided for in this Convention;
- 5. 'applicant authority': the competent authority of the Member State which makes a request for assistance;
- 35 6. 'requested authority': the competent authority of the Member State to which a request for assistance is made;
- 7. 'customs administrations': Member States' customs authorities as well as other authorities with jurisdiction for implementing the provisions of this Convention;
- 40 8. 'personal data': all information relating to an identified or identifiable natural person; a person is considered to be identifiable if he or she can be directly or indirectly identified, inter alia by means of an identification number or of one or more specific elements which are characteristic of his or her physical, physiological, psychological, economic, cultural or social identity;
- 45 9. 'cross-border cooperation': cooperation between customs administrations across the borders of each Member State.

*Article 5*

*Central coordinating units*

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

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

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

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

*Article 6* 25

*Liaison officers*

1. Member States may make agreements between themselves on the exchange of liaison officers for limited or unlimited periods, and on mutually-agreed conditions.

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

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

- (a) promoting and speeding up the exchange of information between the Member States;
- (b) providing assistance in investigations which relate to their own Member State or the Member State they represent;
- (c) providing support in dealing with requests for assistance;
- (d) advising and assisting the host country in preparing and carrying out cross-border operations;
- (e) any other duties which Member States may agree between themselves.

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



*Article 7*

*Obligation to prove identity*

5 Unless otherwise specified in this Convention, officers of the applicant authority present in another Member State in order to exercise the rights laid down in this Convention shall at all times be able to produce written authority stating their identity and their official functions.

TITLE II — ASSISTANCE ON REQUEST

*Article 8*

10 *Principles*

1. In order to provide the assistance required under this Title, the requested authority or the competent authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own Member State. In 15 so doing it shall avail itself of all the legal powers at its disposal within the framework of its national law in order to respond to the request.

2. The requested authority shall extend this assistance to all circumstances of the infringement which have any recognizable bearing 20 on the subject of the request for assistance without this requiring any additional request. In case of doubt, the requested authority shall firstly contact the applicant authority.

*Article 9*

*Form and content of the request for assistance*

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

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

- 30 (a) the applicant authority making the request;
- (b) the measure requested;
- (c) the object of, and the reason for, the request;
- (d) the laws, rules and other legal provisions involved;
- 35 (e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations;
- (f) a summary of the relevant facts, except in cases provided for in Article 13.

3. Requests shall be submitted in an official language of the Member State of the requested authority or in a language acceptable to 40 such authority.

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

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

6. The requested authority shall agree to apply a particular procedure in response to a request, provided that that procedure is not in conflict with the legal and administrative provisions of the requested Member State. 10

#### *Article 10*

##### *Requests for information*

1. At the request of the applicant authority, the requested authority shall communicate to it all information which may enable it to prevent, detect and prosecute infringements. 15

2. The information communicated is to be accompanied by reports and other documents, or certified copies or extracts of the same, on which that information is based and which are in the possession of the requested authority or which were produced or obtained in order to execute the request for information. 20

3. By agreement between the applicant authority and the requested authority, officers authorised by the applicant authority may, subject to detailed instructions from the requested authority, obtain information pursuant to paragraph 1 from the offices of the requested Member State. This shall apply to all information derived from the documentation to which the staff of those offices have access. Those officers shall be authorized to take copies of the said documentation. 25

#### *Article 11* 30

##### *Requests for surveillance*

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept on persons where there are serious grounds for believing that they have infringed Community or national customs provisions or that they are committing or have carried out preparatory acts with a view to the commission of such infringements. At the request of the applicant authority, the requested authority shall also keep a watch on places, means of transport and goods connected with activities which might be in breach of the abovementioned customs provisions. 35 40

#### *Article 12*

##### *Requests for enquiries*

1. The requested authority shall at the request of the applicant authority carry out, or arrange to have carried out, appropriate enquiries concerning operations which constitute, or appear to the applicant authority to constitute, infringements. 45

The requested authority shall communicate the results of such enquiries to the applicant authority. Article 10(2) shall apply mutatis mutandis. 50

2. By agreement between the applicant authority and the requested authority, officers appointed by the applicant authority may be present at the enquiries referred to in paragraph 1. Enquiries shall at all times be carried out by officers of the requested authority.

5 The applicant authority's officers may not, of their own initiative, assume the powers conferred on officers of the requested authority. They shall, however, have access to the same premises and the same documents as the latter, through their intermediary and for the sole purpose of the enquiry being carried out.

10 *Article 13*

*Notification*

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

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

*Article 14*

*Use as evidence*

25 Findings, certificates, information, documents, certified true copies and other papers obtained in accordance with their national law by officers of the requested authority and transmitted to the applicant authority in the cases of assistance provided for in Articles 10 to 12 may be used as evidence in accordance with national law by the competent bodies of the Member State where the applicant authority is based.

TITLE III — SPONTANEOUS ASSISTANCE

*Article 15*

*Principle*

35 The competent authorities of each Member State shall, as laid down in Articles 16 and 17, subject to any limitations imposed by national law, provide assistance to the competent authorities of the other Member States without prior request.

*Article 16*

40 *Surveillance*

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

45 (a) as far as is possible keep, or have kept, the special watch described in Article 11;

- (b) communicate to the competent authorities of the other Member States concerned all information in their possession and, in particular, reports and other documents or certified true copies or extracts thereof, concerning operations which are connected with a planned or committed infringement. 5

#### *Article 17*

##### *Spontaneous information*

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States concerned all relevant information concerning planned or committed infringements and, in particular, information concerning the goods involved and new ways and means of committing such infringements. 10

#### *Article 18*

##### *Use as evidence* 15

Surveillance reports and information obtained by officers of one Member State and communicated to another Member State in the course of the spontaneous assistance provided for in Articles 15 to 17 may be used in accordance with national law as evidence by the competent bodies of the Member State receiving the information. 20

### TITLE IV — SPECIAL FORMS OF COOPERATION

#### *Article 19*

##### *Principles*

1. Customs administrations shall engage in cross-border cooperation in accordance with this Title. They shall provide each other with the necessary assistance in terms of staff and organizational support. Requests for cooperation shall, as a rule, take the form of requests for assistance in accordance with Article 9. In specific cases referred to in this Title, officers of the applicant authority may engage in activities in the territory of the requested State, with the approval of the requested authority. 25 30

Coordination and planning of cross-border operations shall be the responsibility of the central coordinating units in accordance with Article 5.

2. Cross-border cooperation within the meaning of paragraph 1 shall be permitted for the prevention, investigation and prosecution of infringements in cases of: 35

- (a) illicit traffic in drugs and psychotropic substances, weapons, munitions, explosive materials, cultural goods, dangerous and toxic waste, nuclear material or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons (prohibited goods); 40
- (b) trade in substances listed in Tables I and II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and intended for the illegal manufacture of drugs (precursor substances); 45

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

(d) any other trade in goods prohibited by Community or national customs rules.

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

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

5. Where officers of a Member State engage in activities in the territory of another Member State by virtue of this Title and cause damage by their activities, the Member State in whose territory the damage was caused shall make good the damage, in accordance with its national legislation in the same way as it would have done if the damage had been caused by its own officers. That Member State will be reimbursed in full by the Member State whose officers have caused the damage for the amounts it has paid to the victims or to other entitled persons or institutions.

6. Without prejudice to the exercise of its rights vis-à-vis third parties and notwithstanding the obligation to make good damages according to the second sentence of paragraph 5, each Member State shall refrain, in the case provided for in the first sentence of paragraph 5, from requesting reimbursement of the amount of damages it has sustained from another Member State.

7. Information obtained by officers during cross-border cooperation provided for in Articles 20 to 24 may be used, in accordance with national law and subject to particular conditions laid down by the competent authorities of the State in which the information was obtained, as evidence by the competent bodies of the Member State receiving the information.

8. In the course of the operations referred to in Articles 20 to 24, officers on mission in the territory of another Member State shall be treated in the same way as officers of that State as regards infringements committed against them or by them.

#### *Article 20*

#### *Hot pursuit*

1. Officers of the customs administration of one of the Member States pursuing in their country, an individual observed in the act of committing one of the infringements referred to in Article 19(2) which could give rise to extradition, or participating in such an

infringement, shall be authorized to continue pursuit in the territory of another Member State without prior authorisation where, given the particular urgency of the situation, it was not possible to notify the competent authorities of the other Member State prior to entry into that territory or where these authorities have been unable to reach the scene in time to take over the pursuit. 5

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Member State in whose territory the pursuit is to take place. The pursuit shall cease as soon as the Member State in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent authorities of the said Member State shall challenge the pursued person so as to establish his identity or to arrest him. Member States shall inform the depositary of the pursuing officers to whom this provision applies; the depositary shall inform the other Member States. 10 15

2. The pursuit shall be carried out in accordance with the following procedures, defined by the declaration provided for in paragraph 6:

(a) the pursuing officers shall not have the right to apprehend; 20

(b) however, if no request to cease the pursuit is made and if the competent authorities of the Member State in whose territory the pursuit is taking place are unable to intervene quickly enough, the pursuing officers may apprehend the person pursued until the officers of the said Member State, who must be informed without delay, are able to establish his identity or arrest him. 25

3. Pursuit shall be carried out in accordance with paragraphs 1 and 2 in one of the following ways as defined by the declaration provided for in paragraph 6: 30

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

(b) without limit in space or time.

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

(a) the pursuing officers shall comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they shall obey the instructions of the competent authorities of the said Member State; 35

(b) when the pursuit takes place on the sea, it shall, where it extends to the high sea or the exclusive economic zone, be carried out in conformity with the international law of the sea as reflected in the United Nations Convention on the Law of the Sea, and, when it takes place in the territory of another Member State, it shall be carried out in accordance with the provisions of this Article; 40 45

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

(d) the pursuing officers shall be easily identifiable, either by their uniform or an armband or by means of accessories fitted to their means of transport; the use of civilian 50

clothes combined with the use of unmarked means of transport without the aforementioned identification is prohibited; the pursuing officers shall at all times be able to prove that they are acting in an official capacity;

5 (e) the pursuing officers may carry their service weapons, save  
(i) where the requested Member State has made a general declaration that weapons may never be carried into its territory or (ii) where specifically decided otherwise by the requested Member State. When officers of another  
10 Member State are permitted to carry their service weapons, their use shall be prohibited save in cases of legitimate self-defence;

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

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

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

35 5. A person who, following the action provided for in paragraph 2, has been arrested by the competent authorities of the Member State in whose territory the pursuit took place may, whatever his nationality, be held for questioning. The relevant rules of national law shall apply *mutatis mutandis*.

40 If the person is not a national of the Member State in whose territory he was arrested, he shall be released no later than six hours after his arrest, not including the hours between midnight and 09.00 hours, unless the competent authorities of the said Member State have previously received a request for his provisional arrest for the purposes of extradition in any form.

45 6. On signing this Convention, each Member State shall make a declaration in which it shall define, on the basis of paragraphs 2, 3 and 4, the procedures for implementing pursuit in its territory.

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

Each declaration shall be made after consultations with each of the Member States concerned and with a view to obtaining equivalent arrangements in those States.

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

8. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or by part thereof. Such declaration may be withdrawn at any time. 5

## Article 21

### *Cross-border surveillance*

1. Officers of the customs administration of one of the Member States who are keeping under observation in their country persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements referred to in Article 19(2) shall be authorized to continue their observation in the territory of another Member State where the latter has authorized cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorization. 10 15

Member States shall inform the depositary of the officers to whom this provision applies; the depositary shall inform the other Member States. 20

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

The request referred to in the first subparagraph shall be sent to an authority designated by each of the Member States empowered to grant the requested authorization or pass on the request. 25

Member States shall inform the depositary of the authority designated for this purpose; the depositary shall inform the other Member States.

2. Where, for particularly urgent reasons, prior authorization of the other Member State cannot be requested, the officers conducting the observation shall be authorized to continue beyond the border the observation of persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements referred to in Article 19(2), provided that the following conditions are met: 30 35

(a) the competent authorities of the Member State in whose territory the observation is to be continued shall be notified immediately of the crossing of the border, during the observation;

(b) a request submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorization shall be submitted without delay. 40

Observation shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b), or where authorization has not been obtained five hours after the border was crossed. 45



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

- 5 (a) the officers conducting the observation shall comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent authorities of the said Member State;
- 10 (b) except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorization has been granted;
- (c) the officers conducting the observation shall be able at all times to provide proof that they are acting in an official capacity;
- 15 (d) the officers conducting the observation may carry their service weapons during the observation save (i) where the requested Member State has made a general declaration that weapons may never be carried into its territory or (ii) where specifically decided otherwise by the requested Member State. When officers of another Member State are permitted to carry their service weapons, their use shall be prohibited save in cases of legitimate self-defence;
- 20 (e) entry into private homes and places not accessible to the public shall be prohibited;
- 25 (f) the officers conducting the observation may neither challenge nor arrest the person under observation;
- (g) all operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers conducting the observation may be required to appear in person;
- 30 (h) the authorities of the Member State from which the observing officers have come shall, when requested by the authorities of the Member State in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.
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4. The Member States may, at bilateral level, extend the scope of this Article and adopt additional measures in implementation thereof.

- 40 5. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or by part thereof. Such declaration may be withdrawn at any time.

## *Article 22*

### *Controlled delivery*

- 45 1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State. 5

The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance. During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at any time it has the possibility of arresting the perpetrators and seizing the goods. 10

4. Consignments the controlled delivery of which is agreed to may, with the consent of the Member States concerned, be intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part. 15

### *Article 23*

#### *Covert investigations*

1. At the request of the applicant authority, the requested authority may authorize officers of the customs administration of the requesting Member State or officers acting on behalf of such administration operating under cover of a false identity (covert investigators) to operate on the territory of the requested Member State. The applicant authority shall make the request only where it would be extremely difficult to elucidate the facts without recourse to the proposed investigative measures. The officers in question shall be authorized in the course of their activities to collect information and make contact with subjects or other persons associated with them. 20 25 30

2. Covert investigations in the requested Member State shall have a limited duration. The preparation and supervision of the investigations shall take place in close cooperation between the relevant authorities of the requested and applicant Member States.

3. The conditions under which a covert investigation is allowed, as well as the conditions under which it is carried out, shall be determined by the requested authority in accordance with its national law. If, in the course of a covert investigation, information is acquired in relation to an infringement other than that covered by the original request, then the conditions concerning the use to which such information may be put shall also be determined by the requested authority in accordance with its national law. 35 40

4. The requested authority shall provide the necessary manpower and technical support. It shall take measures to protect the officers referred to in paragraph 1, while they are active in the requested Member State. 45

5. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or part thereof. Such declaration may be withdrawn at any time.

*Article 24*

*Joint special investigation teams*

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

The joint special investigation team shall have the following tasks:

- implementation of difficult and demanding investigations of specific infringements, requiring simultaneous, coordinated action in the Member States concerned;
- coordination of joint activities to prevent and detect particular types of infringement and obtain information on the persons involved, their associates and the methods used.

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

- (a) they shall be set up only for a specific purpose and for a limited period;
- (b) an officer from the Member State in which the team's activities take place shall head the team;
- (c) the participating officers shall be bound by the law of the Member State in whose territory the team's activities take place;
- (d) the Member State in which the team's activities take place shall make the necessary organizational arrangements for the team to operate.

3. Membership of the team shall not bestow on officers any powers of intervention in the territory of another Member State.

TITLE V — DATA PROTECTION

*Article 25*

*Data protection for the exchange of data*

1. When information is exchanged, the customs administrations shall take into account in each specific case the requirements for the protection of personal data. They shall respect the relevant provisions of the Convention of the Council of Europe of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. In the interest of data protection, a Member State may, in accordance with paragraph 2, impose conditions concerning the processing of personal data by another Member State to which such personal data may be passed.

2. Without prejudice to the provisions of the Convention concerning the use of information technology for customs purposes, the following provisions shall apply to personal data which are communicated pursuant to the application of this Convention:

- (a) processing of the personal data by the recipient authority shall be authorized only for the purpose referred to in Article 1(1). That authority may forward them, without

- prior consent from the Member State supplying them, to its customs administrations, its investigative authorities and its judicial bodies to enable them to prosecute and punish infringements within the meaning of Article 4(3). In all other cases of data transmission, the consent of the Member State which supplied the information is necessary; 5
- (b) the authority of the Member State which communicates data shall ensure that they are accurate and up-to-date. If it emerges that inaccurate data have been communicated or data have been communicated which should not have been communicated or that lawfully communicated data are required at a later stage to be erased in accordance with the law of the communicating Member State, the recipient authority shall be immediately informed thereof. It shall be obliged to correct such data or have them erased. If the recipient authority has reason to believe that communicated data are inaccurate or should be erased, it shall inform the communicating Member State; 10  
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- (c) in cases where communicated data should, according to the law of the communicating Member State, be erased or amended, the persons concerned must be given the effective right to correct the data;
- (d) the forwarding and receipt of exchanged data shall be recorded by the authorities concerned; 25
- (e) if so requested, the communicating and recipient authorities shall inform the person concerned, at that person's request, of the personal data communicated and the use to which they are to be put. There is no obligation to provide the information if it is found, on consideration of the matter, that the importance to the public of the information being withheld outweighs the importance to the person concerned of receiving it. Moreover, the right of the person concerned to receive information about the personal data communicated shall be determined in accordance with the national laws, regulations and procedures of the Member State in whose territory the information is requested. Before any decision is taken on providing information, the communicating authority shall be given the opportunity of stating its position; 30  
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40
- (f) Member States shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through the processing of data communicated in the Member State concerned. This shall also be the case where the injury was caused by the communication of inaccurate data or the fact that the communicating authority communicated data in violation of the Convention; 45
- (g) the data communicated shall be kept for a period not exceeding that necessary for the purposes for which they were communicated. The need to keep them shall be examined at the appropriate moment by the Member State concerned; 50
- (h) in any event, the data shall enjoy at least the same protection as is given to similar data in the Member State which received them; 55

5 (j) every Member State shall take the appropriate measures to ensure compliance with this Article by the application of effective controls. Every Member State may assign the task of control to the national supervisory authority mentioned in Article 17 of the Convention concerning the use of information technology for customs purposes.

10 3. For the purposes of this Article, 'the processing of personal data' shall be understood in accordance with the definition in Article 2(b) of 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 data.

## TITLE VI — INTERPRETATION OF THE CONVENTION

### *Article 26*

#### *Court of Justice*

15 1. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention whenever it has proved impossible for the dispute to be settled by the Council within six months of its being referred to the Council by one of its members.

25 2. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States and the Commission concerning the interpretation or application of this Convention which it has proved impossible to settle through negotiation. The dispute 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 notified the other of the existence of a dispute.

30 3. The Court of Justice shall have jurisdiction, subject to the conditions laid down in paragraphs 4 to 7, to give preliminary rulings on the interpretation of this Convention.

35 4. By a declaration made at the time of the signing of this Convention 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 this Convention as specified in either paragraph 5(a) or (b).

5. A Member State which has made a declaration pursuant to paragraph 4 shall specify that either:

40 (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 this Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement, or

45 (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 this Convention if

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that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

6. 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. 5

7. Any Member State, whether or not it has made a declaration pursuant to paragraph 4, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 5.

8. The Court of Justice shall not have jurisdiction to check the validity or proportionality of operations carried out by competent law enforcement agencies under this Convention nor to rule on the exercise of responsibilities which devolve upon Member States for maintaining law and order and for safeguarding internal security. 10

## TITLE VII — IMPLEMENTATION AND FINAL PROVISIONS 15

### *Article 27*

#### *Confidentiality*

The customs administrations shall take account, in each specific case of exchange of information, of the requirements of investigation secrecy. To that end, a Member State may impose conditions covering the use of information by another Member State to which that information may be passed. 20

### *Article 28*

#### *Exemptions from the obligation to provide assistance*

1. This Convention shall not oblige the authorities of Member States to provide mutual assistance where such assistance would be likely to harm the public policy or other essential interests of the State concerned, particularly in the field of data protection, or where the scope of the action requested, in particular in the context of the special forms of cooperation provided for in Title IV, is obviously disproportionate to the seriousness of the presumed infringement. In such cases, assistance may be refused in whole or in part or made subject to compliance with certain conditions. 25 30

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

### *Article 29* 35

#### *Expenses*

1. Member States shall normally waive all claims for reimbursement of costs incurred in the implementation of this Convention, with the exception of expenses for fees paid to experts.

2. If expenses of a substantial and extraordinary nature are, or will be, required to execute the request, the customs administrations involved shall consult to determine the terms and conditions under which a request shall be executed as well as the manner in which the costs shall be borne. 40

*Article 30*

*Reservations*

1. Save as provided in Article 20(8), Article 21(5) and Article 23(5), this Convention shall not be the subject of any reservations.

5 2. Member States which have already established agreements between them covering matters regulated in Title IV of this Convention may make reservations pursuant to paragraph 1 only in so far as such reservations do not affect their obligations under such agreements.

10 3. Accordingly, the obligations arising out of the provisions of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at their Common Borders which provide for closer cooperation shall not be affected by this Convention in the context of relations between the  
15 Member States which are bound by those provisions.

*Article 31*

*Territorial application*

1. This Convention shall apply to the territories of the Member States as referred to in Article 3(1) of Council Regulation (EEC) No  
20 2913/92 of 12 October 1992 establishing the Community Customs Code, as revised by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded and in Regulation (EC) No 82/97 of the European  
25 Parliament and of the Council of 19 December 1996, including, for the Federal Republic of Germany, the Island of Heligoland and the territory of Büsingen (within the framework of and pursuant to the Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation on the inclusion of the commune of Büsingen am Hochrhein in the customs territory of the  
30 Swiss Confederation, or the current version thereof) and, for the Italian Republic, the municipalities of Livigno and Campione d'Italia, and to the territorial waters, the inland maritime waters and the air-space of the territories of the Member States.

35 2. The Council, acting unanimously by the procedure provided for in Title VI of the Treaty on European Union, may adapt paragraph 1 to any amendment of the provisions of Community law referred to therein.

*Article 32*

*Entry into force*

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

45 2. Member States shall notify the depositary of the completion of the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 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 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 later time, declare that as far as it is concerned this Convention, with the exception of Article 26 thereof, shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect ninety days after the date of deposit thereof. 5  
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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 applicant Member State.

6. On the date of entry into force of this Convention, the Convention on the provision of mutual assistance between customs administrations of 7 September 1967 shall be repealed. 15

### *Article 33*

#### *Accession*

1. This Convention shall be open to accession by any State that becomes a Member State of the European Union. 20

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

3. The instruments of accession shall be deposited with the depositary. 25

4. This Convention shall come 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 upon expiry of the said period of ninety days. 30

5. Where this Convention has not yet entered into force at the time of the deposit of their instrument of accession, Article 32(4) shall apply to acceding Member States.

### *Article 34*

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#### *Amendments*

1. Amendments to this Convention may be proposed by any Member State that is a High Contracting Party. Any proposed amendment shall be sent to the depositary, who shall communicate it to the Council and the Commission. 40

2. Without prejudice to Article 31(2), the amendments to the Convention shall be adopted by the Council, which shall recommend them to the Member States for adoption in accordance with their respective constitutional requirements.

3. Amendments adopted in accordance with paragraph 2 shall come into force in accordance with Article 32(3). 45



*Article 35*

*Depositary*

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

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

10    Done at Brussels on the eighteenth day of December 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.

FIFTH SCHEDULE

THE TEXT IN THE ENGLISH LANGUAGE OF THE 1999  
PROTOCOL

**PROTOCOL DRAWN UP ON THE BASIS OF ARTICLE K.3  
OF THE TREATY ON EUROPEAN UNION, ON THE SCOPE 5  
OF THE LAUNDERING OF PROCEEDS IN THE  
CONVENTION ON THE USE OF INFORMATION  
TECHNOLOGY FOR CUSTOMS PURPOSES AND THE  
INCLUSION OF THE REGISTRATION NUMBER OF THE  
MEANS OF TRANSPORT IN THE CONVENTION 10**

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  
12 March 1999,

HAVING REGARD to the Convention drawn up on the basis of 15  
Article K.3 of the Treaty on European Union on the use of infor-  
mation technology for customs purposes, hereinafter referred to as  
'the Convention';

HAVE AGREED ON THE FOLLOWING PROVISIONS:

*Article 1* 20

The second indent of Article 1(1) of the Convention shall be  
amended to read as follows:

'— the transfer, conversion, concealment or disguise of property or  
proceeds derived from, obtained directly or indirectly through 25  
or used in, illicit international drug trafficking or any infringe-  
ment of:

(i) all laws, regulations and administrative provisions of a  
Member State the application of which comes wholly or  
partly within the jurisdiction of the customs admin- 30  
istration of the Member State concerning cross-border  
traffic in goods subject to bans, restrictions or controls,  
in particular pursuant to Articles 36 and 223 of the Treaty  
establishing the European Community, and non-harmon-  
ised excise duties, or

(ii) the body of Community provisions and associated 35  
implementing provisions governing the import, export,  
transit and presence of goods traded between Member  
States and third countries, and between Member States  
in the case of goods that do not have Community status  
within the meaning of Article 9(2) of the Treaty estab- 40  
lishing the European Community or goods subject to  
additional controls or investigations for the purposes of  
establishing their Community status, or

(iii) the body of provisions adopted at Community level under  
the common agricultural policy and the specific pro- 45  
visions adopted with regard to goods resulting from the  
processing of agricultural products, or

- (iv) the body of provisions adopted at Community level for harmonised excise duties and for value-added tax on importation together with the national provisions implementing them.'

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*Article 2*

The data categories listed in Article 4 of the Convention shall be supplemented by the following category:

- '(ix) registration number of the means of transport.'

*Article 3*

10 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 depositary of the completion of their respective constitutional requirements for adopting this Protocol.

15 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  
20 same time as the Convention.

*Article 4*

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

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

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

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

*Article 5*

35 Any State that becomes a Member State of the European Union and accedes to the Convention in accordance with Article 25 thereof shall accept the provisions of this Protocol.

*Article 6*

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

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

3. Amendments adopted in this manner shall come into force in accordance with Article 3.

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*Article 7*

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.

10

Done at Brussels on the twelfth day of March in the year one thousand nine hundred and ninety-nine.

## SIXTH SCHEDULE

### THE TEXT IN THE IRISH LANGUAGE OF THE CIS CONVENTION

#### **COINBHINSIÚN ARNA DHRÉACHTÚ AR BHONN AIRTEAGAL K.3 DEN CHONRADH AR AN AONTAS EORPACH MAIDIR LE hÚSÁID THEICNEOLAÍOCHT AN EOLAIS CHUN CRÍOCHA CUSTAIM**

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Choinbhinsiún seo, Ballstáit an Aontais Eorpaigh,

10 AG TAGAIRT do Ghníomh ó Chomhairle an Aontais Eorpaigh an 26/07/95,

AG MEABHRÚ DÓIBH na ngealltanais atá sa Choinbhinsiún maidir le Riaracháin Chustaim do Sholáthar Cúnamh Frithphárteach, arna dhéanamh sa Róimh ar an 7 Meán Fómhair 1967,

15 DE BHRÍ go bhfuil na riaracháin chustaim, mar aon le húdaráis inniúla eile, freagrach, ag teorainneacha seachtracha an Chomhphobail agus laistigh dá theorainneacha críochacha, as cionta ní hamháin in aghaidh rialacháin Chomhphobail ach in aghaidh dlíthe náisiúnta freisin, go háirithe na dlíthe sin atá folaithe ag Airteagail 36 agus  
20 223 den Chonradh ag bunú an Chomhphobail Eorpaigh, a chosc, a imscrúdú agus a chur faoi chois,

DE BHRÍ gur bagairt thromchúiseach do shláinte, moráltacht agus slándáil an phobail an treo atá ag teacht chun cinn ionsar gháinneáil aindleathach de gach saghas,

25 ÓS DEIMHIN leo gur gá an comhar idir riaracháin chustaim a athneartú trí nósanna imeachta a leagan síos faoina bhféadfaidh riaracháin chustaim gníomhú go comhphárteach agus sonraí pearsanta agus sonraí eile a bhaineann le gníomhaíochtaí gáinneála aindleathacha a mhalartú ag úsáid na teicneolaíochta nua chun eolas den  
30 sórt sin a bhainisteoireacht agus a tharchur, faoi réir fhorálacha Choinbhinsiún Chomhairle na hEorpa um Chosaint Daoine Aonair maidir le hUathphróiseáil Sonraí Pearsanta arna dhéanamh in Strasbourg ar an 28 Eanáir 1981,

AG MEABHRÚ DÓIBH go mbíonn ar na riaracháin Chustaim ina n-obair laethúil idir fhorálacha Comhphobail agus fhorálacha neamhchomhphobail a chur chun feidhme agus go bhfuil, dá dheasca sin, riachtanas follasach ann a áirithiú go bhfabhraíonn na forálacha maidir le cúnamh frithphárteach agus comhar riarthach sa dá earnáil go comhthreomhar a mhéad is féidir,

40 TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A LEANAS:

#### CAIBIDIL I

#### Sainmhínte

#### *Airteagal 1*

45 Chun críocha an Choinbhinsiúin seo:

1. Ciallaíonn an téarma “dlíthe náisiúnta” dlíthe nó rialacháin Ballstáit, a bhfuil inniúlacht iomlán nó pháirteach ag riarachán custaim an Bhallstáit sin ina gcur i bhfeidhm, maidir le:

- gluaiseacht earraí atá faoi réir bearta toirmisc, srianta nó rialaithe, go háirithe na bearta sin atá folaithe in Airteagail 36 agus 223 den Chonradh ag bunú an Chomhphobail Eorpaigh;
  - aistriú, tiontú, ceilt nó folú maoine nó fáltas arna gcineadh ó gháinneáil idirnáisiúnta aindleathach drugaí, arna bhfáil go díreach nó go neamhdhíreach tríthi nó arna n-úsáid inti. 5
2. Ciallaíonn an téarma “sonraí pearsanta” aon eolas a bhaineann le duine aonair aitheanta nó inaitheanta.
3. Ciallaíonn an téarma “Ballstát soláthair” Ballstát a dhéanann sonra a áireamh sa Chóras Eolais Custaim. 10

## CAIBIDIL II

### Córas Eolais Custaim a bhunú

#### *Airteagal 2*

1. Cuirfidh riaracháin chustaim na mBallstát ar bun, agus cothabhálfaidh siad, uathchóras eolais comhpháirteach chun críocha custaim, dá ngairtear an Córas Eolais Custaim anseo feasta. 15
2. Beidh sé de chuspóir ag an gCóras Eolais Custaim, i gcomhréir le forálacha an Choinbhinsiúin seo, cabhrú chun sárúithe tromchúiseacha ar dhlíthe náisiúnta a chosc, a imscrúdú agus a ionchúiseamh trí éifeachtúlacht nósanna imeachta comhair agus rialaithe riaracháin chustaim na mBallstát a mhéadú trí eolas a scaipeadh go luath. 20

## CAIBIDIL III

### An Córas Eolais Custaim a oibriú agus a úsáid

#### *Airteagal 3*

1. Is áis bhunachar sonraí lárnach é an Córas Eolais Custaim agus beidh sé inrochtana trí theirminéil i ngach Ballstát. Cuimseoidh sé go heisiach na sonraí, lena n-áirítear sonraí pearsanta, is gá chun a chuspóir mar atá sé sonraithe in Airteagal 2(2) a bhaint amach sna hearnálacha seo a leanas: 25

- (i) tráchtearraí; 30
- (ii) córacha iompair;
- (iii) gnóthaí;
- (iv) daoine;
- (v) treochtaí calaoise;
- (vi) infhaighteacht saineolais. 35

2. Áiritheoidh an Coimisiún bainistíocht theicniúil bhonneagar an Chórais Eolais Custaim i gcomhréir leis na rialacha dá bhforáiltear sna bearta cur chun feidhme arna nglacadh laistigh den Chomhairle.

Tuairisceoidh an Coimisiún maidir leis an mbainistíocht don choiste dá dtagraítear in Airteagal 16. 40

3. Páirteoidh an Coimisiún leis an gcoiste sin na socruithe praiticiúla arna nglacadh don bhainistíocht theicniúil.

#### *Airteagal 4*

- 5 Cinnfidh na Ballstáit na míreanna atá le háireamh sa Chóras Eolais Custaim a bhaineann le gach ceann d'earnálacha (i) go (vi) in Airteagal 3 a mhéad is gá sin chun cuspóir an chórais a bhaint amach. Ní áireofar ar aon chúinse aon sonraí pearsanta in earnálacha (v) agus (vi) d'Airteagal 3. Ní chuimseoidh na sonraí pearsanta atá le hionchur ach:
- 10 (i) sloinne, sloinne réamhphósta, céad ainmneacha agus ainmneacha bréige;
- (ii) dáta agus ionad breithe;
- (iii) náisiúntacht;
- (iv) gnéas;
- 15 (v) aon bhuansaintréithe fisiceacha oibiachtúla áirithe;
- (vi) cúis leis na sonraí a áireamh;
- (vii) gníomhaíocht arna moladh;
- (viii) cód foláirimh a shonraíonn aon tuairisc go raibh an duine i dtrácht faoi arm, foréigineach nó tar éis éalú.
- 20 In aon chás, ní áireofar sonraí pearsanta atá liostaithe sa chéad abairt d'Airteagal 6 de Choinbhinsiún Chomhairle na hEorpa um Chosaint Daoine Aonair maidir le hUathphróiseáil Sonraí Pearsanta, arna dhéanamh in Strasbourg ar an 28 Eanáir 1981, dá ngairtear "Coinbhinsiún Strasbourg 1981" anseo feasta.

#### 25 *Airteagal 5*

1. Ní iontrálfar sonraí in earnálacha (i) go (iv) d'Airteagal 3 sa Chóras Eolais Custaim ach amháin ar mhaithe le hamharc agus tuairisciú, faireachán discréideach nó seiceálacha sonracha.
2. Ar mhaithe leis na gníomhaíochtaí arna moladh dá dtagraítear
- 30 i mír 1, ní iontrálfar sonraí pearsanta in aon cheann d'earnálacha (i) go (iv) d'Airteagal 3 sa Chóras Eolais Custaim ach amháin, go háirithe mar gheall ar ghníomhaíochtaí neamhdhlithiúla roimhe sin, má tá taispeántaí firinneacha ann a thugann le fios go bhfuil an duine i dtrácht tar éis sárúithe tromchúiseacha ar dhlíthe náisiúnta a dhéanamh,
- 35 nó go bhfuil sé i mbun na sárúithe sin a dhéanamh nó go ndéanfaidh sé fós iad.

#### *Airteagal 6*

1. Má dhéantar na gníomhaíochtaí arna moladh dá dtagraítear in Airteagal 5(1), féadfar an t-eolas seo a leanas, go hiomlán nó go

40 páirteach, a bhailiú agus a tharchur chuig an mBallstát soláthair:

- (i) go bhfuil an tráchtarra, an chóir iompair, an gnó nó an duine arna dtuairisciú aimsithe;
- (ii) ionad, uair agus cúis na seiceála;

- (iii) bealach agus ceann scríbe an turais;
- (iv) daoine tionlacain an duine i dtrácht nó lucht na córa iompair;
- (v) an chóir iompair arna húsáid;
- (vi) na réada arna n-iompar; 5
- (vii) na himthosca inar aimsíodh an tráchtearra, an chóir iompair, an gnó nó an duine.

Nuair a bhailítear eolas den sórt sin i gcúrsa faireachán discréideach, ní mór bearta a ghlacadh chun a áirithiú nach gcuirtear cineál discréideach an fhaireacháin i gcontúirt. 10

2. I gcomhthéacs seiceáil shonrach dá dtagraítear in Airteagal 5(1), féadfar daoine, córacha iompair agus réada a chuardach a mhéad is incheadaíthe agus i gcomhréir le dlíthe, rialacháin agus nósanna imeachta an Bhallstáit ina ndéantar an cuardach. Mura gceadaítear an tseiceáil shonrach i ndlí Ballstáit, déanfaidh an Ballstát sin í 15 a thiontú go huathoibríoch go hamharc agus tuairisciú.

#### *Airteagal 7*

1. Forchoimeádtar rochtain dhíreach ar shonraí sa Chóras Eolais Custaim go heisiach do na húdaráis náisiúnta arna n-ainmniú ag gach Ballstát. Is riaracháin chustaim iad na húdaráis náisiúnta sin ach 20 féadfar údaráis eile a áireamh atá inniúil freisin, de réir dhlíthe, rialacháin agus nósanna imeachta an Bhallstáit i dtrácht, chun gníomhú d'fhonn an cuspóir atá sonraithe in Airteagal 2(2) a bhaint amach.

2. Cuirfidh gach Ballstát chuig gach Ballstát eile agus chuig an gcoiste dá dtagraítear in Airteagal 16 liosta dá údaráis inniúla atá 25 ainmnithe i gcomhréir le mír 1 chun rochtain dhíreach a bheith acu ar an gCóras Eolais Custaim ag sonrú, i gcás gach údaráis, na sonraí a bhféadfaidh sé rochtain a bheith aige orthu agus na críocha ar chucu é.

3. De mhaolú ar mhíreanna 1 agus 2, féadfaidh Ballstáit, trí chomhaontú d'aon toil, rochtain ar an gCóras Eolais Custaim a cheadú d'eagraíochtaí idirnáisiúnta nó réigiúnacha. Beidh comhaontú den sórt sin i bhfoirm prótacail a ghabhann leis an gCoinbhinsiún seo. Ag teacht ar a gcinneadh dóibh, tabharfaidh na Ballstáit aird ar aon 35 socrúithe cómhálartacha agus ar aon tuairim ón gComhúdarás Maoirseachta dá dtagraítear in Airteagal 18 ar leormhaitheas na mbeart cosanta sonraí.

#### *Airteagal 8*

1. Ní fhéadfaidh na Ballstáit sonraí ón gCóras Eolais Custaim a úsáid ach amháin chun an cuspóir atá sonraithe in Airteagal 2(2) a 40 ghnóthú, cé go bhféadfaidh siad iad a úsáid chun críocha riarthacha nó chun críocha eile le húdarú roimh ré ón mBallstát a d'ionchuir sa Chóras iad agus faoi réir aon choinníollacha arna bhforchur ag an mBallstát sin. Beidh aon úsáid eile den sórt sin i gcomhréir le dlíthe, rialacháin agus nósanna imeachta an Bhallstáit a fhéachann le hiad 45 a úsáid agus ba chóir di aird a thabhairt ar Phrionsabal 5.5. de Mholadh R (87)15 ó Choiste Airí Chomhairle na hEorpa an 17 Meán Fómhair 1987.



2. Gan dochar do mhíreanna 1 agus 4 den Airteagal seo agus d'Airteagal 7(3), ní úsáidfean sonraí ón gCóras Eolais Custaim ach amháin ag údaráis náisiúnta i ngach Ballstát arna n-ainmniú ag an mBallstát i dtrácht, atá inniúil, i gcomhréir le dlíthe, rialacháin agus nósanna imeachta an Bhallstáit sin, chun gníomhú d'fhonn an cuspóir atá sonraithe in Airteagal 2(2) a bhaint amach.

3. Cuirfidh gach Ballstát chuig gach Ballstát eile agus chuig an gCoiste dá dtagraítear in Airteagal 16 liosta de na húdaráis inniúla atá ainmnithe aige i gcomhréir le mír 2.

4. Féadfar sonraí ón gCóras Eolais Custaim, le húdarú roimh ré ón mBallstát a d'ionchuir sa Chóras iad, agus faoi réir aon choinníollacha arna bhforchur ag an mBallstát sin, a sheoladh lena n-úsáid ag údaráis náisiúnta seachas na cinn arna n-ainmniú faoi mhír 2, ag tíortha nach Ballstáit iad agus ag eagraíochtaí idirnáisiúnta nó réigiúnacha ar mian leo iad a úsáid. Glacfaidh gach Ballstát bearta speisialta chun slándáil sonraí den sórt sin a áirithiú nuair atá siad á dtarchur nó á soláthar do sheirbhísí atá suite lasmuigh dá chríoch. Ní mór mionsonraí bearta den sórt sin a chur in iúl don Chomhúdarás Maoirseachta atá luaite in Airteagal 18.

#### 20 *Airteagal 9*

1. Beidh ionchur sonraí sa Chóras Eolais Custaim faoi rialú ag dlíthe, rialacháin agus nósanna imeachta an Bhallstáit soláthair mura leagann an Coinbhinsiún forálacha níos déine síos.

2. Beidh úsáid sonraí arna bhfáil ón gCóras Eolais Custaim, lena n-áirítear aon ghníomhaíocht dá dtagraítear in Airteagal 5 agus atá arna moladh ag an mBallstát Conarthach soláthair a chomhall, faoi rialú ag dlíthe, rialacháin agus nósanna imeachta an Bhallstáit a úsáideann sonraí den sórt sin, mura leagann an Coinbhinsiún forálacha níos déine síos.

#### 30 *Airteagal 10*

1. Ainmneoidh gach Ballstát riarachán custaim inniúil a bheidh freagrach ar an mbonn náisiúnta as an gCóras Eolais Custaim.

2. Beidh an riarachán sin freagrach as an gCóras Eolais Custaim a oibriú go cuí laistigh den Bhallstát; glacfaidh sé pé bearta is gá chun a áirithiú go gcomhlíontar forálacha an Choinbhinsiúin seo.

3. Cuirfidh na Ballstáit in iúl dá chéile ainm an riaracháin inniúil dá dtagraítear i mír 1.

### CAIBIDIL IV

#### Sonraí a leasú

#### 40 *Airteagal 11*

1. Is ag an mBallstát soláthair amháin a bheidh an ceart sonraí atá ionchurtha aige sa Chóras Eolais Custaim a leasú, a fhorlíonadh, a cheartú nó a scriosadh.

2. Má thugann Ballstát soláthair dá aire, nó má thugtar dá aire, go bhfuil na sonraí a d'ionchuir sé neamhbheacht go fíorasach nó gur ionchuireadh iad nó go bhfuil siad stóráilte ar shlí atá contrártha leis an gCoinbhinsiún seo, déanfaidh sé na sonraí a leasú, a fhorlíonadh, a cheartú nó a scriosadh, mar is iomchuí, agus tabharfaidh sé faisnéis faoi do na Ballstáit eile. 5

3. Má tá fianaise ag ceann de na Ballstáit a thugann le fios go bhfuil sonra neamhbheacht go fíorasach nó gur ionchuireadh é nó go bhfuil sé stóráilte sa Chóras Eolais Custaim ar shlí atá contrártha leis an gCoinbhinsiún seo, tabharfaidh sé faisnéis faoi don Bhallstáit soláthair a luaithe is féidir. Déanfaidh an Ballstát sin na sonraí i dtrácht a sheiceáil agus, más gá, an sonra a cheartú nó a scriosadh gan mhoill. Déanfaidh an Ballstát soláthair faisnéis faoi aon cheartúchán nó aon scriosadh a rinneadh a thabhairt do na Ballstáit eile. 10

4. Má thugann Ballstát dá aire, agus sonraí á n-ionchur aige sa Chóras Eolais Custaim, go bhfuil a thuarascáil i gcodarsna le tuarascáil roimhe sin i dtaca le hinneachar nó gníomhaíocht arna moladh, tabharfaidh sé faisnéis faoi láithreach don Bhallstát a rinne an tuarascáil roimhe sin. Féachfaidh an dá Bhallstát ansin leis an bhfadhb a réiteach. I gcás easaontais, mairfidh an chéad tuarascáil ach ionchuirfear sa Chóras na codanna sin den tuarascáil nua nach bhfuil i gcodarsna. 15 20

5. Faoi réir fhorálacha an Choinbhinsiúin seo, nuair a dhéanann cúirt in aon Bhallstát, nó údarás inniúil eile sa Bhallstát sin, cinneadh críochnaitheach i dtaca le sonraí a leasú, a fhorlíonadh, a cheartú nó a scriosadh sa Chóras Eolais Custaim, gabhfaidh na Ballstáit orthu féin cinneadh den sórt sin a fhorghníomhú go cómhálartach. I gcás codarsna idir chinntí den sórt sin ó chúirteanna nó ó údaráis inniúla eile i mBallstáit éagsúla, lena n-áirítear na cinn dá dtagraítear in Airteagal 15(4) maidir le ceartúchán nó scriosadh, déanfaidh an Ballstát a d'ionchuir na sonraí i dtrácht iad a scriosadh den Chóras. 25 30

## CAIBIDIL V

### Sonraí a stóráil

#### *Airteagal 12*

1. Ní stórálfar sonraí arna n-ionchur sa Chóras Eolais Custaim ach go ceann na tréimhse is gá chun an cuspóir ar chuíge a ionchuireadh iad a bhaint amach. Déanfaidh an Ballstát soláthair athbhreithniú gach bliain ar a laghad an gá iad a stóráil. 35

2. Féadfaidh an Ballstát soláthair, laistigh den tréimhse athbhreithnithe, a chinneadh sonraí a stóráil go dtí an chéad athbhreithniú eile más gá iad a stóráil chun na cuspóirí ar chucu a ionchuireadh iad a bhaint amach. Gan dochar d'Airteagal 15, mura ndéanfar cinneadh iad sonraí a stóráil, aistreofar iad go huathoibríoch go dtí an chuid sin den Chóras Eolais Custaim a mbeidh rochtain uirthi teoranta i gcomhréir le mír 4. 40 45

3. Cuirfidh an Córas Eolais Custaim an Ballstát soláthair ar an eolas go huathoibríoch faoi aistriú sceidealta sonraí ón gCóras Eolais Custaim faoi mhír 2, ag tabhairt fógra míosa dó.

4. Leanfar de sonraí arna n-aistriú faoi mhír 2 a stóráil go ceann bliana sa Chóras Eolais Custaim ach, gan dochar d'Airteagal 15, ní bheidh siad inrochtana ach amháin ag ionadaí don choiste dá dtagraítear in Airteagal 16 nó ag na húdaráis mhaoirseachta dá dtagraítear in Airteagal 17(1) agus 18(1). Le linn na tréimhse sin ní fhéadfaidh siad na sonraí a cheadú ach amháin chun a mbeachtas agus a ndlíthiúlacht a sheiceáil, agus ina dhiaidh sin ní foláir iad a scriosadh. 50 55

## CAIBIDIL VI

### Sonraí pearsanta a chosaint

#### *Airteagal 13*

1. Gach Ballstát a bhfuil sé d'intinn aige sonraí pearsanta a fháil  
5 ón gCóras Eolais Custaim, nó iad a ionchur ann, glacfaidh sé, tráth  
nach déanaí ná dá theacht i bhfeidhm an Choinbhinsiúin seo, an  
reachtaíocht náisiúnta atá leordhóthanach chun leibhéal cosanta  
sonraí pearsanta a ghnóthú is combhionann ar a laghad leis an leibhéal  
a leanann ó phrionsabail Choinbhinsiún Strasbourg 1981.

10 2. Ní bhfaighidh Ballstát sonraí pearsanta ón gCóras Eolais Cus-  
taim ná ní ionchuirfidh sé ann iad ach amháin nuair a bheidh na  
socruithe chun sonraí den sórt sin a chosaint dá bhforáiltear i mír 1  
tar éis teacht i bhfeidhm ar chríoch an Bhallstáit sin. Beidh an  
Ballstát freisin tar éis údarás maoirseachta nó údaráis mhaoirseachta  
15 náisiúnta a ainmniú roimh ré i gcomhréir le hAirteagal 17.

3. D'fhonn a áirithiú go ndéanfar na forálacha cosanta sonraí sa  
Choinbhinsiún seo a chur i bhfeidhm go cuí, measfar i ngach Ballstát  
gur comhad náisiúnta sonraí atá faoi réir na bhforálacha náisiúnta dá  
dtagraítear i mír 1 agus aon fhorálacha níos déine atá sa Choinbhin-  
20 siún seo é an Córas Eolais Custaim.

#### *Airteagal 14*

1. Faoi réir Airteagal 8(1), áiritheoidh gach Ballstát go mbeidh sé  
neamhdhleathach faoina dhlíthe, rialacháin agus nósanna imeachta  
féin sonraí pearsanta ón gCóras Eolais Custaim a úsáid chun críche  
25 seachas ar mhaithe leis an gcuspóir dá dtagraítear in Airteagal 2(2).

2. Féadfar sonraí a atáirgeadh chun críocha teicniúla amháin, ar  
chuntar go bhfuil an t-atáirgeadh sin riachtanach le haghaidh cuard-  
ach díreach ag na húdaráis dá dtagraítear in Airteagal 7. Faoi réir  
Airteagal 8(1), ní fhéadfar sonraí pearsanta arna n-ionchur ag  
30 Ballstáit eile a chóipeáil ón gCóras Eolais Custaim isteach i gcom-  
haid náisiúnta eile sonraí.

#### *Airteagal 15*

1. Cuirfear cearta daoine maidir leis na sonraí pearsanta atá sa  
Chóras Eolais Custaim, go háirithe a gceart rochtana, in éifeacht i  
35 gcomhréir le dlíthe, rialacháin agus nósanna imeachta an Bhallstáit  
ina ndéantar na cearta sin a agairt.

Má tá sé leagtha síos i ndlíthe, rialacháin agus nósanna imeachta  
an Bhallstáit i dtrácht, cinntídh an t-údarás maoirseachta náisiúnta  
dá bhforáiltear in Airteagal 17 an gá an fhaisnéis a pháirtiú agus cén  
40 nós imeachta lena bpáirteofar í.

Ní fhéadfaidh Ballstát nach bhfuil na sonraí ábhartha soláthraithe  
aige sonraí a pháirtiú mura mbeidh caoi tugtha aige don Bhallstát  
soláthair a dhearcadh a nochtadh.

2. Déanfaidh Ballstát, a ndéantar iarratas ar rochtain ar shonraí  
45 pearsanta chuige, rochtain a dhiúltú más dóigh go bhféadfaidh an  
rochtain sin cur chun feidhme na gníomhaíochta atá sonraithe sa tua-  
rascáil dá dtagraítear in Airteagal 5(1) a dhochrú nó d'fhonn cearta  
agus saoirsí daoine eile a chosaint. Diúltófar an rochtain, pé scéal é,  
le linn thréimhse an fhaireacháin dhiscrídigh nó an amhairc agus na  
50 tuairisce.

3. I ngach Ballstát, féadfaidh duine, de réir dhlíthe, rialacháin agus nósanna imeachta an Bhallstáit i dtrácht, sonraí pearsanta a bhaineann leis féin a chur á gceartú nó á scriosadh má tá na sonraí sin neamhbheacht go fíorasach, nó gur ionchuireadh iad nó go bhfuil siad stóráilte sa Chóras Eolais Custaim ar shlí atá contrártha leis an gcuspóir atá sonraithe in Airteagal 2(2) den Choinbhinsiún seo nó le forálacha Airteagal 5 de Choinbhinsiún Strasbourg 1981. 5

4. Ar chríoch gach Ballstáit féadfaidh aon duine, i gcomhréir le dlíthe, rialacháin agus nósanna imeachta an Bhallstáit i gceist, caincean a thabhairt nó, más iomchuí, gearán a dhéanamh os comhair na gcúirteanna nó an údaráis is inniúil faoi dhlíthe, rialacháin agus nósanna imeachta an Bhallstáit sin maidir le sonraí pearsanta a bhaineann leis féin sa Chóras Eolais Custaim, d'fhonn: 10

(i) sonraí pearsanta atá neamhbheacht go fíorasach a cheartú nó a scriosadh; 15

(ii) sonraí pearsanta arna n-ionchur nó arna stóráil sa Chóras Eolais Custaim ar shlí atá contrártha leis an gCoinbhinsiún seo a cheartú nó a scriosadh;

(iii) rochtain a fháil ar shonraí pearsanta;

(iv) cúiteamh a fháil de bhun Airteagal 21(2). 20

Gabhfaidh na Ballstáit i dtrácht orthu fein cinntí críochnaitheacha arna nglacadh ag cúirt, nó ag údarás inniúil eile, de bhun phointí (i), (ii) agus (iii) den mhír seo a fhorghníomhú go cómhálartach.

5. Ní bheidh le tuiscint ó na tagairt san Airteagal seo agus in Airteagal 11(5) do “chinneadh críochnaitheach” go bhfuil aon oibleagáid ar aon Bhallstát achomharc a dhéanamh in aghaidh cinneadh arna ghlacadh ag cúirt nó ag údarás inniúil eile. 25

## CAIBIDIL VII

### Creat institiúideach

#### *Airteagal 16* 30

1. Cuirfear ar bun coiste ar a mbeidh ionadaithe ó riaracháin chustaim na mBallstát. Glacfaidh an Coiste a chinntí d'aon toil fad a bhaineann le forálacha na chéad fhleisce de mhír 2 agus trí thromlach dhá thrian fad a bhaineann le forálacha an dara fleasc de mhír 2. Glacfaidh sé d'aon toil a rialacha nós imeachta féin. 35

2. Beidh an Coiste freagrach as:

— forálacha an Choinbhinsiúin seo a chur chun feidhme agus a chur i bhfeidhm i gceart, gan dochar do chumhachtaí na n-údarás maoirseachta dá dtagraítear in Airteagail 17(1) agus 18(1); 40

— oibriú cuí an Chórais Eolais Custaim maidir le gnéithe teicniúla agus oibríochtúla. Tabharfaidh an Coiste gach céim is gá chun a áirithiú go gcuirtear na bearta atá leagtha amach in Airteagail 12 agus 19 chun feidhme go cuí maidir leis an gCóras Eolais Custaim. Chun críocha na míre seo amháin, féadfaidh an Coiste rochtain dhíreach agus cead úsáide díri a bheith aige ar shonraí ón gCóras Eolais Custaim. 45

3. Caithfidh an Coiste tuarascáil a dhéanamh in aghaidh na bliana don Chomhairle i gcomhréir le Teideal VI den Chonradh ar an Aontas Eorpach maidir le héifeachtacht agus éifeachtúlacht an Chórais Eolais Custaim, ag déanamh moltaí dó mar is gá.

5 4. Comhlachófar an Coimisiún le himeachtaí an Choiste.

## CAIBIDIL VIII

### Maoirseacht ar chosaint sonraí pearsanta

#### *Airteagal 17*

10 1. Ainmneoidh gach Ballstát údarás maoirseachta nó údarás mhaoirseachta náisiúnta atá freagrach as sonraí pearsanta a chosaint chun maoirseacht neamhspleách a dhéanamh ar shonraí den sórt sin arna n-ionchur sa Chóras Eolais Custaim.

15 Déanfaidh na húdaráis mhaoirseachta, i gcomhréir lena reachtaíocht náisiúnta faoi seach, maoirseacht agus seiceálacha go neamhspleách, d'fhonn a áirithiú nach sáraíonn próiseáil agus úsáid sonraí arna gcoimeád sa Chóras Eolais Custaim cearta an duine i dtrácht. Chuige sin, beidh rochtain ag na húdaráis mhaoirseachta ar an gCóras Eolais Custaim.

20 2. Féadfaidh aon duine iarraidh ar aon údarás maoirseachta náisiúnta seiceáil a dhéanamh ar shonraí pearsanta a bhaineann leis féin sa Chóras Eolais Custaim agus ar an úsáid atá déanta nó á déanamh de na sonraí sin. Beidh an ceart sin faoi rialú ag dlíthe, rialacháin agus nósanna imeachta an Bhallstáit ina ndearnadh an t-iarratas. Más Ballstát eile a d'ionchuir na sonraí, déanfar an tseiceáil i ndlúthchomharáocht le húdarás maoirseachta náisiúnta an Bhallstáit sin

#### *Airteagal 18*

30 1. Cuirfear ar bun Comhúdarás Maoirseachta, ar a mbeidh beirt ionadaí ó gach Ballstát arna roghnú ón údarás maoirseachta neamhspleách náisiúnta nó ó na húdaráis mhaoirseachta neamhspleacha náisiúnta faoi seach.

2. Feidhmeoidh an Comhúdarás Maoirseachta a fheidhmeanna i gcomhréir le forálacha an Choinbhinsiún seo agus forálacha Choinbhinsiún Strasbourg 1981 agus aird á tabhairt ar Mholadh R (87) 15 ó Choiste Airí Chomhairle na hEorpa an 17 Meán Fómhair 1987.

35 3. Beidh an Comhúdarás Maoirseachta inniúil chun oibríocht an Chórais Eolais Custaim a mhaoirsiú, chun aon deacrachtaí maidir le cur i bhfeidhm nó léiriú a fhéadfaidh teacht chun cinn le linn a oibríochta a scrúdú, chun staidéar a dhéanamh ar fhadhbanna a fhéadfaidh teacht chun cinn maidir le feidhmiú maoirseacht neamhspleách ag údaráis mhaoirseachta náisiúnta na mBallstát nó i bhfeidhmiú cearta rochtana ar an gCóras ag daoine aonair, agus chun tograí a tharraingt suas d'fhonn réitigh chomhpháirteacha ar fhadhbanna a aimsiú.

45 4. D'fhonn a fhreagrachtaí a fheidhmiú, beidh rochtain ag an gComhúdarás Maoirseachta ar an gCóras Eolais Custaim.

5. Seolfar tuarascálacha arna dtarraingt suas ag an gComhúdarás Maoirseachta chuig na húdaráis a gcuireann na húdaráis mhaoirseachta náisiúnta a dtuarascálacha faoina mbráid.

## CAIBIDIL IX

### Slándáil an Chórais Eolais Custaim

#### *Airteagal 19*

1. Chun slándáil a chothabháil, glacfar gach beart riarthach is gá:
  - (i) ag údaráis inniúla na mBallstát i leith theirminéil an Chórais Eolais Custaim ina Stáit faoi seach; 5
  - (ii) ag an gCoiste dá dtagraítear in Airteagal 16 i leith an Chórais Eolais Custaim agus na dteirminéal atá suite san áitreabh céanna leis an gCóras agus atá arna n-úsáid le haghaidh críocha teicniúla agus na seiceálacha is gá de bhun mhír 3. 10
2. Glacfaidh na húdaráis inniúla agus an coiste dá dtagraítear in Airteagal 16 bearta ach go háirithe chun:
  - (i) cosc a chur le rochtain ag aon duine neamhúdaraithe ar shuiteálacha arna n-úsáid chun sonraí a phróiseáil; 15
  - (ii) cosc a chur le léamh, cóipeáil, bunathrú nó scriosadh sonraí agus meáin sonraí ag daoine neamhúdaraithe;
  - (iii) cosc a chur le hiontráil neamhúdaraithe sonraí agus aon cheadú, bunathrú nó scriosadh neamhúdaraithe sonraí;
  - (iv) cosc a chur le rochtain ar shonraí sa Chóras Eolais Custaim ag daoine neamhúdaraithe trí bhíthin trealamh tarchuir sonraí; 20
  - (v) a ráthú, maidir le húsáid an Chórais Eolais Custaim, nach mbeidh ceart rochtana ag daoine údaraithe ach amháin ar sonraí a bhfuil siad inniúil ina leith; 25
  - (vi) a ráthú gur féidir a sheiceáil agus a shuíomh cé hiad na húdaráis a bhféadfár sonraí a tharchur chucu le trealamh tarchuir sonraí;
  - (vii) a ráthú gur féidir a sheiceáil agus a shuíomh a posteriori cad iad na sonraí a ionchuireadh sa Chóras Eolais Custaim, cathain a ionchuireadh iad agus cé a d'ionchuir iad agus gur féidir faireachán a dhéanamh ar an gceistiú; 30
  - (viii) cosc a chur le léamh, cóipeáil, bunathrú nó scriosadh neamhúdaraithe sonraí le linn sonraí a tharchur agus meáin sonraí a iompar. 35
3. Déanfaidh an Coiste dá dtagraítear in Airteagal 16 faireachán ar cheistiú an Chórais Eolais Custaim d'fhonn a sheiceáil an raibh na cuardaigh arna ndéanamh inghlactha agus ar úsáidirí údaraithe a rinne iad. Déanfar 1% ar a laghad de na cuardaigh go léir arna ndéanamh a sheiceáil. Coimeádfar taifead de na cuardaigh sin agus na seiceálacha sin sa Chóras, ní dhéanfaidh an Coiste agus na húdaráis mhaoirseachta dá dtagraítear in Airteagail 17 agus 18 é a úsáid ach amháin chun na críche a dúradh, agus scriosfar é tar éis sé mhí. 40

### *Airteagal 20*

5 Beidh an riarachán custaim inniúil dá dtagraítear in Airteagal 10(1) den Choinbhinsiún seo freagrach as na bearta slándála atá leagtha amach in Airteagal 19, i ndáil leis na teirminéil atá suite ar chríoch an Bhallstáit i dtrácht, as na feidhmeanna athbhreithnithe atá leagtha amach in Airteagail 12(1) agus (2), agus ar shlí eile as cur chun feidhme cuí an Choinbhinsiúin seo a mhéad is gá faoi dhlíthe, rialacháin agus nósanna imeachta an Bhallstáit sin.

## CAIBIDIL X

10 Freagrachtaí agus dliteanais

### *Airteagal 21*

15 1. Beidh gach Ballstát freagrach as beachtas, ábharthacht reatha agus dlíthiúlacht na sonraí atá ionchurtha aige sa Chóras Eolais Custaim. Beidh gach Ballstát freagrach freisin as forálacha Airteagal 5 de Choinbhinsiún Strasbourg 1981 a chomhlíonadh.

2. Beidh gach Ballstát faoi dhliteanas, i gcomhréir lena dhlíthe, rialacháin agus nósanna imeachta féin, i leith na díobhála a dhéantar do dhuine trí úsáid an Chórais Eolais Custaim sa Bhallstát i dtrácht.

20 Is amhlaidh a bheidh freisin nuair a dhéantar an díobháil trí ionchur sonraí neamhbheachta ag an mBallstát soláthair, nó tríd an mBallstát sin sonraí a ionchur ar shlí atá contrártha leis an gChoinbhinsiún seo.

25 3. Murab é an Ballstát a sholáthair na sonraí neamhbheachta an Ballstát a ndéantar caingean a thabhairt ina choinne i leith sonraí neamhbheachta, lorgóidh na Ballstáit i dtrácht comhaontú maidir le pé comhréir, más ann, de na suimeanna arna n-íoc mar chúiteamh a aisíocfaidh an Ballstát soláthair don Bhallstát eile. Déanfar aon suim den sórt sin a aisíoc arna iarraidh sin.

### *Airteagal 22*

30 1. Beidh na costais arna dtabhú ag na Ballstáit i ndáil le hoibriú agus úsáid an Chórais Eolais Custaim atá suite ar a gcríocha de mhui-rear ar gach ceann díobh.

35 2. Beidh caiteachas eile arna thabhú i gcur chun feidhme an Choinbhinsiúin seo, seachas caiteachas nach féidir a scaradh ó oibriú an Chórais Eolais Custaim chun críocha rialacháin chustaim agus talmhaíochta an Chomhphobail a chur i bhfeidhm, de mhui-rear ar na Ballstáit. Cinnfear cion gach Ballstáit de réir chomhréir a olltáirgeachta náisiúnta le suim iomlán olltáirgeachtaí náisiúnta na mBallstát don bhliain roimh an mbliain ina dtabhaítear na costais.

40 Chun críocha an fhomhír seo a chur i bhfeidhm, ciallaíonn an téarma “olltáirgeacht náisiúnta” an olltáirgeacht náisiúnta arna sainiú i gcomhréir le Treoir 89/130/CEE, Euratom ón gComhairle an 13 Feabhra 1989 maidir le tiomsú na holltáirgeachta náisiúnta ag margadhphraghsanna a chomhchuibhiú nó i gcomhréir le haon ion-  
45 straim Chomhphobail á leasú nó ag gabháil a hionaid.

## CAIBIDIL XI

Cur chun feidhme agus forálacha críochnaitheacha

### *Airteagal 23*

Déanfar an t-eolas dá bhforáiltear faoin gCoinbhinsiún seo a mhalartú go díreach idir údaráis na mBallstát. 5

### *Airteagal 24*

1. Beidh an Coinbhinsiún seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl d'Ardrúnaí Chomhairle an Aontais Eorpaigh go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Coinbhinsiún seo a ghlacadh comhlhonta acu. 10

3. Tiocfaidh an Coinbhinsiún seo i bhfeidhm nócha lá tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an mBallstát is déanaí a dhéanfaidh sin. 15

### *Airteagal 25*

1. Beidh aontachas leis an gCoinbhinsiún seo ar oscailt d'aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach.

2. Is téacs údarásach téacs an Choinbhinsiúin seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh. 20

3. Taiscfear na hionstraimí aontachais leis an taiscí.

4. Tiocfaidh an Coinbhinsiún seo i bhfeidhm maidir le Stát aontach nócha lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Choinbhinsiúin a theacht i bhfeidhm mura bhfuil sé tagtha i bhfeidhm fós tráth na tréimhse nócha lá sin a dhul in éag. 25

### *Airteagal 26*

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Choinbhinsiúin seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an gCoinbhinsiún seo a ghlacadh agus aontachais leis, na dearbhuithe, na forchoimeádais agus gach fógra eile a bhainneann leis an gCoinbhinsiún seo. 30

### *Airteagal 27*

1. Ní foláir don Chomhairle aon díospóidí idir na Ballstáit maidir le léiriú nó cur i bhfeidhm an Choinbhinsiúin seo a phlé mar chéad chéim i gcomhréir leis an nós imeachta atá leagtha amach i dTeideal VI den Chonradh ar an Aontas Eorpach d'fhonn teacht ar réiteach. 35



Mura mbeidh réiteach faighte laistigh de thréimhse sé mhí, féadfaidh páirtí sa díospóid í a chur faoi bhráid Chúirt Bhreithiúnais na gComhphobal Eorpach.

5 2. Aon díospóid idir Ballstát amháin nó níos mó agus Coimisiún na gComhphobal Eorpach maidir leis an gCoinbhinsiún seo a chur i bhfeidhm nárbh fhéidir a réiteach trí chaibidliocht, féadfar í a chur faoi bhráid na Cúirte Breithiúnais.

SEVENTH SCHEDULE

THE TEXT IN THE IRISH LANGUAGE OF THE  
AGREEMENT

**COMHAONTÚ I DTAOBH AN COINBHINSIÚN ARNA  
DHRÉACTÚ AR BHONN AIRTEAGAL K.3 DEN  
CHONRADH AR AN AONTAS EORPACH MAIDIR LE  
HÚSÁID THEICNEOLAÍOCHT AN EOLAIS CHUN  
CRÍOCHA CUSTAIM A CHUR I BHFEIDHM GO  
SEALADACH IDIR BHALSTÁIT ÁIRITHE DEN AONTAS  
EORPACH** 5 10

TÁ

RÍOCHT NA BEILGE,

RÍOCHT NA DANMHAIRGE,

POBLACHT CHÓNAIDHME NA GEARMÁINE,

AN PHOBLACHT HEILLÉANACH, 15

RÍOCHT NA SPÁINNE,

POBLACHT NA FRAINCE,

ÉIRE,

POBLACHT NA hIODÁILE,

ARD-DIÚCACHT LUCSAMBURG, 20

RÍOCHT NA hÍSILTÍRE,

POBLACHT NA hOSTAIRE,

POBLACHT NA PORTAINGÉILE,

POBLACHT NA FIONLAINNE,

RÍOCHT NA SUALAINNE, 25

RÍOCHT AONTAITHE NA BREATAINE MÓIRE AGUS  
THUAISCEART ÉIREANN,

Ballstáit an Aontais Eorpaigh agus sínitheoirí Choinbhinsiún an  
26 Iúil 1995 arna dhréachtú ar bhonn Airteagal K.3 den Chonradh  
ar an Aontas Eorpach maidir le húsáid theicneolaíocht an eolais 30  
chun críocha custaim, dá ngairtear “an Coinbhinsiún” anseo feasta,

AG FÉACHAINT dá thábhachtaí atá sé an Coinbhinsiún a chur i  
bhfeidhm go luath;

DE BHRÍ nach gcoiscfidh forálacha Theideal VI den Chonradh ar  
an Aontas Eorpach, de bhun Airteagal K.7 den Chonradh sin, com- 35  
har níos dlúithe idir dhá Bhallstát nó níos mó a thionscnamh ná a  
fhorbairt a mhéad nach mbeidh an comhar sin ina shárú ná ina bhac  
ar an gcomhar dá bhforáiltear i dTeideal VI den Chonradh sin,

DE BHRÍ nach mbeadh an Coinbhinsiún a chur i bhfeidhm go seala- 40  
dach idir Bhallstáit áirithe den Aontas Eorpach ina shárú ná ina bhac  
ar an gcomhar dá bhforáiltear i dTeideal VI den Chonradh ar an  
Aontas Eorpach,

TAR ÉIS COMHAONTÚ MAR A LEANAS:

*Airteagal 1*

Chun críocha an Chomhaontaithe seo:

- 5 — ciallaíonn “Coinbhinsiún” an Coinbhinsiún arna dhréachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach maidir le húsáid theicneolaíocht an eolais chun críocha custaim,
- ciallaíonn “Ardpháirtithe Conarthacha” na Ballstáit den Aontas Eorpach is páirtithe sa Choinbhinsiún,
- 10 — ciallaíonn “Páirtithe” na Ballstáit den Aontas Eorpach is páirtithe sa Chomhaontú seo.

*Airteagal 2*

Beidh an Coinbhinsiún infheidhme go sealadach idir na hArdpháirtithe Conarthacha is páirtithe sa Chomhaontú seo amhail ón gcéad lá den tríú mí tar éis don ochtú Ardpháirtí Conarthach a dhéanann amhlaidh ionstraim formheasta, glactha nó daingnithe an Chomhaontaithe seo a thaisceadh.

*Airteagal 3*

Na forálacha idirthréimhseacha is gá chun an Coinbhinsiún a chur i bhfeidhm go sealadach, déanfaidh na hArdpháirtithe Conarthacha sin a mbeidh an Coinbhinsiún infheidhme go sealadach eatarthu iad a ghlacadh de thoil a chéile i gcomhairle leis na hArdpháirtithe Conarthacha eile. Fad atá an cur i bhfeidhm sealadach ann, feidhmeoidh na hArdpháirtithe Conarthacha, ag gníomhú dóibh de thoil a chéile i ndlúthchomhlachas le Coimisiún na gComhphobal Eorpach, feidhmeanna an choiste dá bhforáiltear in Airteagal 16 den Choinbhinsiún. Ní dhéanfar Airteagail 7(3) agus 16 den Choinbhinsiún a chur chun feidhme sa tréimhse sin.

*Airteagal 4*

1. Beidh an Comhaontú ar oscailt chun a shíniú ag Ballstáit a shíníonn an Coinbhinsiún. Beidh sé faoi réir a fhorghníomhaíochta, a ghlactha nó a dhaingnithe. Tiocfaidh sé i bhfeidhm ar an gcéad lá den tríú mí tar éis don ochtú Ardpháirtí Conarthach a dhéanann amhlaidh a ionstraim formheasta, glactha nó daingnithe a thaisceadh.

2. I gcás Ardpháirtí Conarthach a ionstraim formheasta, glactha nó daingnithe a thaisceadh ar dháta níos déanaí, tiocfaidh an Comhaontú seo i bhfeidhm ar an gcéad lá den tríú mí tar éis dó an ionstraim sin a thaisceadh.

3. Taiscfear na hionstraimí formheasta, glactha nó daingnithe le hArdnáisiúnaí Chomhairle an Aontais Eorpaigh. Feidhmeoidh sé feidhmeanna an taiscí.

### *Airteagal 5*

Tarraingíodh an Comhaontú seo suas i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag gach ceann de na téacsanna sin; taiscfear é le hArdrúnaí Chomhairle an Aontais Eorpaigh agus cuirfidh sé cóip dheimhnithe chuig gach ceann de na Páirtithe. 5

### *Airteagal 6*

Rachaidh an Comhaontú seo in éag ar theacht i bhfeidhm don 10 Choinbhinsiún.

EIGHTH SCHEDULE

THE TEXT IN THE IRISH LANGUAGE OF THE 1996  
PROTOCOL

5 **PRÓTACAL ARNA DHRÉACHTÚ AR BHONN AIRTEAGAL  
K.3 DEN CHONRADH AR AN AONTAS EORPACH, MAIDIR  
LE LÉIRIÚ, TRÍ RÉAMHRIALÚ, AG CÚIRT  
BHREITHIÚNAIS NA GCOMHPHOBAL EORPACH AR AN  
gCOINBHINSIÚN MAIDIR LE HÚSÁID THEICNEOLAÍOCHT  
AN EOLAIS CHUN CRÍOCHA CUSTAIM**

10 TÁ NA hARDPHÁIRTITHE CONARTHACHA,

TAR ÉIS COMHAONTÚ ar na forálacha seo a leanas a chuirfear i  
gceangal leis an gCoinbhinsiún:

*Airteagal 1*

15 Beidh dlínse ag Cúirt Bhreithiúnais na gComhphobal Eorpach,  
faoi na coinníollacha atá leagtha síos sa Phrótacal seo, chun réamhri-  
aluithe a thabhairt ar léiriú ar an gCoinbhinsiún maidir le húsáid  
theicneolaíocht an eolais chun críocha custaim.

*Airteagal 2*

20 1. Féadfaidh aon Bhallstát, trí dhearbhu a dhéanamh tráth sínithe  
an Phrótacail seo nó aon tráth eile ina dhiaidh sin, glacadh le dlínse  
Chúirt Bhreithiúnais na gComhphobal Eorpach chun réamhrialuithe  
a thabhairt ar léiriú ar an gCoinbhinsiún maidir le húsáid theicneolaí-  
ocht an eolais chun críocha custaim faoi na coinníollacha atá sonrai-  
the i bpointe (a) de mhír 2 nó i bpointe (b) de mhír 2.

25 2. Féadfaidh Ballstát a dhéanann dearbhú faoi mhír 1 a shonrú:

30 (a) go bhféadfaidh aon cheann de chúirteanna nó binsí an  
Bhallstáit sin nach bhfuil leigheas breithiúnach faoin dlí  
náisiúnta in aghaidh a bhreitheanna a iarraidh ar Chúirt  
Bhreithiúnais na gComhphobal Eorpach réamhrialú a  
35 thabhairt ar cheist a ardaítear i gcás atá ar feitheamh os a  
chomhair agus a bhaineann le léiriú ar an gCoinbhinsiún  
maidir le húsáid theicneolaíocht an eolais chun críocha  
custaim má mheasann an chúirt nó an binse sin gur gá  
breith a thabhairt ar an gceist ionas go bhféadfaidh sé  
breithiúnas a thabhairt; nó

40 (b) go bhféadfaidh aon cheann de chúirteanna nó binsí an  
Bhallstáit sin a iarraidh ar Chúirt Bhreithiúnais na  
gComhphobal Eorpach réamhrialú a thabhairt ar cheist a  
ardaítear i gcás atá ar feitheamh os a chomhair agus a  
bhaineann le léiriú ar an gCoinbhinsiún maidir le húsáid  
theicneolaíocht an eolais chun críocha custaim má mheas-  
ann an chúirt nó an binse sin gur gá breith a thabhairt ar  
an gceist ionas go bhféadfaidh sé breithiúnas a thabhairt.

*Airteagal 3*

45 1. Beidh an Prótacal ar Reacht Chúirt Bhreithiúnais na  
gComhphobal Eorpach agus Rialacha Nós Imeachta na Cúirte Brei-  
thiúnais sin infheidhme.

2. I gcomhréir le Reacht Chúirt Bhreithiúnais na gComhphobal Eorpach, beidh gach Ballstát, bíodh nó ná bíodh dearbhú de bhun Airteagal 2 déanta aige, i dteideal ráitis cháis nó barúlacha i scríbhinn a thíolacadh do Chúirt Bhreithiúnais na gComhphobal Eorpach i gcásanna a thagann chun cinn faoi Airteagal 1. 5

#### *Airteagal 4*

1. Beidh an Prótacal seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl don taiscí go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Prótacal seo a ghlacadh comhlionta acu, agus cuirfidh siad in iúl dó freisin aon dearbhú arna dhéanamh de bhun Airteagal 2. 10

3. Tiocfaidh an Prótacal seo i bhfeidhm nócha lá tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an Stát, is Ballstát den Aontas Eorpach tráth na Comhairle do ghlacadh an Ghnímh ag dréachtú an Phrótacail seo, is déanaí a dhéanfaidh an beart sin. Ar a shon sin, tiocfaidh sé i bhfeidhm ar a luaithe san am céanna leis an gCoinbhinsiún maidir le húsáid theicneolaíocht an eolais chun críocha custaim. 15

#### *Airteagal 5*

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1. Beidh aontachas leis an bPrótacal seo ar oscailt d'aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach.

2. Taiscfear na hionstraimí aontachais leis an taiscí.

3. Is téacs údarásach téacs an Phrótacail seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh. 25

4. Tiocfaidh an Prótacal seo i bhfeidhm i leith aon Stáit aontaigh nócha lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Phrótacail seo a theacht i bhfeidhm mura mbeidh sé tagtha i bhfeidhm fós tráth na tréimhse nócha lá thuasluaite a dhul in éag.

#### *Airteagal 6*

30

Aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach agus a aontaíonn don Choinbhinsiún maidir le húsáid theicneolaíocht an eolais chun críocha custaim i gcomhréir le hAirteagal 25 de, glacfaidh sé le forálacha an Phrótacail seo.

#### *Airteagal 7*

35

1. Féadfaidh gach Ballstát is Ardpháirtí Conarthach leasuithe ar an bPrótacal seo a mholadh. Cuirfear gach togra do leasú chuig an taiscí agus cuirfidh seisean in iúl don Chomhairle é.

2. Glacfaidh an Chomhairle na leasuithe agus molfaidh sí iad lena nglacadh ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach. 40

3. Tiocfaidh na leasuithe arna nglacadh amhlaidh i bhfeidhm i gcomhréir le hAirteagal 4.

### *Airteagal 8*

5 1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Phrótacail seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach fógraí, ionstraimí agus cumarsáidí a bhaineann leis an bPrótacal seo.

10 Arna dhéanamh sa Bhruiséil, an naoú lá is fiche de Shamhain, míle naoi gcéad nócha a sé, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis, agus comhúdarás ag gach ceann de na téacsanna sin.

NINTH SCHEDULE

THE TEXT IN THE IRISH LANGUAGE OF THE CUSTOMS  
COOPERATION CONVENTION

<b>AN COINBHINSIÚN ARNA DHRÉACHTÚ AR BHONN AIRTEAGAL K.3 DEN CHONRADH AR AN AONTAS EORPACH, MAIDIR LE CÚNAMH FRITHPHÁIRTEACH AGUS COMHAR IDIR RIARACHÁIN CHUSTAIM</b>	5
TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Choinbhinsiún seo, Ballstáit an Aontais Eorpaigh,	
AG TAGAIRT do Ghníomh ó Chomhairle an Aontais Eorpaigh an 18 Nollaig 1997;	10
AG MEABRHÚ DÓIBH an gá na gealltanais a neartú atá sa Choinbhinsiún maidir le riaracháin chustaim do sholáthar cúnamh frithpháirteach arna shníú sa Róimh ar an 7 Meán Fómhair 1967;	
DE BHRÍ go bhfuil riaracháin chustaim freagrach, ar chríoch chustaim an Chomhphobail agus go háirithe ag a pointí iontrála agus fágála, as cionta ní amháin in aghaidh rialacha an Chomhphobail ach in aghaidh dlíthe náisiúnta freisin, go háirithe na cásanna atá folaithe ag Airteagail 36 agus 223 den Chonradh ag bunú an Chomhphobail Eorpaigh, a chosc, a imscrúdú agus a chur faoi chois;	15 20
DE BHRÍ gur bagairt thromchúiseach don tsláinte phoiblí, don mhórtacht phoiblí agus don tslándáil phoiblí an treocht atá ag teacht chun cinn ionsar gháinneáil aindleathach de gach saghas;	
DE BHRÍ gur cóir foirmeacha sonracha comhair a rialú lena ngabhfadh gníomhaíochtaí trasteorann d'fhonn sáruithe áirithe ar reachtaíocht náisiúnta na mBallstát agus rialacháin chustaim an Chomhphobail araon a chosc, a imscrúdú agus a ionchúiseamh agus de bhri nach foláir gníomhaíochtaí trasteorann den sórt sin a dhéanamh i gcónaí i gcomhlíonadh phrionsabail na dlíthiúlachta (an dlí ábhartha is infheidhme sa Bhallstát iarrtha agus treoracha údarais inniúla an Bhallstáit sin a chomhlíonadh), na coimhdeachta (gan tús a chur le gníomhaíochtaí den sórt sin ach nuair is follas nach iomchuí foirmeacha eile gníomhaíochta ar lú a suntas) agus na comhréireachta (scála agus fad na gníomhaíochta a chinneadh i bhfianaise thromchúis an tsáraithe a thiomhdítear);	25 30 35
ÓS DEIMHIN LEO gur gá an comhar idir riaracháin chustaim a athneartú trí nósanna imeachta a leagan síos faoina bhféadfaidh riaracháin chustaim gníomhú go comhpháirteach agus sonraí a mhalartú a bhaineann le gníomhaíochtaí gáinneála aindleathacha;	
AG COIMEÁD I gCUIMHNE DÓIBH go mbíonn ar na riaracháin chustaim ina n-obair laethúil idir fhorálacha an Chomhphobail agus fhorálacha náisiúnta a chur chun feidhme agus go bhfuil, dá dheasca sin, riachtanas follasach ann a áirithiú go bhfabhraíonn na forálacha maidir le cúnamh frithpháirteach agus comhar sa dá earnáil go comhthreomhar a mhéad is féidir,	40 45
TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A LEANAS:	



## TEIDEAL I — FORÁLACHA GINEARÁLTA

### *Airteagal 1*

#### *Raon feidhme*

5 1. Gan dochar d'inniúlachtaí an Chomhphobail, cuirfidh Ballstáit an Aontais Eorpaigh cúnamh frithpháirteach ar fáil dá chéile agus comhoibreoidh siad le chéile trína riaracháin chustaim d'fhonn:

— sárúithe ar fhorálacha náisiúnta custaim a chosc agus a bhrath, agus

10 — sárúithe ar fhorálacha custaim an Chomhphobail agus forálacha náisiúnta custaim a ionchúiseamh agus a phionósú.

15 2. Gan dochar d'Airteagal 3, ní dhéanfaidh an Coinbhinsiún seo difear do na forálacha is infheidhme maidir le cúnamh frithpháirteach in ábhair choiriúla idir údaráis bhreithiúnacha, d'fhorálacha níos fabhraí i gcomhaontuithe déthaobhacha nó iltaobhacha idir Ballstáit a rialaíonn an comhar dá bhforáiltear i mír 1 idir údaráis chustaim nó údaráis inniúla eile na mBallstát, ná do shocruithe sa réimse céanna arna gcomhaontú ar bhonn reachtaíochta combhionainne nó córais speisialta lena bhforáiltear bearta cúnaimh fhrithpháirtigh a chur i bhfeidhm go cómhalartach.

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### *Airteagal 2*

#### *Cumhachtaí*

25 Cuirfidh na riaracháin chustaim an Coinbhinsiún seo i bhfeidhm laistigh de theorainneacha na gcumhachtaí a thugtar dóibh faoi fhorálacha náisiúnta. Ní fhéadfar aon ní sa Choinbhinsiún seo a fhorléiriú mar ní a dhéanann difear do na cumhachtaí a thugtar faoi fhorálacha náisiúnta do na riaracháin chustaim de réir bhrí an Choinbhinsiúin seo.

### *Airteagal 3*

#### *Gaolmhaireacht le cúnamh frithpháirteach arna sholáthar ag na húdaráis bhreithiúnacha*

30 1. Folatonn an Coinbhinsiún seo cúnamh frithpháirteach agus comhar faoi chuimsiú na n-imscrúduithe coiriúla maidir le sárúithe ar fhorálacha náisiúnta custaim agus forálacha custaim an Chomhphobail a bhfuil dlínse ag an údarás iarrthach ina leith ar bhonn fhorálacha náisiúnta an Bhallstáit ábhartha.

35 2. Nuair a dhéanann údarás breithiúnach imscrúdú coiriúil nó nuair a dhéantar imscrúdú coiriúil faoina stiúir, cinntíonn an t-údarás sin an dtíolacfar iarrataí ar chúnamh frithpháirteach nó ar chomhar maidir leis sin ar bhonn na bhforálacha is infheidhme maidir le cúnamh frithpháirteach in ábhair choiriúla nó ar bhonn an Choinbhinsiúin seo.

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### *Airteagal 4*

#### *Sainmhínte*

Chun críocha an Choinbhinsiúin seo, beidh feidhm ag na sainmhínte seo a leanas:

45 1.—“forálacha náisiúnta custaim”: forálacha reachtaíochta, rialúcháin agus riaracháin uile de chuid Ballstáit a dtagann a gcur i

bhfeidhm go hiomlán nó go páirteach faoi dhlinse riarachán custaim an Bhallstáit sin maidir le:

- trácht trasteorann in earraí atá faoi réir toirmeasc, srianta nó rialuithe, go háirithe faoi Airteagail 36 agus 223 den Chonradh ag bunú an Chomhphobail Eorpaigh; 5
  - dleachtanna máil neamh-chomhchuibhithe;
- 2.—“forálacha custaim an Chomhphobail”:
- bailiúchán fhorálacha an Chomhphobail, agus forálacha cur chun feidhme a bhaineann leo, a rialaíonn allmhairiú, onnmhairiú, idirthuras agus láithreach earraí arna dtrádáil idir Ballstáit agus tríú tíortha, agus idir Ballstáit i gcás earraí nach bhfuil stádas Comhphobail acu de réir bhrí Airteagal 9(2) den Chonradh ag bunú an Chomhphobail Eorpaigh nó earraí atá faoi réir rialuithe nó imscrúduithe breise chun a stádas Comhphobail a bhunú; 10  
15
  - bailiúchán na bhforálacha arna nglacadh ar leibhéal an Chomhphobail faoin gcomhbheartas talmhaíochta agus na forálacha sonracha arna nglacadh i ndáil le hearraí a thig ó tháirgí talmhaíochta a phróiseáil;
  - bailiúchán na bhforálacha arna nglacadh ar leibhéal an Chomhphobail maidir le dleachtanna comhchuibhithe máil agus le cáin bhreisluacha ar allmhairiú mar aon leis na forálacha náisiúnta á gcur chun feidhme; 20
- 3.—“sáruithe”: gníomhartha atá codarsnach le forálacha náisiúnta custaim nó forálacha custaim an Chomhphobail, lena n-áirítear, inter alia: 25
- rannpháirtíocht i sáruithe den sórt sin nó in iarrachtaí ar sáruithe den sórt sin a dhéanamh;
  - rannpháirtíocht in eagraíocht choiriúil a dhéanann sáruithe den sórt sin; 30
  - sciúradh an airgid a thig ó na sáruithe dá dtagraítear sa mhír seo;
- 4.—“cúnamh frithpháirteach”: riaracháin chustaim do sholáthar cúnamh mar a fhoráiltear sa Choinbhinsiún seo;
- 5.—“údarás iarrthach”: an t-údarás inniúil de chuid an Bhallstáit a dhéanann iarraidh ar chúnamh; 35
- 6.—“údarás iarrtha”: an t-údarás inniúil de chuid an Bhallstáit a ndéantar iarraidh ar chúnamh air;
- 7.—“riaracháin chustaim”: údaráis chustaim na mBallstát agus údaráis eile a bhfuil dlínse acu chun forálacha an Choinbhinsiúin seo a chur chun feidhme; 40
- 8.—“sonraí pearsanta”: gach faisnéis a bhaineann le duine nádúrtha sainaitheanta nó atá insainaitheanta; meastar go bhfuil duine insainaitheanta más féidir é a shainaithint go díreach nó go hindíreach, inter alia trí uimhir aitheantais nó trí shaintréith nó saintréithe dá chéannacht fhisiceach, fhiseolaíoch, shíceolaíoch, eacnamaíoch, chultúrtha nó shóisialta; 45
- 9.—“comhar trasteorann”: comhar idir riaracháin chustaim thar theorainneacha gach Ballstáit.

## Airteagal 5

### Láraonaid chomhordaithe

1. Ceapfaidh na Ballstáit láraonad (aonad comhordaithe) ina n-údaráis chustaim. Beidh sé freagrach as gach iarratas ar chúnamh frithpháirteach faoin gCoinbhinsiún seo a ghlacadh agus as cúnaimh frithpháirteach a chomhordú, gan dochar do mhír 2. Beidh an t-aonad freagrach freisin as an gcomhar le húdaráis eile atá i gceist i mbeart cúnaimh faoin gCoinbhinsiún seo. Coinneoidh aonaid chomhordaithe na mBallstát an teagmháil dhíreach is gá le chéile, go háirithe sna cásanna atá folaithe i dTeideal IV.

2. Ní eisíafaídh gníomhaíocht na láraonad comhordaithe, go háirithe tráth éigeandála, comhar díreach idir seirbhísí eile de chuid údaráis chustaim na mBallstát. Ar chúiseanna éifeachtachta agus comhchuibhis, cuirfear na láraonaid chomhordaithe ar an eolas faoi aon gníomhaíocht lena ngabfaidh comhar díreach den sórt sin.

3. Mura mbeidh údarás custaim inniúil, nó mura mbeidh sé inniúil go hiomlán, chun iarraidh a phróiseáil, díreoidh an láraonad comhordaithe an iarraidh chuig an údarás náisúnta inniúil agus cuirfidh sé an t-údarás iarrthach ar an eolas go bhfuil sin déanta aige.

4. Mura féidir géilleadh d'iarraidh ar chúiseanna dlí nó ar chúiseanna substainteacha, cuirfidh an t-aonad comhordaithe an iarraidh ar ais chuig an údarás iarrthach mar aon le míniúchán ar na cúiseanna nárbh fhéidir an iarraidh a phróiseáil.

## Airteagal 6

### Oifigigh liaison

1. Féadfaidh Ballstáit comhaontuithe a dhéanamh eatarthu féin maidir le hoifigigh liaison a mhalartú go ceann tréimhsí teoranta nó neamhtheoranta, i gcomhréir le coinníollacha arna gcomhaontú go frithpháirteach.

2. Ní bheidh aon chumhachtaí idirghabhála ag oifigigh liaison sa tír aíochta.

3. D'fhonn an comhar idir riaracháin chustaim na mBallstát a chur ar aghaidh, féadfaidh oifigigh liaison, le comhaontú údaráis inniúil na mBallstát nó arna iarraidh sin do na húdaráis inniúla sin, na dualgais seo a leanas a bheith orthu:

(a) an malartú faisnéise idir na Ballstáit a chur ar aghaidh agus a bhrostú;

(b) cúnaimh a thabhairt in imscrúduithe a bhaineann lena mBallstát féin nó leis an mBallstát a ionadaíonn siad;

(c) tacaíocht a thabhairt chun déileáil le hiarrataí ar chúnamh;

(d) comhairle agus cúnaimh a thabhairt don tír aíochta maidir le hoibríochtaí trasteorann a ullmhú agus a chur i gcrích;

(e) aon dualgais eile ar a bhféadfaidh na Ballstáit comhaontú eatarthu féin.

4. Féadfaidh na Ballstáit comhaontú go déthaobhach nó go hilaobhach ar théarmaí tagartha agus ar shuíomh na n-oifigeach liaison. Féadfaidh oifigigh liaison freisin leasanna Ballstáit amháin nó níos mó a ionadú.

## Airteagal 7

### *Oibleagáid an chéannacht a chruthú*

Mura bhforáiltear a mhalairt sa Choinbhinsiún seo, beidh oifigigh de chuid an údaráis iarrthaigh atá i mBallstát eile chun na cearta atá leagtha síos sa Choinbhinsiún seo a fheidhmiú in ann i gcónaí údarás i scríbhinn a thabhairt ar aird a shonraíonn a gcéannacht agus a bhfeidhmeanna oifigiúla. 5

## TEIDEAL II — CÚNAMH AR É A IARRAIDH

### Airteagal 8

#### *Prionsabail* 10

1. Chun an cúnamh is gá faoin Teideal seo a chur ar fáil, gníomhóidh an t-údarás iarrtha nó an t-údarás inniúil ar dhírigh sé an iarraidh chuige amhail is dá mbeadh sé ag gníomhú thar a cheann féin nó ar iarraidh ó údarás eile ina Bhallstát féin. Lena linn sin, bainfidh sé leas as na cumhachtaí dlíthiúla uile atá ar fáil dó faoi chuimsiú a dhlí náisiúnta chun an iarraidh a fhreagairt. 15

2. Cuirfidh an t-údarás iarrtha an cúnamh sin i mbaint le himthosca uile an tsáraithe a bhfuil aon bhaint inaitheanta aige le hábhar na hiarrata ar chúnamh gan gá a bheith le hiarraidh sa bhreis chuige sin. Má tá amhras ann, rachaidh an t-údarás iarrtha i dteagmháil i dtosach báire leis an údarás iarrthach. 20

### Airteagal 9

#### *Foirm agus inneachar na hiarrata ar chúnamh*

1. Déanfar iarrataí ar chúnamh i scríbhinn i gcónaí. Beidh na doiciméid is gá chun na hiarrataí sin a fhorghníomhú in éineacht leis an iarraidh. 25

2. Cuimseoidh na hiarrataí arna ndéanamh de bhun mhír 1 an fhaisnéis seo a leanas:

- (a) an t-údarás iarrthach atá ag déanamh na hiarrata;
- (b) an beart arna iarraidh; 30
- (c) críoch agus cúis na hiarrata;
- (d) na dlíthe, na rialacha agus na forálacha dlí eile atá i gceist;
- (e) sonraí chomh cruinn cuimsitheach agus is féidir ar na daoine nádúrtha nó dlítheanacha is ábhar do na himscrúduithe;
- (f) achoimre ar na fíorais ábhartha, seachas na cásanna dá bhforáiltear in Airteagal 13. 35

3. Tíolacfar iarrartaí i dteanga oifigiúil de chuid Bhallstát an údaráis iarrtha nó i dteanga is inghlactha ag an údarás sin.

4. Glacfar le hiarrataí ó bhéal nuair is gá sin ar chúiseanna práinne ach ní mór iad a dhainníú i scríbhinn a luaithe is féidir.

5. Mura gcomhallann iarraidh na ceanglais fhoirmiúla, féadfaidh an t-údarás iarrrha a iarraidh go ndéantar í a cheartú nó a chomhlánú; féadfar bearta a dhéanamh idir an dá linn atá riachtanach chun an iarraidh a chomhlíonadh.

10. 6. Comhaontóidh an t-údarás iarrrha nós imeachta áirithe a chur i bhfeidhm agus an iarraidh á freagairt aige ar choinníoll nach bhfuil an nós imeachta sin codarsnach le forálacha dlí agus riarthacha an Bhallstáit iarrrha.

### *Airteagal 10*

#### *Iarrataí ar fhaisnéis*

15. 1. Arna iarraidh sin don údarás iarrrhach, páirteoidh an t-údarás iarrrha gach faisnéis leis chun gur féidir leis sárúithe a chosc, a bhrath agus a ionchúiseamh.

20. 2. Beidh in éineacht leis an bhfaisnéis arna páirtíú tuarascálacha agus doiciméid eile, nó cóipeanna deimhnithe díobh nó sleachta astu, ar a bhfuil an fhaisnéis sin bunaithe agus atá i seilbh an údarás iarrrha nó a tugadh ar aird nó a fuarthas d'fhonn an iarraidh ar fhaisnéis a fhorghníomhú.

25. 3. Trí chomhaontú idir an t-údarás iarrrhach agus an t-údarás iarrrha, féadfaidh oifigigh arna n-údarú ag an údarás iarrrhach, faoi réir teagasc mionsonraithe ón údarás iarrrha, faisnéis a fháil de bhun mhír 1 ó oifigí an Bhallstáit iarrrha. Beidh feidhm aige sin maidir le gach faisnéis arna fáil ón doiciméadú a bhfuil rochtain air ag foireann na n-oifigí sin. Údarófar do na hoifigigh sin cóipeanna a ghlacadh den doiciméadú sin.

### *Airteagal 11*

#### *Iarrataí ar fhaireachán*

30. Arna iarraidh sin don údarás iarrrhach, déanfaidh an t-údarás iarrrha a mhéad is féidir faire speisialta, nó cuirfidh sé faoi deara go ndéanfar faire speisialta, ar dhaoine nuair atá forais thromchúiseacha lena chreidiúint go bhfuil sárú déanta acu ar fhorálacha custaim an Chomhphobail nó forálacha custaim náisiúnta nó go bhfuil sárú á dhéanamh acu orthu nó go bhfuil bearta ullmhúcháin curtha i gcrích acu d'fhonn sárúithe den sórt sin a dhéanamh. Arna iarraidh sin don údarás iarrrhach, déanfaidh an t-údarás iarrrha faire freisin ar áiteanna, ar chóiracha iompair agus ar earraí a bhfuil baint acu le gníomhaíochtaí a d'fhéadfadh bheith ina sárú ar na forálacha custaim thuasluaite.

### *Airteagal 12*

#### *Iarrataí ar fhiosrúcháin*

45. 1. Déanfaidh an t-údarás iarrrha, arna iarraidh sin don údarás iarrrhach, fiosrúcháin iomchuí, nó cuirfidh sé faoi deara go ndéanfar fiosrúcháin iomchuí, ar oibríochtaí ar sárúithe iad nó ar cosúil don údarás iarrrhach gur sárúithe iad.

Páirteoidh an t-údarás iarrrha torthaí na bhfiosrúcháin sin leis an údarás iarrrhach. Beidh feidhm mutatis mutandis ag Airteagal 10(2).

2. Trí chomhaontú idir an t-údarás iarrthach agus an t-údarás iarrtha, féadfaidh oifigigh arna gceapadh ag an údarás iarrthach bheith i láthair ag na fiosrúcháin dá dtagraítear i mír 1. Is oifigigh de chuid an údaráis iarrtha a dhéanfaidh na fiosrúcháin i gcónaí. Ní fhéadfaidh oifigigh an údaráis iarrthaigh, ar a dtionscnamh féin, na cumhachtaí a thugtar d'oifigigh an údaráis iarrtha a ghabháil orthu féin. Ar a shon sin, beidh rochtain acu ar an áitreabh céanna agus ar na doiciméid chéanna atá ag oifigigh an údaráis iarrtha, faoina n-idirghabháil siúd agus chun críche an fhiosrúcháin atá á dhéanamh agus chuige sin amháin.

### *Airteagal 13*

#### *Fógra*

1. Arna iarraidh sin don údarás iarrthach, tabharfaidh an t-údarás iarrtha, i gcomhréir le rialacha náisiúnta an Bhallstáit ina bhfuil sé bunaithe, fógra don seolaí nó cuirfidh sé faoi deara go dtabharfar fógra dó, faoi na hionstraimí nó na cinntí uile a thagann ó údaráis inniúla an Bhallstáit a bhfuil a shuíomh ag an údarás iarrthach ann agus a bhaineann leis an gCoinbhinsiún seo a chur i bhfeidhm.

2. Beidh in éineacht le hiarrataí ar fhógra, a luann ábhar na hionstraime nó an chinnidh a bhfuil fógra le tabhairt ina thaobh, aistriúchán i dteanga oifigiúil nó i gceann de theangacha oifigiúla an Bhallstáit ina bhfuil an t-údarás iarrtha bunaithe, gan dochar do cheart an údaráis sin aistriúchán den sórt sin a tharscaoileadh.

### *Airteagal 14*

#### *Úsáid mar fhianaise*

Féadfaidh comhlachtaí inniúla an Bhallstáit ina bhfuil an t-údarás iarrthach bunaithe cinntí, deimhnithe, faisnéis, doiciméid, cóipeanna fiordheimhnithe agus páipéir eile arna bhfáil i gcomhréir lena ndlí náisiúnta ag oifigigh an údaráis iarrtha agus arna dtarchur chuig an údarás iarrthach sna cásanna cúnaimh dá bhforáiltear in Airteagail 10 go 12 a úsáid mar fhianaise i gcomhréir leis an dlí náisiúnta.

## TEIDEAL III — CÚNAMH SPONTÁINEACH

### *Airteagal 15*

#### *Prionsabal*

Déanfaidh údaráis inniúla gach Ballstáit, mar atá leagtha síos in Airteagail 16 agus 17, faoi réir aon teorainneacha arna bhforchur ag an dlí náisiúnta, cúnamh a sholáthar d'údaráis inniúla na mBallstát eile gan é a bheith iarrtha roimh ré.

### *Airteagal 16*

#### *Faireachán*

Nuair a fhónann sé do chionta a chosc, a bhrath agus a ionchúiseamh i mBallstát eile, déanfaidh údaráis inniúla gach Ballstát:

- (a) a mhéad is féidir an faire speisialta arna thuairisc in Airteagal 11 a dhéanamh, nó a chur faoi deara go ndéantar é;

5 (b) gach faisnéis atá ina seilbh acu, agus go háirithe tuarascála-  
cha agus doiciméid eile nó cóipeanna dilse deimhniithe  
díobh nó sleachta astu, a bhaineann le hoibríochtaí a  
bhfuil baint acu le cion arna bheartú nó arna dhéanamh,  
a pháirtíú le húdarais inniúla na mBallstát eile i dtrácht.

### *Airteagal 17*

#### *Faisnéis spontáineach*

10 Cuirfidh údarais inniúla gach Ballstát láithreach chuig údarais  
inniúla na mBallstát eile i dtrácht gach faisnéis ábhartha a bhaineann  
le cionta arna mbeartú nó arna ndéanamh agus go háirithe faisnéis  
faoi na hearraí i gceist agus modhanna agus meáin nua chun cionta  
den sórt sin a dhéanamh.

### *Airteagal 18*

#### *Úsáid mar fhianaise*

15 Tuarascálacha faireacháin agus faisnéis arna bhfáil ag oifigigh de  
chuid Ballstát amháin agus arna bpáirtíú le Ballstát eile i gcúrsa an  
chúnaimh spontáinigh dá bhforáiltear in Airteagail 15 go 17, féad-  
faidh comhlachtaí inniúla an Bhallstáit a ghlacann an fhaisnéis iad a  
úsáid mar fhianaise, i gcomhréir leis an dlí náisiúnta.

## 20 TEIDEAL IV — FOIRMEACHA SPEISIALTA COMHAIR

### *Airteagal 19*

#### *Prionsabail*

25 1. Rachaidh riaracháin chustaim i mbun comhair thrasteorann i  
gcomhréir leis an Teideal seo. Soláthróidh siad dá chéile an cúnaimh  
is gá i ndáil le foireann agus tacaíocht eagrúcháin. Is i bhfoirm iar-  
rataí ar chúnaimh i gcomhréir le hAirteagal 9 a bheidh iarrataí ar  
chomhar, de ghnáth. I gcásanna sonracha dá dtagraítear sa Teideal  
seo, féadfaidh oifigigh den údarás iarrthach gabháil le gníom-  
haíochtaí ar chríoch an Stáit iarrtha, le formheas an údarais  
30 iarrthaigh.

Is iad na láraonaí chomhordaithe i gcomhréir le hAirteagal 5 a  
bheidh freagrach as oibríochtaí trasteorann a chomhordú agus a  
phleanáil.

35 2. Ceadófar comhar trasteorann de réir bhrí mhír 1 chun sárúithe  
a chosc, a imscrúdú agus a ionchúiseamh i gcásanna ina bhfuil:

40 (a) gáinneáil aindleathach drugaí agus substaintí síceatrópacha,  
arm, muinisean, ábhar pléascach, earraí cultúrtha, dram-  
haíola contúirtí agus tocsainí, ábhair núicléach nó ábhar  
nó trealaimh atá ceaptha chun airm adamhacha, bhitheo-  
laíocha agus/nó cheimiceacha (earraí toirmiscthe) a  
dhéanamh;

45 (b) trádáil i substaintí atá liostaithe i dTáblaí I agus II de Cho-  
inbhinsiún na Náisiún Aontaithe i gcoinne gáinneáil  
neamhdhleathach drugaí támhshuanacha agus substaintí  
síceatrópacha agus atá ceaptha chun drugaí a dhéanamh  
go neamhdhlíthiúil (substaintí réamhtheachtacha);

- (c) trádáil thráchtálach neamhdhlíthiúil trasteorann in earraí inchánach chun cáin a imghabháil nó chun íocaíochtaí Stáit neamhúdaraíthe a fháil i ndáil le hearraí a allmhairiú nó a onnmhairiú, nuair atá an trádáil agus an fiontar a bhaineann le cánacha agus deontais chomh mór sin gur tábhachtach an costas airgeadais ionchasach do bhuiséad an gComhphobal Eorpach nó na mBallstát; 5
- (d) aon trádáil eile in earraí atá toirmisce the ag rialacha custaim an Chomhphobail nó rialacha custaim náisiúnta.
3. Ní bheidh de cheangal ar an údarás iarrtha tús a chur leis na foirmeacha sonracha comhair dá dtagraítear sa Teideal seo mura gceadaítear faoi dhlí náisiúnta an Bhallstáit iarrtha an saghas imscrúdaíthe a iarrtar nó mura bhforáiltear ann dó. Sa chás sin, beidh an t-údarás iarrthach i dteideal an saghas comhfhreagrach comhair thrasteorann a dhiúltú ar na cúiseanna céanna ina mhalairt de chás, nuair a iarrann údarás de chuid an Bhallstáit iarrthaigh é. 10
4. Más gá faoi dhlí náisiúnta na mBallstát, iarrfaidh na húdaráis rannpháirteacha ar a n-údaráis bhreithiúnacha na himscrúduithe a bheartaítear a fhormheas. Nuair a chuireann na húdaráis bhreithiúnacha inniúla a bhformheas faoi réir coinníollacha agus ceanglas áirithe, féachfaidh na húdaráis rannpháirteacha chuige go n-urramófar na coinníollacha agus na ceanglais sin i gcúrsa na n-imscrúduithe. 20
5. Nuair a bhíonn oifigigh de chuid Ballstáit ag gabháil do ghníomhaíochtaí ar chríoch Bhallstáit eile de bhua an Teidil seo agus go ndéanann siad damáiste trína ngníomhaíochtaí, déanfaidh an Ballstát ar ar a chríoch a rinneadh an damáiste é a shlánú i gcomhréir lena reachtaíocht náisiúnta ar an dóigh chéanna is a dhéanadh sé é dá mba iad a oifigigh féin a rinne an damáiste. Déanfaidh an Ballstát a ndearna a oifigigh an damáiste na suimeanna a d'íoc an Ballstát eile sin do na daoine éagóirithe nó do dhaoine nó institiúidí eile a bhfuil teideal acu ina leith a aisíoc go hiomlán leis. 25
6. Gan dochar d'fheidhmiú a cheart i leith tréimh páirtithe agus d'ainneoin na hoibleagáide damáiste a shlánú de réir an dara habairt de mhír 5, staonfaidh gach Ballstát, sa chás dá bhforáiltear sa chéad abairt de mhír 5, ó aisíoc as méid an damáiste a bhain dó a iarraidh ar Bhallstát eile. 30
7. Faisnéis a fhaigheann oifigigh le linn an chomhair thrasteorann dá bhforáiltear in Airteagail 20 go 24, féadfaidh údaráis inniúla an Bhallstáit a ghlacann í an fhaisnéis sin a úsáid mar fhianaise, i gcomhréir leis an dlí náisiúnta agus faoi réir coinníollacha áirithe arna leagan síos ag comhlachtaí inniúla an Bhallstáit ina bhfuarthas an fhaisnéis. 40
8. I gcúrsa na n-oibríochtaí dá dtagraítear in Airteagail 20 go 24, tabharfar an chóir chéanna d'oifigigh ar misean ar chríoch Bhallstáit eile a thugtar d'oifigigh an Bhallstáit sin a mhéad a bhaineann le sárúithe a dhéantar ina gcoinne nó a dhéanann siad. 45

#### *Airteagal 20*

#### *Dearghóir*

1. Oifigigh an riaracháin chustaim de chuid ceann de na Ballstáit atá ar thóir, ina dtír féin, duine a breathnaíodh i mbun ceann de na sárúithe dá dtagraítear in Airteagal 19(2) a dhéanamh a bhféadfadh eiseachadh teacht as nó i mbun rannpháirtíú i sárú den sórt sin, 50



5 údarófar dóibh leanúint den tóir ar chríoch Bhallstáit eile gan réam-  
húdarás nuair nár bhféidir, ag féachaint do phráinn áirithe na  
staide, fógra a thabhairt d'údarás inniúla an Bhallstáit eile roimh  
iontráil ar an gcríoch sin nó nuair nár fhéad na húdarás sin an t-  
ionad a shroicheadh in am chun an tóir a ghlacadh ar láimh.

10 Rachaidh na hoifigigh thóra i dteagmháil le húdarás inniúla an  
Bhallstáit ar ar a chríoch a dhéanfar an tóir, ar a dhéanaí nuair a  
thrasnaíonn siad an teorainn. Cuirfear deireadh leis an tóir a luaithe  
a iarrann an Ballstát ar ar a chríoch atá an tóir á déanamh é. Arna  
iarraidh sin do na hoifigigh thóra, cuirfidh údarás inniúla an  
Bhallstáit sin forrán ar an duine a bhfuil an tóir air chun a chéan-  
nacht a shuíomh nó é a ghabháil. Cuirfidh na Ballstáit an taiscí ar an  
eolas faoi na hoifigigh thóra a bhfuil feidhm ag an bhforáil seo maidir  
leo; cuirfidh an taiscí na Ballstáit eile ar an eolas.

15 2. Déanfar an tóir i gcomhréir leis na nósanna imeachta seo a  
leanas, arna sainiú sa dearbhú dá bhforáiltear i mír 6:

(a) ní bheidh de cheart ag na hoifigigh thóra duine a ghabháil;

20 (b) ar a shon sin, mura n-iarrtar deireadh a chur leis an tóir  
agus mura féidir le húdarás inniúla an Bhallstáit ar ar a  
chríoch atá an tóir á déanamh idirghabháil tapaídh go  
leor, féadfaidh na hoifigigh thóra an duine a bhfuil tóir  
air a ghabháil go dtí gur féidir le hoifigigh an Bhallstáit  
sin, nach foláir a chur ar an eolas gan mhoill, a chéan-  
nacht a shuíomh nó é a ghabháil.

25 3. Déanfar an tóir i gcomhréir le míreanna 1 agus 2 ar cheann de  
na dóigheanna seo a leanas mar a shainítear sa dearbhú dá bhforáil-  
tear i mír 6:

(a) i limistéar nó le linn tréimhse, amhail ón teorainn a thrasnú,  
atá le bunú sa dearbhú;

30 (b) gan an limistéar ná an tréimhse a theorannú.

4. Beidh an tóir faoi réir na gcoinníollacha ginearálta seo a leanas:

35 (a) déanfaidh na hoifigigh thóra forálacha an Airteagail seo  
agus dlí an Bhallstáit ar ar a chríoch atá siad ag oibriú a  
chomhlíonadh; déanfaidh siad de réir theagasca údarás  
inniúil an Bhallstáit sin;

40 (b) nuair is ar muir a bhíonn an tóir, déanfar í i gcomhréir le  
dlí idirnáisiúnta na farraige mar atá i gCoinbhinsiún na  
Náisiún Aontaithe maidir le dlí na farraige nuair a leantar  
di ar an muir mhór nó sa limistéar eacnamaíoch eisiach,  
agus i gcomhréir le forálacha an Airteagail seo nuair is ar  
chríoch Bhallstáit eile a dhéantar í;

(c) toirmiscfear iontráil i dteaghaisí príobháideacha agus in áite-  
anna nach bhfuil rochtain ag an bpobal orthu;

45 (d) beidh na hoifigigh thóra so-insainitheanta, trína n-éide, trí  
armbhanda nó trí ghabháilais feistithe dá gcóir iompair;  
toirmiscfear éadaí sibhialtacha a úsáid in éineacht le cóir

iompair neamh-mharcáilte gan na modhanna sainitheanta thuasluaite; beidh na hoifigigh thóra i gcónaí in ann a chruthú go bhfuil siad ag gníomhú ina gcáil oifigiúil;

- (e) féadfaidh na hoifigigh thóra a n-armáin seirbhíse a iompar ach amháin (i) nuair atá dearbhú ginearálta déanta ag an mBallstát iarrtha nach féidir riamh armáin a iompar isteach ar a chríoch nó (ii) nuair atá a mhalairt de chinneadh sonrach déanta ag an mBallstát iarrtha. Nuair a cheadaítear d'oifigigh ó Bhallstát eile a n-armáin seirbhíse a iompar, toirmiscfear a n-úsáid ach amháin i gcásanna féinchosanta dlisteanáí; 5 10
- (f) nuair a bheidh an duine a bhfuil tóir air gafa mar a fhoráiltear i bpointe (b) de mhír 2, d'fhonn é a thabhairt ós comhair údaráis inniúla an Bhallstáit ar ar a chríoch atá an tóir á déanamh, ní fhéadfar ach cuardach slándála a dhéanamh air; féadfar dornaisc a úsáid le linn dó bheith á aistriú; féadfar earraí a bhí i seilbh an duine a raibh tóir air a urghabháil; 15
- (g) tar éis gach oibríochta dá dtagraítear i míreanna, 1, 2 agus 3, rachaidh na hoifigigh thóra i láthair údaráis inniúla an Bhallstáit ar ar a chríoch a bhí siad ag oibriú agus tabharfaidh siad tuairisc ar a misean; arna iarraidh sin do na húdaráis sin, ní foláir dóibh fanacht ar láimh na n-údarás sin go dtí go ndéantar imthosca a ngníomhaíochta a shoiléiriú go leordhóthanach; beidh feidhm ag an gcoinníoll seo fiú nuair nach raibh de thoradh ar an tóir go ndearnadh an duine a raibh tóir air a ghabháil; 20 25
- (h) arna iarraidh sin d'údaráis an Bhallstáit ar ar a chríoch a tharla an tóir, cabhróidh údaráis an Bhallstáit ónar tháinig na hoifigigh thóra leis an bhfiosrúchán i ndiaidh na hoibríochta inar ghlac siad páirt, lena n-áirítear imeachtaí dlí. 30

5. Féadfar duine a ghabhann údaráis inniúla an Bhallstáit ar ar a chríoch atá an tóir á déanamh, tar éis na gníomhaíochta dá bhforáiltear i mír 2, a choinneáil, gan spleáchas dá náisiúntacht, chun é a cheistiú. Beidh feidhm mutatis mutandis ag na rialacha ábhartha den dlí náisiúnta. 35

Mura náisiúnach den Bhallstát ar ar a chríoch a gabhadh é an duine, scaoilfear saor é tráth nach deánaí ná sé huaire an chloig tar éis a ghabhála, gan na huaireanta idir meánoíche agus 09.00 a áireamh leo, mura mbeidh iarraidh ar a ghabháil shealadach chun críoch eiseachadta i bhfoirm éigin faighte roimhe sin ag údaráis inniúla an Bhallstáit sin. 40

6. Ar shíniú an Choinbhinsiúin seo dó, déanfaidh gach Ballstát dearbhú ina saineoidh sé, ar bhonn mhíreanna 2, 3 agus 4, na nósanna imeachta chun an tóir a chur chun feidhme ar a chríoch. 45

Féadfaidh Ballstát tráth ar bith dearbhú eile a chur in ionad an dearbhaithe sin, ar choinníoll nach srianfaidh sé raon feidhme an tseandearbhaithe.

Déanfar gach dearbhú tar éis dul i gcomhairle le gach ceann de na Ballstáit i dtrácht agus d'fhonn socruithe coibhéiseacha a fháil sna Ballstáit sin. 50

7. Féadfaidh Ballstáit, ar bhonn déthaobhach, raon feidhme mhír 1 a leathnú agus forálacha breise a ghlacadh chun an tAirteagal seo a chur chun feidhme.

8. Agus ionstraimí glactha an Choinbhinsiúin seo á dtaisceadh aige, féadfaidh Ballstát a dhearbhu nach bhfuil an tAirteagal seo, nó cuid de, ina cheangal air. Féadfar dearbhú den sórt sin a tharraingt siar tráth ar bith.

## *Airteagal 21*

### *Faireachán trasteorann*

1. Údarófar d'oifigigh riaracháin chustaim de chuid ceann de na Ballstáit a bhfuil daoine a bhfuil forais thromchúiseacha ann lena chreidiúint ina leith go bhfuil siad i dtreis i gceann de na sárúithe dá dtagraítear in Airteagal 19(2) á gcoimeád faoi bhreathnú acu ina dtír féin leanúint dá mbreathnú ar chríoch Bhallstáit eile nuair atá breathnú trasteorann údaraithe ag an mBallstát sin mar fhreagra ar iarraidh ar chúnamh a tíolacadh roimhe sin. Féadfar coinníollacha a chur leis an údarú sin.

Cuirfidh na Ballstáit an taiscí ar an eolas faoi na hoifigigh thóra a bhfuil feidhm ag an bhforáil seo maidir leo; cuirfidh an taiscí na Ballstáit eile ar an eolas.

Arna iarraidh sin, déanfar an breathnú a chur de chúram ar oifigigh an Bhallstáit ar ar a chríoch a dhéantar é.

Déanfar an iarraidh dá dtagraítear sa chéad fhomhír a chur chuig údarás arna ainmniú ag gach ceann de na Ballstáit atá cumhachtaithe chun an t-údarú arna iarraidh a thabhairt nó an iarraidh a chur ar aghaidh.

Cuirfidh na Ballstáit an taiscí ar an eolas faoin údarás arna ainmniú chuige sin; cuirfidh an taiscí na Ballstáit eile ar an eolas.

2. Nuair nach féidir, de bharr cúiseanna sárphráinneacha, réamhúdarú an Bhallstáit eile a iarraidh, údarófar do na hoifigigh atá ag déanamh an bhreathnaithe leanúint de dhaoine a bhfuil forais thromchúiseacha ann lena chreidiúint ina leith go bhfuil siad i dtreis i gceann de na cionta dá dtagraítear in Airteagal 19(2) a bhreathnú ar an taobh eile den teorainn, ar choinníoll go gcomhlíontar na coinníollacha seo a leanas:

(a) déanfar fógra faoi thrasnú na teorann a thabhairt láithreach, i rith an bhreathnaithe, d'údaráis inniúla an Bhallstáit ar ar a chríoch a leanfar den bhreathnú;

(b) déanfar iarraidh arna tíolacadh i gcomhréir le mír 1 agus ag tabhairt na bhforas maidir leis an teorainn a thrasnú gan réamhúdarú a thíolacadh gan mhoill.

Cuirfear deireadh leis an mbreathnú a luaithe a dhéanann an Ballstát ar ar a chríoch atáthar á dhéanamh é sin a iarraidh, tar éis don fhógra dá dtagraítear i bpointe (a) a bheith tugtha nó an iarraidh dá dtagraítear i bpointe (b) a bheith déanta, nó nuair nach mbeidh an t-údarú faighte cúig huairé an chloig tar éis an teorainn a thrasnú.

3. Ní dhéanfar an breathnú dá dtagraítear i míreanna 1 agus 2 ach faoi na coinníollacha ginearálta seo a leanas:

- (a) déanfaidh na hoifigigh atá ag déanamh an bhreathnaithe forálacha an Airteagail seo a chomhlíonadh maille le dlí an Bhallstáit ar ar a chríoch atá siad ag feidhmiú; ní foláir dóibh déanamh de réir theagasca údaráis inniúla an Bhallstáit sin; 5
- (b) ach amháin sna staideanna dá bhforáiltear i mír 2, déanfaidh na hoifigigh doiciméad a iompar le linn an bhreathnaithe á dheimhniú gur deonaíodh údarú; 10
- (c) beidh na hoifigigh atá ag déanamh an bhreathnaithe i gcónaí in ann cruthúnas a sholáthar go bhfuil siad ag gníomhú ina gcáil oifigiúil;
- (d) féadfaidh na hoifigigh atá ag déanamh an bhreathnaithe a n-armáin seirbhíse a iompar le linn an bhreathnaithe ach amháin (i) nuair atá dearbhú ginearálta déanta ag an mBallstát iarrtha nach féidir riamh armáin a iompar isteach ar a chríoch; nó (ii) nuair atá a mhalairt de chinneadh sonrach déanta ag an mBallstát iarrtha. Nuair a cheadaítear d'oifigigh de chuid Ballstát eile a n-armáin seirbhíse a iompar, toirmiscfear a n-úsáid ach amháin i gcásanna féinchosanta dlisteaná; 15 20
- (e) toirmiscfear iontráil i dteaghaisí príobháideacha agus in áiteanna nach bhfuil rochtain ag an bpobal orthu;
- (f) ní fhéadfaidh na hoifigigh atá ag déanamh an bhreathnaithe forrán a chur ar an duine faoi bhreathnú ná é a ghabháil; 25
- (g) beidh na hoibríochtaí uile ina n-ábhar do thuarascáil chuig údaráis an Bhallstáit ar ar a chríoch a rinneadh iad; féadfar iallach a chur ar na hoifigigh atá ag déanamh an bhreathnaithe láithriú go pearsanta; 30
- (h) arna iarraidh sin d'údaráis an Bhallstáit ar ar a chríoch a rinneadh an breathnú, cabhróidh údaráis an Bhallstáit ónar tháinig na hoifigigh bhreathnaithe leis an bhfiosrúchán i ndiaidh na hoibríochta inar ghlac siad páirt, lena n-áirítear imeachtaí dlí. 35

4. Féadfaidh na Ballstáit, ar leibhéal déthaobhach, raon feidhme an Airteagail seo a leathnú agus bearta breise a ghlacadh á chur chun feidhme.

5. Agus ionstraimí glactha an Choinbhinsiúin seo á dtaisceadh aige, féadfaidh Ballstát a dhearbhu nach bhfuil an tAirteagal seo, nó cuid de, ina cheangal air. Féadfar dearbhú den sórt sin a tharraingt siar tráth ar bith. 40

## *Airteagal 22*

### *Seachadadh rialaithe*

1. Gabhann gach Ballstát air féin go bhféadfar seachadtaí rialaithe a cheadú ar a chríoch, arna iarraidh sin do Bhallstát eile, faoi chuimsiú imscrúduithe coiriúla maidir le cionta iniseachadta. 45

2. Déanfaidh údaráis inniúla an Bhallstáit iarrtha cinneadh seachadtaí rialaithe a úsáid ó chás go chéile i gcomhréir le dlí náisiúnta an Bhallstáit sin.

5 3. Déanfar na seachadtaí rialaithe i gcomhréir le nósanna imeachta an Bhallstáit iarrtha. Is iad údaráis inniúla an Bhallstáit sin a bheidh inniúil chun gníomhú agus chun na hoibríochataí a dhíriú.

10 Rachaidh an t-údarás iarrtha i gceann an tseachadta nuair a thrasnaíonn na hearraí an teorainn nó ag ionad arna chomhaontú lena dtabhairt ar láimh chun aon bhriseadh san fhaireachán a sheachaint. I gcaitheamh a bhfuil fágtha den turas, áiritheoidh an t-údarás iarrtha go ndéanfar buanfhairesachán ar na hearraí ar dhóigh gur féidir leis tráth ar bith na húdair a ghabháil agus na hearraí a urghabháil.

15 4. Féadfar teacht roimh coinsíneachtaí ar a gcomhaontaítear a seachadadh rialaithe, le toiliú na mBallstát i dtrácht, agus a údarú dóibh leanúint ar a mbealach mar atá siad nó tar éis dá n-inneachar bunaidh a bheith bainte astu nó táirgí eile a bheith curtha ina ionad go hiomlán nó go páirteach.

### *Airteagal 23*

#### *Imscrúduithe folaitheacha*

20 1. Arna iarraidh sin don údarás iarrthach, féadfaidh an t-údarás iarrtha a údarú d'oifigigh riarachán custaim an Bhallstáit iarrthaigh, nó d'oifigigh ag gníomhú thar ceann an riaracháin sin, atá ag oibriú faoi chumhdach céannachta bréagaí (imscrúdaitheoirí folaitheacha) oibriú ar chríoch an Bhallstáit iarrtha. Ní dhéanfaidh an t-údarás  
25 iarrthach an iarraidh ach amháin dá mbeadh sé an-deacair na fíoraí a shoiléiriú gan leas a bhaint as na bearta imscrúdaithe a bheartaítear. Údarófar do na hoifigigh i gceist i gcúrsa a ngníomhaíochtaí faisnéis a bhailiú agus dul i dteagmháil le daoine atá faoi amhras nó daoine eile atá comthaithe leo.

30 2. Beidh ré teoranta ag imscrúduithe folaitheacha sa Bhallstát iarrtha. Déanfar na himscrúduithe a ullmhú agus a mhaoirsiú i ndlúthchomhar idir údaráis ábhartha an Bhallstáit iarrtha agus an Bhallstáit iarrthaigh.

35 3. Cinnfidh an t-údarás iarrtha i gcomhréir lena dhlí náisiúnta na coinníollacha faoina gceadaítear imscrúdú folaitheach maille leis na coinníollacha faoina gcuirtear i gcrích é. Má fhaightear i gcúrsa imscrúdaithe fholaitheigh faisnéis i ndáil le sárú seachas an sárú atá folaithe san iarraidh bhunaidh, cinnfidh an t-údarás iarrtha freisin i gcomhréir lena dhlí náisiúnta na coinníollacha a bhaineann leis an  
40 leas is féidir a bhaint as faisnéis den sórt sin.

4. Soláthróidh an t-údarás iarrtha an daonchumhacht agus an tacaíocht theicniúil is gá. Glacfaidh sé bearta chun na hoifigigh dá dtagraítear i mír 1 a chosaint fad a bheidh siad ag gníomhú sa Bhallstát iarrtha.

45 5. Agus ionstraimí glactha an Choinbhinsiúin seo á dtaisceadh aige, féadfaidh Ballstát a dhearbhu nach bhfuil an tAirteagal seo, nó cuid de, ina cheangal air. Féadfar dearbhú den sórt sin a tharraingt siar tráth ar bith.

## Airteagal 24

### Foirne imscrúdaithe comhpháirteacha speisialta

1. Féadfaidh údaráis Bhallstát éagsúil foireann imscrúdaithe chomhpháirteach speisialta a chur ar bun de thoil a chéile a bheidh bunaithe i mBallstát amháin agus ar a mbeidh oifigigh a bhfuil na speisialtóireachtaí ábhartha acu. 5

Beidh de chúram ar an bhfoireann imscrúdaithe chomhpháirteach speisialta:

— imscrúduithe achrannacha éilitheacha ar shárúithe sonracha a dhéanamh a éilíonn gníomhaíocht chomhuaineach chomhdaithe sna Ballstáit i dtrácht, 10

— gníomhaíochtaí comhpháirteacha a chomhordú chun saghsanna áirithe sáráithe a chosc agus a bhrath agus chun faisnéis a fháil faoi na daoine i dtreís iontu, faoina gcomthaigh agus faoi na modhanna arna n-úsáid. 15

2. Oibreoidh foirne imscrúdaithe comhpháirteacha speisialta faoi na coinníollacha ginearálta seo a leanas:

(a) ní chuirfear ar bun iad ach chun críche sonraí agus go ceann tréimhse teoranta;

(b) beidh oifigeach ón mBallstát ina bhfuil gníomhaíochtaí na foirne á ndéanamh i gceannas ar an bhfoireann; 20

(c) beidh na hoifigigh rannpháirteacha faoi cheangal ag dlí an Bhallstáit ar ar a chríoch atá gníomhaíochtaí na foirne á ndéanamh;

(d) déanfaidh an Ballstát ina bhfuil gníomhaíochtaí na foirne á ndéanamh na socrúithe eagrúcháin is gá chun go bhféadfaidh an fhoireann oibriú. 25

3. Ní thabharfaidh comhaltas den fhoireann aon chumhachtaí idirghabhála ar chríoch Bhallstáit eile d'oifigigh.

## TEIDEAL V — SONRAÍ A CHOSAINT 30

### Airteagal 25

#### Sonraí a chosaint i ndáil le sonraí a mhalartú

1. Nuair a dhéantar faisnéis a mhalartú, cuirfidh na húdaráis chustaim san áireamh, i ngach cás sonrach, na ceanglais chun sonraí pearsanta a chosaint. Urramóidh siad forálacha ábhartha Choinbhinsiún Chomhairle na hEorpa an 28 Eanáir 1981 um chosaint daoine aonair maidir le huathphróiseáil sonraí pearsanta. D'fhonn sonraí a chosaint, féadfaidh Ballstát, i gcomhréir le mír 2, coinníollacha a fhorchur maidir le próiseáil sonraí pearsanta ag Ballstát eile a bhféadfar na sonraí pearsanta sin a chur chuige. 40

2. Gan dochar d'fhorálacha an Choinbhinsiún maidir le húsáid theicneolaíocht an eolais chun críoch custaim, beidh feidhm ag na forálacha seo a leanas maidir le sonraí pearsanta a pháirtítear de bhun an Choinbhinsiún seo a chur i bhfeidhm:

(a) ní údarófar don údarás glactha na sonraí pearsanta a phróiseáil ach chun na críche dá dtagraítear in Airteagal 1(1). Féadfaidh an t-údarás sin, gan réamhthoilú an Bhallstáit 45

a sholáthair na sonraí, iad a tharchur chuig a chuid riarachán custaim, údarás imscrúdaithe agus comhlachtaí breithiúnacha chun gur féidir leo sárúithe de réir bhrí phointe 3 d'Airteagal 4 a ionchúiseamh agus a phionósú. I ngach cás eile ina dtarchuirtear sonraí, beidh gá le toiliú ón mBallstát a sholáthair an fhaisnéis;

(b) áiritheoidh údarás an Bhallstáit a pháirtíonn sonraí go bhfuil siad beacht agus suas chun dáta. Má thagann sé chun solais gur páirtíodh sonraí neamhbheachta nó sonraí nár chóir a pháirtíú nó nach foláir sonraí a páirtíodh go dleathach a scriosadh níos déanaí i gcomhréir le dlí Bhallstát a bpáirtithe, cuirfear sin in iúl láithreach don údarás glactha. Beidh sé faoi cheangal na sonraí sin a cheartú nó a scriosadh. Má bhíonn cúis ag an údarás glactha a chreidiúint go bhfuil sonraí arna bpáirtíú neamhbheacht nó gur cóir iad a scriosadh, cuirfidh sé Ballstát a bpáirtithe ar an eolas;

(c) sna cásanna inar cóir, de réir dhlí Bhallstát a bpáirtithe, sonraí arna bpáirtíú a scriosadh nó a leasú, ní foláir ceart éifeachtúil a thabhairt do na daoine i dtrácht chun na sonraí a cheartú;

(d) taifeadfaidh na húdaráis i dtrácht cur ar aghaidh agus glacadh sonraí arna malartú;

(e) má iarrtar amhlaidh, déanfaidh na húdaráis pháirtithe agus na húdaráis ghlactha an duine i dtrácht a chur ar an eolas, arna iarraidh sin dó, faoi na sonraí pearsanta arna bpáirtíú agus an leas a bhainfear astu. Ní bheidh aon oibleagáid ann an fhaisnéis a sholáthar má fhaightear, ar an ábhar a mheas, gur mó an tábhacht don phobal an fhaisnéis a choinneáil siar ná an tábhacht don duine i dtrácht an fhaisnéis sin a fháil. Thairis sin, is i gcomhréir le dlíthe, rialacháin agus nósanna imeachta náisiúnta an Bhallstáit ar ar a chríoch a iarrtar an fhaisnéis a chinnfear ceart an duine i dtrácht chun faisnéis faoi na sonraí pearsanta arna bpáirtíú a fháil. Sula nglacfar aon chinneadh maidir le faisnéis a sholáthar, tabharfar deis don údarás páirtithe a sheasamh a shonrú;

(f) beidh na Ballstáit faoi dhliteanas, i gcomhréir lena ndlíthe, rialacháin agus nósanna imeachta féin, i leith na díobhála a dhéantar do dhuine trí phróiseáil sonraí arna bpáirtíú sa Bhallstát i dtrácht. Is amhlaidh a bheidh freisin nuair a dhéantar an díobháil toisc go ndearnadh sonraí neamhbheachta a pháirtíú, nó go ndearna an t-údarás páirtithe sonraí a pháirtíú de shárú ar an gCoinbhinsiún seo;

(g) stórálfar na sonraí arna bpáirtíú go ceann tréimhse nach mó ná an tréimhse is gá chun na gcríoch ar páirtíodh chucu iad. Scrúdóidh an Ballstát i dtrácht in am trátha an gá iad a stóráil;

(h) ar aon chuma, beidh ag na sonraí ar a laghad an chosaint chéanna a bhíonn ag sonraí comhchosúla sa Bhallstát a ghlac iad;

- (j) glacfaidh gach Ballstát na bearta iomchuí chun a áirithiú trí rialuithe éifeachtúla go ndéanfar an tAirteagal seo a chomhlíonadh. Féadfaidh gach Ballstát cúram an rialaithe a shannadh don údarás maoirseachta náisiúnta atá luaite in Airteagal 17 den Choinbhinsiún maidir le húsáid theicneolaíocht an eolais chun críoch custaim. 5

3. Chun críocha an Airteagail seo, tuigfear “próiseáil sonraí pearsanta” i gcomhréir leis an sainmhíniú i bpointe (b) d’Airteagal 2 de Threoir 95/46/CE ó Pharlaimint na hEorpa agus ón gComhairle an 24 Deireadh Fómhair 1995 maidir le daoine aonair a chosaint i ndáil le sonraí pearsanta a phróiseáil agus maidir le saorghluaiseacht sonraí den sórt sin. 10

## TEIDEAL VI — AN COINBHINSIÚN A LÉIRIÚ

### *Airteagal 26*

#### *An Chúirt Bhreithiúnais* 15

1. Beidh dlínse ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú ar aon díospóid idir Ballstáit maidir le léiriú nó cur i bhfeidhm an Choinbhinsiúin seo nuair nach féidir an díospóid sin a réiteach sa Chomhairle laistigh de shé mhí óna cur faoi bhráid na Comhairle ag ceann dá comhaltá. 20

2. Beidh dlínse ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú ar aon díospóid idir na Ballstáit agus an Coimisiún maidir le léiriú nó cur i bhfeidhm an Choinbhinsiúin nach féidir a réiteach trí chaibidlíocht. Féadfar an díospóid a chur faoi bhráid na Cúirte Breithiúnais tar éis do thréimhse sé mhí ón dáta a thug ceann de na páirtithe fógra don pháirtí eile go raibh díospóid ann dul in éag. 25

3. Beidh dlínse ag an gCúirt Bhreithiúnais, faoi réir na gcoinníollacha atá leagtha stos i míreanna 4 go 7, chun réamhrialuithe a thabhairt ar léiriú an Choinbhinsiúin seo.

4. Féadfaidh aon Bhallstát, trí dhearbhu a dhéanamh tráth sínithe an Choinbhinsiúin seo nó aon tráth eile ina dhiaidh sin, glacadh le dlínse Chúirt Bhreithiúnais na gComhphobal Eorpach chun réamhrialuithe a thabhairt ar léiriú an Choinbhinsiúin seo mar atá sonraithe i bpointe (a) nó (b) de mhír 5. 30

5. Sonróidh Ballstát a dhéanann dearbhu de bhun mhír 4: 35

(a) go bhféadfaidh aon chúirt nó binse de chuid an Bhallstáit sin nach bhfuil aon leigheas breithiúnach ann faoin dlí náisiúnta in aghaidh a breitheanna nó a bhreitheanna a iarraidh ar Chúirt Bhreithiúnais na gComhphobal Eorpach réamhrialú a thabhairt ar cheist a thugtar ar aird i gcás atá ar feitheamh os comhair na cúirte nó an bhinse sin agus a bhaineann le léiriú an Choinbhinsiúin seo má mheasann an chúirt nó an binse sin gur gá breith maidir leis an gceist ionas go bhféadfaidh sí nó sé breithiúnas a thabhairt; nó 45

(b) go bhféadfaidh aon chúirt nó binse de chuid an Bhallstáit sin a iarraidh ar Chúirt Bhreithiúnais na gComhphobal Eorpach réamhrialú a thabhairt ar cheist a thugtar ar aird i gcás atá ar feitheamh os comhair na cúirte nó an bhinse



sin agus a bhaineann le léiriú an Choinbhinsiúin seo má mheasann an chúirt nó an binse sin gur gá breith maidir leis an gceist ionas go bhféadfaidh sí nó sé breithiúnas a thabhairt.

5 6. Beidh feidhm ag an bPrótacal ar Reacht Chúirt Bhreithiúnais na gComhphobal Eorpach agus Rialacha Nós Imeachta na Cúirte Breithiúnais sin.

7. Beidh aon Bhallstát, bíodh nó ná bíodh dearbhú de bhun mhír 4 déanta aige, i dteideal ráitis cháis nó barúlacha i scríbhinn a thíolacadh don Chúirt i gcásanna a thagann chun cinn faoi mhír 5.

8. Ní bheidh dlínse ag an gCúirt Bhreithiúnais chun léirmheas a dhéanamh ar bhailíocht nó comhréireacht oibríochtaí arna ndéanamh i mBallstát ag na seirbhísí inniúla um fhorghníomhú an dlí faoi chuimsiú an Choinbhinsiúin seo ná ar fheidhmiú na bhfreagrachtaí atá ar na Ballstáit maidir leis an ord poiblí a chaomhnú agus an tslándáil inmheánach a choimirciú.

## TEIDEAL VII — CUR CHUN FEIDHME AGUS FORÁLACHA CRÍOCHNAITHEACHA

### *Airteagal 27*

20 *Rúndacht*

Cuirfidh na riaracháin chustaim san áireamh ceanglais rúndacht na n-imscrúduithe i ngach cás sonrach ina malartaítear faisnéis. Chuige sin, féadfaidh Ballstát coinníollacha a fhorchur maidir le húsáid na faisnéise ag Ballstát eile a bhféadfar an fhaisnéis sin a chur chuige.

25 *Airteagal 28*

### *Díolúintí ón oibleagáid cúnaimh a sholáthar*

1. Ní chuirfidh an Coinbhinsiún seo de cheangal ar údaráis na mBallstát cúnaimh a sholáthar nuair ba dhóigh don cúnaimh sin beartas poiblí nó leasanna fíor-riachtanacha eile an Bhallstáit i dtrácht a dhochrú, go háirithe i réimse na sonraí a chosaint, nó nuair is follas go bhfuil raon an ghnímh a iarrtar, ach go háirithe i gcomhthéacs na bhfoirmeacha speisialta comhair dá bhforáiltear i dTeideal IV, díreireach le tromchúis an tsáráithe a thiomhdítear. I gcásanna den sórt sin, féadfar cúnaimh a dhiúltú go hiomlán nó go páirteach nó é a chur faoi réir coinníollacha áirithe.

2. Ní foláir na cúiseanna a thabhairt le haon diúltú cúnaimh a sholáthar.

### *Airteagal 29*

#### *Caiteachas*

40 1. De ghnáth tarscaoilfidh Ballstáit gach éileamh ar aisíocaíochtaí as costais arna dtabhú i gcur chun feidhme an Choinbhinsiúin seo, seachas costais i leith táillí arna n-ioc do shaineolaithe.

45 2. I gcás ina bhfuil nó ina mbeidh gá le caiteachas de chineál suntasach urghnách chun géilleadh don iarraidh, rachaidh na riaracháin chustaim i gceist i gcomhar le chéile chun na téarmaí agus na coinníollacha faoina bhforghníomhófar an iarraidh agus an dóigh ina n-íomprófar na costais sin a chinneadh.

### *Airteagal 30*

#### *Forchoimeádais*

1. Ach amháin mar a fhoráiltear in Airteagail 20(8), 21(5) agus 23(5), ní bheidh an Coinbhinsiún seo faoi réir aon fhorchoimeádas.
2. Ballstáit a bhfuil comhaontuithe bunaithe acu eatarthu maidir le hábhair atá faoi rialú ag Teideal IV den Choinbhinsiún seo, ní fhéadfaidh siad forchoimeádais a dhéanamh de bhun mhír 1 ach amháin a mhéad nach ndéanann na forchoimeádais sin difear dá n-oibleagáidí faoi na comhaontuithe sin. 5
3. Dá réir sin, na hoibleagáidí a thig ó fhorálacha Choinbhinsiún an 19 Meitheamh 1990 chun Comhaontú Schengen an 14 Meitheamh 1985 maidir le seiceálacha ag na comhtheorainneacha a dhíothú de réir a chéile a chur i bhfeidhm agus a fhorálann go mbeidh comhar níos dlúithe ann, ní dhéanfaidh an Coinbhinsiún seo difear dóibh sa chaidreamh idir na Ballstáit atá faoi cheangal na bhforálacha sin. 10 15

### *Airteagal 31*

#### *Cur i bhfeidhm críochach*

1. Beidh feidhm ag an gCoinbhinsiún seo maidir le críocha na mBallstát mar a thagraítear dóibh in Airteagal 3(1) de Rialachán (CEE) Uimh. 2913/92 ón gComhairle an 12 Deireadh Fómhair 1992 ag bunú Chód Custaim an Chomhphobail, mar atá arna choigeartú leis an Ionstraim i dtaobh choinniollacha aontachais Phoblacht na hOstaire, Phoblacht na Fionlainne agus Ríocht na Sualainne agus oiriúnaithe na gConarthaí ar a bhfuil an tAontas fothaithe agus le Rialachán (CE) Uimh. 82/97 ó Pharlaimint na hEorpa agus ón gComhairle, lena n-áirítear, i gcás Phoblacht Chónaidhme na Gearmáine, Oileán Heligoland agus críoch Büsingen (faoi chuimsiú agus de bhun Chonradh an 23 Samhain 1964 idir Poblacht Chónaidhme na Gearmáine agus an Chónaidhm Eilvéiseach maidir le común Büsingen am Hochrhein na áireamh i gcríoch chustaim na Cónaidhme Eilvéisí, nó sa leagan de atá ann anois) agus, i gcás Phoblacht na hIodáile, bardasachtaí Livigno agus Campione d'Italia, agus beidh feidhm aige freisin maidir le huiscí teorann, uiscí muirí intíre agus aerspás chríocha na mBallstát. 20 25 30
2. Féadfaidh an Chomhairle, ag gníomhú di d'aon toil tríd an nós imeachta dá bhforáiltear in dTeideal VI den Chonradh ar an Aontas Eorpach, mír 1 a oiriúnú d'aon leasú ar na forálacha de dhlí an Chomhphobail dá dtagraítear inti. 35

### *Airteagal 32*

#### *Teacht i bhfeidhm*

1. Beidh an Coinbhinsiún seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach. 40
2. Cuirfidh na Ballstáit in iúl don taiscí go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Coinbhinsiún seo a ghlacadh comhlíonta acu. 45

3. Tiocfaidh an Coinbhinsiún seo i bhfeidhm nócha lá tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an Stát is Ballstát den Aontas Eorpach ar an dáta a ghlac an Chomhairle an Gníomh ag dréachtú an Choinbhinsiúin seo is déanaí a chomhallfaidh an fhoirmiúlacht sin.

4. Go dtí go dtiocfaidh an Coinbhinsiún seo i bhfeidhm, féadfaidh gach Ballstát, tráth an fhógra dá dtagraítear i mír 2 a thabhairt nó tráth ar bith eile ina dhiaidh sin, a dhearbú go mbeidh feidhm ag an gCoinbhinsiún seo, seachas Airteagal 26 de, a mhéad a bhaineann leis maidir lena chaidreamh leis na Ballstáit a mbeidh an dearbhú céanna déanta acu. Beidh éifeacht leis na dearbhuithe sin nócha lá tar éis dáta a dtaiscthe.

5. Ní bheidh feidhm ag an gCoinbhinsiún seo ach maidir le hiarrataí a dhéantar tar éis an dáta a thiocfaidh sé i bhfeidhm nó a chuirtear i bhfeidhm é idir an Ballstát iarrtha agus an Ballstát iarrthach.

6. Ar dháta an Choinbhinsiúin seo a theacht i bhfeidhm, aisghairfear Coinbhinsiún an 7 Meán Fómhair 1967 maidir le riaracháin chustaim do sholáthar cúnaimh frithpháirteach.

### *Airteagal 33*

#### *Aontachas*

1. Beidh aontachas leis an gCoinbhinsiún seo ar oscailt d'aon Stát a thiocfaidh chun bheith ina Bhallstát den Aontas Eorpach.

2. Is téacs údarásach téacs an Choinbhinsiúin seo i dteanga an Bhallstáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh.

3. Taiscfear na hionstraimí aontachais leis an taiscí.

4. Tiocfaidh an Coinbhinsiún seo i bhfeidhm i leith aon Stáit a aontaíonn dó nócha lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Choinbhinsiúin a theacht i bhfeidhm, mura mbeidh sé tagtha i bhfeidhm cheana tráth na tréimhse thuasluaite nócha lá a dhul in éag.

5. I gcás nach mbeidh an Coinbhinsiún seo tagtha i bhfeidhm fós tráth a n-ionstraimí aontachais a thaisceadh, beidh feidhm ag forálacha Airteagal 31(4) maidir leis na Ballstáit aontacha.

### *Airteagal 34*

#### *Leasuithe*

1. Féadfaidh gach Ballstát is Ardpháirtí Conarthach leasuithe ar an gCoinbhinsiún seo a mholadh. Cuirfear gach togra do leasú chuig an taiscí agus cuirfidh seisean in iúl don Chomhairle agus don Choinbhinsiún é.

2. Gan dochar d'Airteagal 31(2), glacfaidh an Chomhairle na leasuithe ar an gCoinbhinsiún seo agus molfaidh sí iad lena nglacadh ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

3. Tiocfaidh na leasuithe arna nglacadh i gcomhréir le mír 2 i bhfeidhm i gcomhréir le forálacha Airteagal 32(3).

*Airteagal 35*

*An taiscí*

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Choinbhinsiúin seo.
  2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an gCoinbhinsiún seo a ghlacadh agus aontachais leis, maidir lena chur chun feidhme agus maidir leis na dearbhuithe agus na forchoimeádais, maille le gach fógra eile a bhaineann leis an gCoinbhinsiún seo. 5
- Arna dhéanamh sa Bhruiséil ar an ochtú lá déag de Nollaig sa bhliain míle naoi gcéad nócha a seacht, i scríbhinn bhunaidh amháin sa Béarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh. 10 15

TENTH SCHEDULE

THE TEXT IN THE IRISH LANGUAGE OF THE 1999  
PROTOCOL

5 **PRÓTACAL ARNA DHRÉACHTÚ AR BHONN AIRTEAGAL**  
**K.3 DEN CHONRADH AR AN AONTAS EORPACH,**  
**MAIDIR LEIS AN RAON FEIDHME ATÁ AG SCIÚRADH**  
**FÁLTAS SA CHOIBHINSIÚN MAIDIR LE HÚSÁID**  
**THEICNEOLAÍOCHT AN EOLAIS CHUN CRÍOCHA**  
10 **CUSTAIM AGUS MAIDIR LE HUIMHIR CHLÁRÚCHÁIN**  
**NA CÓRA IOMPAIR A ÁIREAMH SA CHOIBHINSIÚN**

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Phrótacal seo,  
Ballstáit an Aontais Eorpaigh,

AG TAGAIRT DO Ghníomh ó Chomhairle an Aontais Eorpaigh  
an 12 Márta 1999,

- 15 AG FÉACHAINT don Choinbhinsiún, arna dhréachtú ar bhonn  
Airteagal K.3 den Chonradh ar an Aontas Eorpach, maidir le húsáid  
theicneolaíocht an eolais chun críocha custaim, dá ngairtear an  
Coinbhinsiún anseo feasta;

20 TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A  
LEANAS:

*Airteagal 1*

Leasaítear an dara fleasc de phointe 1 d'Airteagal 1 den Choinbhinsiún mar a leanas:

- 25 ‘— aistriú, tiontú, ceilt nó folú maoiné nó fáltas arna gcineadh ó  
gháinneáil idirnáisiúnta aindleathach drugaí, arna bhfáil go  
díreach nó go neamhdhíreach tríthi nó arna n-úsáid inti nó arna  
gcineadh ó aon sárú ar na forálacha seo a leanas, arna bhfáil  
go díreach nó go neamhdhíreach tríd nó arna n-úsáid ann:

- 30 (i) na dlíthe, rialacháin agus forálacha riaracháin uile de chuid  
Ballstáit a dtig a gcur i bhfeidhm go hiomlán nó go páirteach  
faoi dhlíne riarachán custaim an Bhallstáit maidir le  
trácht trasteorann in earraí atá faoi réir toirmeasc, srianta  
nó rialuithe, go háirithe de bhun Airteagail 36 agus 223  
35 den Chonradh ag bunú an Chomhphobail Eorpaigh, agus  
faoi réir dleachtanna neamh-chomhchuibhithe máil; nó

- 40 (ii) an bailiúchán forálacha Comhphobail agus forálacha  
comhlachaithe cur chun feidhme a rialaíonn allmhairiú,  
onnmhairiú, idirthuras agus láithreach earraí arna dtrá-  
dáil idir Ballstáit agus tríú tíortha, agus idir Ballstáit i  
gcás earraí nach bhfuil stádas Comhphobail acu de réir  
bhri Airteagal 9(2) den Chonradh ag bunú an  
Chomhphobail Eorpaigh nó i gcás earraí atá faoi réir rial-  
uithe nó imscrúduithe breise d'fhonn a stádas Comhpho-  
bail a shuíomh; nó

- 45 (iii) an bailiúchán forálacha arna nglacadh ar leibhéal an  
Chomhphobail faoin gcomhbheartas talmhaíochta agus  
na forálacha sonracha arna nglacadh i ndáil le hearraí a  
thig ó tháirgí talmhaíochta a phróiseáil; nó

- (iv) an bailiúchán forálacha arna nglacadh ar leibhéal an Chomhphobail maidir le dleachtanna comhchuibhithe máil agus cáin bhreisluacha ar allmhairiú mar aon leis na forálacha náisiúnta á gcur chun feidhme.’

*Airteagal 2*

5

Forlíontar na hearnálacha sonraí atá liostaithe in Airteagal 4 den Choinbhinsiún leis an earnáil seo a leanas:

- ‘(ix) uimhir chlárúcháin na córa iompair.’

*Airteagal 3*

1. Beidh an Prótacal seo faoi réir a ghlactha ag na Ballstáit i 10 gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl don taiscí go bhfuil a rialacha bunreachtúla faoi seach chun an Prótacal seo a ghlacadh comhlíonta acu.

3. Tiocfaidh an Prótacal seo i bhfeidhm nócha lá tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an Stát is Ballstát den 15 Aontas Eorpach tráth na Comhairle do ghlacadh an Ghnímh ag dréachtú an Phrótacail seo is déanaí a chomhallfaidh an fhoirmiúlacht sin. Ar a shon sin, tiocfaidh sé i bhfeidhm ar a luaithe san am céanna leis an gCoinbhinsiún.

*Airteagal 4*

20

1. Beidh aontachas leis an bPrótacal seo ar oscailt d’aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach.

2. Déanfar na hionstraimí aontachais a thaisceadh leis an taiscí.

3. Is téacs údarásach téacs an Phrótacail seo i dteanga an Stáit aontaigh, arna tharraingt suas ag Comhairle an Aontais Eorpaigh. 25

4. Tiocfaidh an Prótacal seo i bhfeidhm i leith aon Stát a aontaíonn dó nócha lá tar éis dó a ionstraim aontachais a theisceadh nó ar dháta an Phrótacail seo a theacht i bhfeidhm mura mbeidh sé tagtha i bhfeidhm fós tráth na tréimhse nócha lá thuasluaite a dhul in éag. 30

*Airteagal 5*

Aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach agus a aontaíonn don Choinbhinsiún i gcomhréir le hAirteagal 25 de, glacfaidh sé le forálacha an Phrótacail seo.

*Airteagal 6*

35

1. Féadfaidh gach Ballstát is Ardpháirtí Conarthach leasuithe ar an bPrótacal seo a mholadh. Cuirfear gach togra do leasú chuig an taiscí agus cuirfidh seisean in iúl don Chomhairle é.

2. Glacfaidh an Chomhairle na leasuithe agus molfaidh sí iad lena nglacadh ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

5 3. Tiocfaidh na leasuithe arna nglacadh amhlaidh i bhfeidhm i gcomhréir le hAirteagal 3.

#### *Airteagal 7*

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Phrótacail seo.

10 2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach fógraí, ionstraimí agus cumarsáidí a bhaineann leis an bPrótacal seo.

Arna dhéanamh sa Bhruiséil, an dara lá déag de Mhárta, míle naoi gcéad nócha naoi.



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**AN BILLE UM CUSTAM AGUS MÁIL (CÚNAMH  
FRITHPHÁIRTEACH), 2000  
CUSTOMS AND EXCISE (MUTUAL ASSISTANCE)  
BILL, 2000**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

The purpose of this Bill is to enable Ireland to adopt the:

- EU Convention of 26 July 1995 on the use of Information Technology for Customs purposes;
- Agreement on Provisional application of that Convention;
- Protocol of 29 November 1996 on the interpretation of that Convention by the Court of Justice of the European Communities;
- Protocol of 12 March 1999 which corrects two deficiencies in that Convention; and
- EU Convention of 18 December 1997 on Mutual Assistance and co-operation between Customs Administrations.

*Background to the Conventions and Protocols*

For many years there has been intensive co-operation between the EU Customs Administrations which allows for a constant flow of intelligence and exchange of information to combat international smuggling, including drugs smuggling. This co-operation is underpinned by a Convention on Mutual Assistance (known as the Naples Convention) and a Community Regulation (Regulation (EC) No 515/97). These instruments complement each other: the Regulation deals with mutual assistance in areas of Community competence and the Naples Convention applies in relation to matters outside Community competence most notably in respect of trafficking in so called “sensitive goods”, such as drugs.

To take account in particular of the abolition of internal Community frontier controls on completion of the Single Market, the EU Member States agreed that there was a need to update the Naples Convention and to take full advantage of new technology by establishing a computerised “Customs Information System” (CIS).

*(A) Convention on the use of information technology for customs purposes (CIS Convention): Agreement on provisional application and Protocols to the CIS Convention*

In 1995, the EU Council, acting under Article K.3 of the Treaty on European Union, agreed a draft Convention on the use of information technology for Customs purposes known as the CIS Convention. This Convention provides for the establishment of a computerised central database with terminals in each Member State



linked to it, thus allowing for the rapid dissemination of information and intelligence about illegal movements over internal frontiers so that effective action can be taken by EU Customs Administrations. The CIS will carry information on commodities, means of transport, businesses, persons, fraud trends and availability of expertise.

The CIS will also be used to disseminate information in all areas of Customs concern and will not be confined solely to the exchange of information about drugs and other sensitive goods. For this reason, a dual legal basis is necessary. To the extent that the CIS covers information about possible breaches of Community law, it is underpinned by a Council Regulation (Council Regulation (EC) No 515/97) and in so far as it deals with information concerning goods such as drugs, an area not within Community competence, the legal basis is the CIS Convention. The CIS Convention was signed by all Member States on 26 July 1995.

*(B) Convention on Mutual Assistance and Co-operation between Customs Administrations (Customs Co-operation Convention)*

On its accession to the EEC in 1973, Ireland became a party to the 1967 Naples Convention. That Convention has been for over thirty years the principal legal instrument available to Customs administrations for the provision of mutual assistance. It allowed them to exchange useful information and intelligence and assisted in the investigation of breaches of Customs law including smuggling of, for example, prohibited goods such as drugs, arms and ammunition.

By the early 1990s, Member States decided that the Naples Convention was in need of updating so that Customs services would have the means to tackle cross-border smuggling activities effectively in the context of a Single Market without internal frontiers. In this regard the updated Convention which was also concluded under Article K.3 of the Treaty on European Union provides, subject to an opt-out clause which may be exercised in certain cases by individual Member States, a legislative basis for special forms of co-operation between Member States such as hot pursuit, cross-border surveillance, controlled delivery, covert investigations and joint special investigation teams.

*Main Provisions of the Conventions, Agreement and Protocols*

*(A) Convention on the use of information technology for customs purposes (CIS Convention)*

The CIS Convention provides for the inclusion in the CIS database of detailed information concerning goods, means of transport, businesses and persons (Articles 3 and 4). Customs services may use the CIS to pass on information about suspect movements, carry out discreet surveillance or specific checks and report on results. The CIS will also carry information on fraud trends and the availability of specialist Customs expertise.

The CIS Convention generally limits access to and use of data on the CIS to nominated national authorities (Articles 7 and 8) and obliges national authorities to take the necessary administrative measures to protect the security of information stored on it (Article 19).

The CIS Convention lays down detailed rules governing personal data included in the CIS database. Article 13 obliges Member States participating in the CIS to have national law in place giving a level of protection of personal data at least equal to that in the Convention for the Protection of Individuals with regard to automatic processing

of Personal Data done at Strasbourg on 28 January 1981. (Effect was given in the State to the latter Convention by the Data Protection Act, 1988). Articles 4 and 5(2) place limits on the personal data which may be included in the CIS and Articles 15 and 17(2) deal with the right of access by individuals to personal data about themselves in the CIS as well as their right to have data checked, corrected or deleted and to have their rights vindicated in the courts.

The CIS Convention provides that each Member State is to be responsible in accordance with its national law for any injury caused through the use of the CIS in its territory, including injury arising from inaccurate data supplied by another Member State, or data supplied by another Member State which should not have been included in the CIS. Where injury is caused as a result of data provided by another Member State, the apportionment of liability will be subject to agreement between the States concerned (Article 21).

The Convention lays down an elaborate framework for the management and supervision of the CIS, comprising three elements as follows:

- (a) A Committee, consisting of representatives from the Customs Administrations of the Member States and the Commission with responsibility (subject to the powers of the Authorities mentioned at (b) and (c) below) for the correct application of the Convention and its proper implementation.
- (b) A National Supervisory Authority, in each Member State, to carry out independent supervision of personal data included in the CIS and to ensure that the processing and use of such data does not violate the rights of individuals.
- (c) A Joint Supervisory Authority, consisting of representatives from the respective National Supervisory Authorities ((b) above), with responsibility for examining difficulties of application or interpretation.

The CIS Convention will come into force ninety days after the last of the Member States to adopt it has done so (Article 24.3).

#### *(B) Agreement on provisional application of the CIS Convention*

It was recognised that certain Member States might not be in a position to adopt the CIS Convention for some time taking account of measures, including legislative changes, needed at national level. Accordingly, an Agreement to provisionally apply the Convention was also drawn up to allow Member States in a position to adopt it quickly to use the CIS technology in the fight against fraud in the interim period before the CIS Convention has been adopted by all. The Agreement was signed at the same time as the CIS Convention. Adoption of this Agreement by eight of the fifteen Member States will allow the CIS Convention to be applied provisionally subject to certain conditions specified in the Agreement. The Agreement provides for the CIS Convention applying provisionally between certain Member States as and from the first day of the third month following the deposit of the eighth instrument of adoption (Article 2). The Agreement enters into force on that date (Article 4.1). For Member States depositing their instruments subsequently the Agreement will enter into force for them on the first day of the third month following their depositing their instrument of adoption (Article 4.2).

*(C) Protocol on the Interpretation of the CIS Convention by the European Court of Justice*

The purpose of this Protocol is to enable a uniform legal interpretation, by means of a preliminary ruling, of the CIS Convention throughout the European Union. It confers jurisdiction on the European Court of Justice (the Court) to interpret the Convention, but it makes the Protocol's application by the courts in the individual Member States conditional on a declaration to be made by the Member States at the time of signature or at any time thereafter. Those Member States prepared to accept the Court's jurisdiction may make a declaration to the effect that either only those national courts or tribunals against whose decision there is no judicial remedy under national law (Article 2(a)) or all their national courts or tribunals (Article 2(b)) may ask the Court for preliminary rulings. At the time of signature, Ireland made a declaration that it accepted the jurisdiction of the Court in accordance with Article 2(a) of the Protocol. The Protocol was signed by all 15 Member States on 29 November 1996.

This Protocol will come into force ninety days after the last of the Member States to adopt it has done so (Article 4.3). At the time of its signature, all Member States made a declaration that they would take steps to ensure the simultaneous adoption of the Convention and the Protocol at the earliest opportunity.

*(D) Second Protocol to CIS Convention*

The second Protocol to the CIS Convention remedies two deficiencies in that Convention. The first deficiency related to the items of information which could be placed on the CIS as the Convention did not allow EU Customs Administrations to include the registration number of the means of transport of smuggled goods even though this additional data element could be very useful. This deficiency was only identified after the entry into force of the Community Regulation on mutual assistance i.e. Regulation (EC) No. 515/97 which establishes the "Community Leg" of the CIS — the CIS Convention providing the legal basis for the "Inter-Governmental Leg".

The second deficiency remedied by the second Protocol related to the information which could be placed on the CIS in connection with money laundering. The CIS Convention provided for an exchange of information on money laundering in connection with illicit international drug trafficking but did not provide for exchanges of information on money laundering in connection with other types of infringements of Community and national customs provisions. In the interests of ensuring a comprehensive response to all types of smuggling, the Protocol extended the circumstances in which information on money laundering could be exchanged using the CIS to cover the transfer, conversion, concealment or disguise of property or proceeds derived from, obtained directly or indirectly through or used in certain other infringements of Community and national customs provisions, which are defined in Article 1 of the Protocol, in addition to illicit drug trafficking.

The second Protocol will come into force ninety days after the last of the Member States to adopt it has done so.

*(E) Convention on Mutual Assistance and Co-operation between Customs Administrations (Customs Co-operation Convention)*

The Customs Co-operation Convention enables EU Customs Administrations to afford each other mutual assistance to prevent

and investigate infringements of national customs provisions and prosecute and punish infringements of both Community and national customs provisions (Article 1). These are defined in Article 4.3 as acts which conflict with national or Community customs provisions, including, inter alia:

- participation in or attempts to commit such infringements;
- participating in a criminal organisation committing such infringements; and
- the laundering of money connected with the aforementioned infringements.

Mutual assistance provided by judicial authorities in criminal cases will be unaffected (Articles 1 and 3).

EU Customs Administrations, in applying the provisions of the Customs Co-operation Convention, must act within the limits of the powers conferred upon them under national provisions and the Convention does not affect those powers (Article 2).

Requests for assistance are to be channelled through designated Central Co-ordinating Units in each Member State although provision has been made for Investigation Services to be in direct contact with each other (Article 5) and for the appointment of liaison officers where mutually agreed necessary (Article 6). Unless otherwise specified in the Customs Co-operation Convention, officers acting in the territory of another Member State must carry proof of their authority (Article 7).

In providing assistance in response to a request, the requested authority must act as if the request had emanated from within its own country (Article 8).

All reasonable measures must be taken to carry out a request for assistance and to conduct any necessary investigation into actual or suspected infringements. In certain circumstances, officials from the applicant authority may also visit the offices of the requested Member State to obtain further information (Article 10). The requested authority can be asked to carry out surveillance on suspect persons and on means of transport, goods and places (Article 11). A representative of the applicant authority may be present when action is carried out by the requested authority, provided both authorities agree (Article 12).

A requested authority may also be asked to notify the subject of the request of all instruments or decisions which concern the application of the Customs Co-operation Convention and which emanate from the competent authorities in the Member State in which the applicant authority is based (Article 13).

Provision is made in the Customs Co-operation Convention for the competent authorities in each Member State to provide spontaneous assistance to the authorities in another Member State, i.e. without prior request (Articles 15, 16 and 17).

Information received under the Customs Co-operation Convention is to be treated as confidential and used only for the purposes specified in the Convention (Article 27) — it can also be used as evidence in the receiving Member State in accordance with national law (Articles 14, 18 and 19.7). Provision is also made for protecting personal data exchanged under the Customs Co-operation Convention (Article 25).

The Customs Co-operation Convention makes provision for EU Customs Administrations to engage in special forms of co-operation in respect of certain types of infringements e.g. cases involving illicit traffic in drugs, weapons, munitions and serious cases of smuggling of taxable and prohibited goods (Article 19). These special forms of co-operation are hot pursuit (Article 20), cross-border surveillance (Article 21), controlled delivery (Article 22), covert investigations (Article 23) and joint special investigation teams (Article 24).

The Customs Co-operation Convention allows Member States who have difficulty agreeing with the principle and practice of hot pursuit, cross-border surveillance and covert investigations to opt-out of applying these provisions or any part thereof by making a declaration to this effect at the same time as it deposits its instruments of adoption of the Convention (Articles 20.8, 21.5 and 23.5).

The Customs Co-operation Convention confers jurisdiction on the European Court of Justice (the Court) to rule on disputes between Member States, and between Member States and the Commission, regarding the application of the Convention (Article 26). In common with the Protocol to the CIS Convention, it also confers jurisdiction on the Court to interpret the Convention and makes its application by the courts in each Member State conditional on a declaration to be made at the time of signature or at any time thereafter to the effect that the Member State will accept that Court's jurisdiction to give preliminary rulings on the interpretation of the Convention. In this regard it provides that those Member States which are prepared to accept the Court's jurisdiction may specify whether courts or tribunals against whose decisions there is no judicial remedy under their national law or all their national courts or tribunals will be in a position to ask the Court for preliminary rulings.

At the time of signing the Customs Co-operation Convention, Ireland opted for the first of the two above-mentioned options. This also reflects Ireland's position on the Protocol dealing with the role of the European Court of Justice in relation to the CIS Convention.

A request for assistance may be refused where it is considered to be prejudicial to public policy or other essential interests and rights of the Member State concerned (particularly in the field of data protection) or where the action requested is disproportionate to the gravity of the offence. Reasons must be given for any such refusal (Article 28).

The Customs Co-operation Convention is to enter into force ninety days after the last of the Member States to adopt it has done so (Article 32.8).

### *Provisions of the Bill*

#### *Section 1 (Interpretation)*

*Subsection (1)* contains definitions while *subsection (2)* contains the usual interpretative provisions.

#### *Section 2 (Conventions, Agreement and Protocols to have force of law)*

*Subsection (1)* provides that the Agreement, the CIS Convention, both Protocols and the Customs Co-operation Convention shall have the force of law in the State and judicial notice shall be taken of them.

The Conventions, the Agreement and the Protocols in the English and Irish languages are set out in the *First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Schedules* to the Bill, respectively. These texts are scheduled for convenience of reference only (*subsection (2)*). They appear in the published version of the Official Journal of the European Communities, as follows:

- CIS Convention: 95/C 316/02 in the English language and I.O. Uimh 95/C 316/03 (eagrán speisialta) in the Irish language;
- Agreement on Provisional Application of the CIS Convention: 95/C 316/04 in the English language and I.O. Uimh 95/C 316/01 (eagrán speisialta) in the Irish language;
- Protocol on the interpretation of the CIS Convention by the European Court of Justice: 97/C 151/02 in the English language and I.O. Uimh 97/C 151/02 (eagrán speisialta) in the Irish language;
- Second Protocol to the CIS Convention: 99/C 91/01 in the English language and I.O. Uimh 99/C 91/01 (eagrán speisialta) in the Irish language; and
- Customs Co-operation Convention: 98/C 24/01 and 98/C 165/10 in the English language and I.O. Uimh 98/C 24/01 (eagrán speisialta) in the Irish language.

### *Section 3 (Designation of national authority)*

This section takes account of Articles 7 and 8.2 of the CIS Convention. These Articles provide respectively for the designation of a national authority in each Member State to have direct access to data included in, and to use data obtained from, the CIS. The Revenue Commissioners are being designated as the national authority for both of these purposes.

### *Section 4 (Designation of competent customs administration)*

This section deals with the designation of a competent customs administration to carry out the tasks listed in Articles 10 and 20 of the CIS Convention which will include taking responsibility for the correct operation of the system within the Member State and ensuring compliance with the provisions of the Convention. The Revenue Commissioners will carry out these tasks.

### *Section 5 (Application of Data Protection Act, 1988)*

Articles 13 to 18 of the CIS Convention and Article 25 of the Customs Co-operation Convention set out detailed provisions relating to data protection. Each Member State is required to ensure, under national legislation, a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Data Protection Convention of 1981.

The Data Protection Act, 1988, gave effect to the principles of the 1981 Convention. *Subsection (1)* therefore applies the Data Protection Act, 1988, to relevant provisions in the Conventions, subject to any necessary modification.

*Subsection (2)* takes account of Article 21 of the CIS Convention, under which each Member State is liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data stored or processed in the CIS. This subsection makes it clear that for the purposes of that provision section 7 of the 1988 Act applies. Section 7 of that Act provides that, to the extent that the law of torts does not already so provide, data controllers and data processors owe a duty of care to data subjects in collecting or dealing with personal data, that is, a duty to take

reasonable care to prevent their activities in this respect causing damage to the data subjects concerned.

*Subsection (3)* takes account of Article 25.2(f) of the Customs Co-operation Convention which provides that each Member State is liable, in accordance with its national law, for any injury caused to an individual through the processing of data communicated in its territory and, for that purpose, in common with *subsection (2)*, applies section 7 of the 1988 Act to the Convention.

*Section 6 (Designation of national supervisory authority)*

Article 17 of the CIS Convention and Article 25.2(i) of the Customs Co-operation Convention provides for the designation of a national supervisory authority to monitor independently, under national law, compliance with data protection rules. This section provides that the Data Protection Commissioner is designated as the national supervisory authority for this jurisdiction.

*Section 7 (Special forms of co-operation)*

*Subsection (1)* provides for the State opting out of applying the provisions in the Customs Co-operation Convention on hot pursuit, cross-border surveillance and covert investigations. *Subsection (2)* allows for the State to decide, if it so wishes, to opt-in to these provisions at a later stage.

*Section 8 (Regulations)*

This is a standard provision in connection with the making of Regulations under the Act (by the Government or Minister for Finance). Specific provision is made also for the application of data protection rules to non-automated exchanges of data provided for in Article 25.2 of the Customs Co-operation Convention, as the existing national data protection legislation only applies to automated exchanges of data.

*Section 9 (Offences)*

Each Member State is to ensure that it is unlawful, except in certain defined situations, for personal data from the CIS to be used other than for the purpose of the aim stated in Article 2.2 of the CIS Convention (Article 14.1 of the CIS Convention). This section creates such an offence under the Data Protection Act, 1988. Penalties for an offence of this kind will be those stated in section 31 of the Data Protection Act, 1988.

*Section 10 (Interpretation of Conventions)*

The Protocol to the CIS Convention and Article 26 of the Customs Co-operation Convention determines the conditions under which the European Court of Justice may have jurisdiction to give preliminary rulings on the interpretation of the Conventions. They enable a Member State to make a declaration at the time of signature of the Protocol and the Customs Co-operation Convention or at any time thereafter that it will accept such jurisdiction and they offer to Member States a choice of two alternatives when making such a declaration. At the time of signature Ireland made a declaration under Article 2(a) of the Protocol and Article 26.5(a) of the Customs Co-operation Convention.

*Subsection (1)* of *section 10* provides that paragraph 2(a) of Article 2 of the Protocol shall apply in the State. *Subsection (2)* provides for the making of a declaration under paragraph 2(b) of Article 2 and the making of an order to this effect by the Minister for Finance. In the event of the Minister making such an order, *subsection (2)* also provides that on its commencement the declaration provided for in *subsection (1)* shall cease to have effect.

*Subsection (3) of section 10* provides that paragraph 5(a) of Article 26 of the Customs Co-operation Convention shall apply in the State. *Subsection (4)* provides for the making of a declaration under paragraph 5(b) of Article 26 and the making of an order to this effect by the Minister for Finance. In the event of the Minister making such an order, *subsection (4)* also provides that on its commencement the declaration provided for in *subsection (1)* shall cease to have effect.

*Subsection (5)* provides that judicial notice shall be taken of any rulings or decision of, or expression of opinion by, the Court.

*Section 11 (Laying of orders and regulations before Houses of the Oireachtas)*

This is a standard provision in connection with the laying of orders and regulations under the Act (by the Government or Minister for Finance) before the Houses of the Oireachtas.

*Section 12 (Short title and Commencement)*

*Subsection (1)* contains the short title and *subsection (2)* contains the commencement provisions. The Conventions, the Agreement and the Protocols come into force as set out previously.

*First Schedule*

The *First Schedule* contains the text in the English language of the CIS Convention.

*Second Schedule*

The *Second Schedule* contains the text in the English language of the Agreement.

*Third Schedule*

The *Third Schedule* contains the text in the English language of the Protocol.

*Fourth Schedule*

The *Fourth Schedule* contains the text in the English language of the Customs Co-operation Convention.

*Fifth Schedule*

The *Fifth Schedule* contains the text in the English language of the Second Protocol.

*Sixth Schedule*

The *Sixth Schedule* contains the text in the Irish language of the CIS Convention.

*Seventh Schedule*

The *Seventh Schedule* contains the text in the Irish Language of the Agreement.

*Eighth Schedule*

The *Eighth Schedule* contains the text in the Irish language of the Protocol.



*Ninth Schedule*

The *Ninth Schedule* contains the text in the Irish language of the Customs Co-operation Convention.

*Tenth Schedule*

The *Tenth Schedule* contains the text in the Irish language of the Second Protocol.

*An Roinn Airgeadais,  
Aibreán, 2000.*