



European Communities No. 3 (2005)

# Co-operation Agreement

between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat Fraud and any other Illegal Activity to the Detriment of their Financial Interests

Luxembourg, 26 October 2004

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
November 2005*





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

THE EUROPEAN COMMUNITY,  
THE KINGDOM OF BELGIUM,  
THE CZECH REPUBLIC,  
THE KINGDOM OF DENMARK,  
THE FEDERAL REPUBLIC OF GERMANY,  
THE REPUBLIC OF ESTONIA,  
THE HELLENIC REPUBLIC,  
THE KINGDOM OF SPAIN,  
THE FRENCH REPUBLIC,  
IRELAND,  
THE ITALIAN REPUBLIC,  
THE REPUBLIC OF CYPRUS,  
THE REPUBLIC OF LATVIA,  
THE REPUBLIC OF LITHUANIA,  
THE GRAND DUCHY OF LUXEMBOURG,  
THE REPUBLIC OF HUNGARY,  
THE REPUBLIC OF MALTA,  
THE KINGDOM OF THE NETHERLANDS,  
THE REPUBLIC OF AUSTRIA,  
THE REPUBLIC OF POLAND,  
THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,  
THE SLOVAK REPUBLIC,  
THE REPUBLIC OF FINLAND,  
THE KINGDOM OF SWEDEN,  
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

of the one part, and

THE SWISS CONFEDERATION,

of the other part,

hereinafter referred to as the "Contracting Parties",

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

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

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

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

RECOGNISING the importance of combating money laundering,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

## TITLE I

### GENERAL PROVISIONS

#### ARTICLE 1

##### **Objective**

The objective of this Agreement is to extend administrative and mutual legal assistance in criminal matters between the European Community and its

Member States, of the one part, and the Swiss Confederation, of the other part, so as to combat the illegal activities to which Article 2 applies.

## ARTICLE 2

### **Scope**

1. This Agreement is applicable to:
  - (a) the administrative and criminal prevention, detection, investigation, prosecution and repression of fraud and any other illegal activity to the detriment of the Contracting Parties' respective financial interests concerning:
    - trade in goods contrary to customs and agricultural legislation;
    - trade contrary to tax legislation applicable to value added tax, special taxes on consumption and excise duties;
    - the charging or retention of funds – including their use for purposes other than those for which they were initially granted – from the budget of the Contracting Parties or budgets managed by them or on their behalf, such as grants and refunds;
    - procedures for the award of contracts by the Contracting Parties;
  - (b) the seizure and recovery of amounts due or wrongly received as a result of the illegal activities referred to in point (a).
2. Cooperation within the meaning of Titles II (Administrative assistance) and III (Mutual legal assistance) may not be withheld on the sole ground that the request relates to an offence treated as a tax offence in the requested Contracting Party or that the legislation of the requested Contracting Party does not provide for the same type of levy or expenditure or does not contain the same type of rules or the same legal characterisation of the facts as the legislation of the requesting Contracting Party.
3. The scope of this Agreement includes the laundering of the proceeds of the activities covered by the Agreement provided that the activities which constitute the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.
4. Direct taxes are excluded from the scope of this Agreement.

## ARTICLE 3

### **Minor cases**

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

## ARTICLE 4

### ***Ordre public***

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

## ARTICLE 5

### **Transmission of information and evidence**

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

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

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



Agreement by a Contracting Party to another Contracting Party or to more than one Contracting Party may not be open to appeal in the Contracting Party initially requested.

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

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

## ARTICLE 6

### **Confidentiality**

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

## TITLE II

### ADMINISTRATIVE ASSISTANCE

#### CHAPTER 1

#### GENERAL PROVISIONS

## ARTICLE 7

### **Relationship with other Agreements**

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

## ARTICLE 8

### **Scope**

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

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

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

## ARTICLE 9

### **Powers**

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

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

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

## ARTICLE 10

### **Proportionality**

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

- (a) the number and the nature of the requests for information made by the requesting Contracting Party within a specific period impose a disproportionate administrative burden on that requested authority;
- (b) the authority of the requesting Contracting Party has not exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested without running the risk of jeopardising the achievement of the desired end.

## ARTICLE 11

### **Central units**

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

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

2. The central units shall communicate directly with each other.
3. The activities of the central units shall not exclude, especially in an emergency, direct cooperation between the other authorities in the Contracting Parties having power to act in matters to which this Agreement applies. The central units shall be informed of any action involving such direct cooperation.
4. The Contracting Parties, when making the notification provided for by Article 44(2), shall announce which are the authorities regarded as the central units for the purposes of this Article.

## CHAPTER 2

### ASSISTANCE ON REQUEST

## ARTICLE 12

### **Requests for information**

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

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

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

## ARTICLE 13

### **Requests for surveillance**

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

## ARTICLE 14

### **Notification and transmission by post**

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

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

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

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

## ARTICLE 15

### **Requests for enquiries**

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

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

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

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

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

## ARTICLE 16

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

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

2. Officers of the authority of the requested Contracting Party shall at all times carry out the enquiries. Officers of the authority of the requesting Contracting

Party may not, of their own initiative, exercise the powers conferred on officers of the authority of the requested Contracting Party.

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

3. Conditions may be attached to the authorisation.

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

## ARTICLE 17

### **Duty to cooperate**

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

## ARTICLE 18

### **Form and content of requests for assistance**

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

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

2. Requests shall be accompanied by the following information:

- (a) the requesting authority;
- (b) the measure requested;
- (c) the object and the grounds for the request;
- (d) the laws, rules and other legal provisions involved;
- (e) indications as exact and comprehensive as possible of the natural or legal persons being the target of the investigations;
- (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 14.

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

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

## ARTICLE 19

### **Use of information**

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

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

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

## CHAPTER 3

### SPONTANEOUS ASSISTANCE

## ARTICLE 20

### **Spontaneous assistance**

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

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

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

## CHAPTER 4

### SPECIAL FORMS OF COOPERATION

#### ARTICLE 21

##### **Joint operations**

1. On imports, exports and transit of goods, where the extent of the trade and the related risk to taxes and subsidies is such that the potential financial loss to the budget of the Contracting Parties is considerable, those Parties may agree to conduct joint cross-border operations for the prevention and prosecution of illegal activities to which this Agreement applies.
2. The coordination and planning of such cross-border operations shall be the responsibility of the central unit or of an office designated by it.

#### ARTICLE 22

##### **Joint special investigation teams**

1. By mutual agreement, the authorities of several Contracting Parties may set up a joint special investigation team based in a Contracting Party.
2. The joint team shall conduct difficult investigations requiring the mobilisation of substantial resources and shall coordinate joint actions.
3. Membership of the team shall not bestow on representatives of the participating Contracting Parties' authorities any powers of intervention in the territory of the Contracting Party in which the investigations are conducted.

#### ARTICLE 23

##### **Liaison officers**

1. The competent authorities of the Contracting Parties may decide on the secondment, for limited or unlimited periods, of liaison officers of a Contracting Party to the competent services of another Contracting Party in order to provide mutual support in the execution of administrative assistance.
2. Liaison officers shall have the task of providing advice and assistance. They shall have no independent power to act in the territory of the host Contracting Party. With the agreement or at the request of the competent authorities of the Contracting Parties, they may:
  - (a) promote and speed up the exchange of information;



- (b) provide assistance in investigations;
- (c) provide support in dealing with requests for assistance;
- (d) advise and assist the host Contracting Party in preparing and carrying out cross-border operations;
- (e) perform any other duties on which the Contracting Parties may agree between themselves.

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

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

## CHAPTER 5

### RECOVERY

#### ARTICLE 24

##### **Recovery**

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

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

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

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

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

### TITLE III

#### MUTUAL LEGAL ASSISTANCE

##### ARTICLE 25

##### **Relationship with other Agreements**

1. The provisions of this Title are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959<sup>1</sup>, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990<sup>2</sup>, and to facilitate their implementation between the Contracting Parties.
2. More favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected.

##### ARTICLE 26

##### **Procedures in which mutual legal assistance shall also be afforded**

1. Mutual legal assistance shall also be afforded:
  - (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
  - (b) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
  - (c) for offences or infringements for which a legal person of the requesting Contracting Party may be liable.
2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

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<sup>1</sup> Treaty series No. 24 (1992) Cm 1928

<sup>2</sup> Treaty Series No. 59 (1993) Cm 2337

## ARTICLE 27

### **Transmission of requests**

1. Requests under this Title shall be presented by the authority of the requesting Contracting Party either via a relevant central authority of the requested Contracting Party, or direct to the Contracting Party's authority which is empowered to execute the requesting Contracting Party's request. The authority of the requesting Contracting Party and, where appropriate, the authority of the Contracting Party requested shall send a copy of the request to its central authority for information.
2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent directly to the authority of the requesting Contracting Party.
3. If the authority of the Contracting Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.
4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Contracting Party. The authority of the Contracting Party requested shall inform the authority of the requesting Contracting Party of the defects and allow it time to regularise them.

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

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

## ARTICLE 28

### **Service by post**

1. As a rule the Contracting Parties shall, in proceedings for illegal activities covered by this Agreement, send procedural documents intended for persons who are in the territory of the other Contracting Party directly by post
2. If the authority of the Contracting Party that issued the documents knows or has reason to believe that the addressee understands only some other language, the documents, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
3. The authority of the serving Contracting Party shall advise the addressee that

no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Contracting Party.

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

## ARTICLE 29

### **Provisional measures**

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

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

## ARTICLE 30

### **Presence of the authorities of the requesting Contracting Party**

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

Conditions may be attached to the authorisation.

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

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

execution has acquired the force of res judicata.

## ARTICLE 31

### **Searches and seizures**

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

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

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

## ARTICLE 32

### **Requests for banking and financial information**

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

- (a) the identification of, and information concerning, bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;
- (b) the identification of, and all information concerning, banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.

2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Contracting Party may order surveillance

of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Contracting Party. The decision to monitor transactions and transmit the results shall be taken in each individual case by the competent authorities of the requested Contracting Party and shall comply with that Contracting Party's national law. The practical details regarding the monitoring shall be determined by agreement between the competent authorities of the requesting and requested Contracting Parties.

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

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

- (a) state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence;
- (b) state on what grounds it presumes that banks in the requested Contracting Party hold the account and, to the extent available, which banks may be involved;
- (c) include all information available which may facilitate the execution of the request.

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

## ARTICLE 33

### **Controlled deliveries**

1. The competent authority in the requested Contracting Party shall undertake to ensure that, at the request of the authority of the requesting Contracting Party, controlled deliveries may be permitted in its territory within the framework of criminal investigations into extraditable offences.

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

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

## ARTICLE 34

### **Handing-over for confiscation or return**

1. At the request of the requesting Contracting Party, all objects, documents, funds or other items of value that have been seized on a precautionary basis may be handed over for confiscation or for return to the rightful owner.
2. The requested Contracting Party may not refuse to return funds on the sole ground that they correspond to a tax or customs debt.
3. Rights asserted by a third party in good faith shall remain reserved.

## ARTICLE 35

### **Speeding up assistance**

1. The authority of the requested Contracting Party shall execute the request for mutual legal assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Contracting Party. The requesting Contracting Party shall explain the reasons for the deadline.
2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall promptly inform the authority of the requesting Contracting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Contracting Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

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

## ARTICLE 36

### **Use of information and evidence**

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

- (a) in criminal proceedings in the requesting Contracting Party against other persons who participated in the commission of the offence for which assistance was given;
- (b) where the infringements on which the request is based constitute another offence for which assistance ought also to be given;
- (c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of infringements for which assistance had been given.

## ARTICLE 37

### **Spontaneous transmission**

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

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

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

## ARTICLE 38

### **Procedures in the requested Contracting Party**

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



## TITLE IV

### FINAL PROVISIONS

#### ARTICLE 39

##### **Joint Committee**

1. A Joint Committee shall be established, consisting of representatives of the Contracting Parties, and shall be responsible for the sound application of this Agreement. To that end, it shall make recommendations and take decisions in the cases provided for by the Agreement. It shall act by mutual agreement.
2. The Joint Committee shall adopt its Rules of Procedure, which shall include provisions governing the convening of meetings, the designation of the Chair and the determination of his or her functions.
3. The Joint Committee shall meet as required but no less than once every year. Any Contracting Party may request that a meeting be convened.
4. The Joint Committee may decide to establish working parties or expert groups to assist it in the performance of its tasks.

#### ARTICLE 40

##### **Dispute settlement**

1. Each Contracting Party may submit to the Joint Committee a dispute relating to the interpretation or application of this Agreement, in particular if it considers that another Contracting Party is failing repeatedly to take action on requests for cooperation made to it.
2. The Joint Committee shall endeavour to settle the dispute as quickly as possible. The Joint Committee shall be supplied with all relevant items of information to assist its detailed examination of the situation with a view to identifying a satisfactory solution. To that end, the Joint Committee shall examine all possibilities of preserving the sound operation of this Agreement.

#### ARTICLE 41

##### **Reciprocity**

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

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

#### ARTICLE 42

##### **Revision**

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

#### ARTICLE 43

##### **Territorial scope**

This Agreement shall apply, on the one hand, to the territory of the Swiss Confederation and, on the other hand, to the territories in which the Treaty establishing the European Community<sup>1</sup> is applied and under the conditions laid down in that Treaty.

#### ARTICLE 44

##### **Entry into force**

1. This Agreement shall be concluded for an indefinite period.
2. It shall be ratified or approved by the Contracting Parties in accordance with their respective procedures. It shall enter into force on the first day of the second month after the last notification of instruments of ratification or approval.
3. Until the entry into force of this Agreement, each Contracting Party may, at the time of the notification referred to in paragraph 2 or at any other subsequent time, declare that it shall consider itself bound by the Agreement in its relations with any other Contracting Party having made the same declaration. These declarations shall take effect ninety days after the date of receipt of the notification.

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<sup>1</sup> Consolidated Version in Treaty Series No. 52 (1999) Cm 4434 and Treaty Series No. 47 (1998) Cm 455

## ARTICLE 45

### **Denunciation**

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

## ARTICLE 46

### **Application over time**

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

## ARTICLE 47

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

1. Any State which becomes a Member State of the European Union may, by written notification to the Contracting Parties, become a Contracting Party to this Agreement.
2. The text of the Agreement in the language of the new acceding Member State as established by the Council of the European Union shall be authenticated by an exchange of letters between the European Community and the Swiss Confederation. It shall be considered to be authentic within the meaning of Article 48.
3. This Agreement shall enter into force in relation to any new Member State of the European Union which accedes to it ninety days after the receipt of its instrument of accession, or on the date of entry into force of this Agreement if it was not yet in force when that ninety-day period expired.
4. If this Agreement is not yet in force when the new acceding State notifies its instrument of accession, Article 44(3) shall apply.

## ARTICLE 48

### **Languages**

1. This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish

languages, each of these texts being equally authentic.

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

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

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

[Here follow the signatures]

FINAL ACT

The plenipotentiaries of

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

THE EUROPEAN COMMUNITY,

THE SWISS CONFEDERATION,

of the one part, and of

of the other part,

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

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

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

#### JOINT DECLARATION ON MONEY LAUNDERING

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

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

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

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

The Contracting Parties have agreed as follows:

Ad Article 2(1)(a)

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

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

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

Ad Article 15(2)

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

Ad second subparagraph of Article 16(2)

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

Ad Article 25(2)

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

Ad Article 35(1)

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

Ad Article 43

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





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