

# Official Journal

## of the European Union

L 121



English edition

Legislation

Volume 52

15 May 2009

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Price: EUR 18

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## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 371/2009

of 27 November 2008

**amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 291 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 16 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Court of Justice <sup>(2)</sup>,

Having regard to the opinion of the Court of Auditors <sup>(3)</sup>,

Whereas:

(1) According to Article 6 of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) <sup>(4)</sup>, Europol staff may participate in a support capacity in joint investigation teams created by and at the initiative of two or more Member States provided those teams are investigating criminal offences for which Europol is competent. These joint investigation teams are headed by a team

leader representing the competent national authority participating in criminal investigations from the Member State in which the team operates. During the operation of a joint investigation team, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

(2) When the possibility for Europol officials to participate in joint investigation teams was introduced by the Protocol amending the Europol Convention <sup>(5)</sup>, it was considered that, given the specificities of the participation of Europol officials in joint investigation teams created by Member States in the context of criminal investigations falling under the competence of Europol, Europol officials should not enjoy immunity from legal proceedings in respect of official acts undertaken when participating in those teams.

(3) The privileges and immunities that the Protocol on the Privileges and Immunities of the European Communities grants, solely in the interests of the Communities, to their officials and agents, have a purely functional character, in that they are intended to avoid any interference with the functioning and independence of the Communities. Given that Decision 2009/371/JHA does not change the specificities of the participation of Europol staff in joint investigation teams, its adoption should not extend immunity from jurisdiction to Europol staff participating in such teams. Therefore Regulation (Euratom, ECSC, EEC) No 549/69 <sup>(6)</sup> should be amended in order to clarify, in the context of that Decision, and exclusively for the purpose of its application, the scope of immunity of Europol staff placed at the disposal of a joint investigation team,

<sup>(1)</sup> Opinion of 23 September 2008 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 11 June 2008.

<sup>(3)</sup> Opinion of 17 July 2008.

<sup>(4)</sup> See page 37 of this Official Journal.

<sup>(5)</sup> OJ C 312, 16.12.2002, p. 1.

<sup>(6)</sup> OJ L 74, 27.3.1969, p. 1.

HAS ADOPTED THIS REGULATION:

*Article 1*

The following Article is inserted in Regulation (Euratom, ECSC, EEC) No 549/69:

*'Article 1a*

Article 12(a) of the Protocol on the Privileges and Immunities of the Communities shall not apply to Europol staff placed at the disposal of a joint investigation team in respect

of official acts required to be undertaken in fulfilment of the tasks set out in Article 6 of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (\*).

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(\* ) OJ L 121, 15.5.2009, p. 37.'

*Article 2*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 November 2008.

*For the Council*  
*The President*  
M. ALLIOT-MARIE

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## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 6 April 2009

**on the accession of the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001**

(2009/370/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) in conjunction with the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) The Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.

(2) The Convention on international interests in mobile equipment (hereinafter referred to as the 'Cape Town Convention') and its Protocol on matters specific to aircraft equipment (hereinafter referred to as the 'Aircraft Protocol'), adopted jointly in Cape Town on 16 November 2001, make a useful contribution to regulation at the international level in their respective areas. It is therefore desirable that the provisions of the two instruments which concern matters falling within the exclusive competence of the Community should be applied as soon as possible.

(3) The Commission negotiated the Cape Town Convention and the Aircraft Protocol on behalf of the Community, for the parts falling within the exclusive competence of the Community.

(4) Regional economic integration organisations which have competence over certain matters governed by the Cape Town Convention and the Aircraft Protocol may accede to the said Convention and the said Protocol after their entry into force.

(5) Some of the matters governed by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(2)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(3)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(4)</sup> are also dealt with in the Cape Town Convention and the Aircraft Protocol.

(6) The Community has exclusive competence over some of the matters governed by the Cape Town Convention and the Aircraft Protocol, while the Member States have competence over other matters governed by these two instruments.

(7) The Community should therefore accede to the Cape Town Convention and the Aircraft Protocol.

<sup>(1)</sup> Opinion of 18 December 2008 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(3)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(4)</sup> OJ L 177, 4.7.2008, p. 6.

- (8) Article 48 of the Cape Town Convention and Article XXVII of the Aircraft Protocol provide that, at the time of accession, a regional economic integration organisation shall make a declaration specifying the matters governed by the said Convention and the said Protocol in respect of which competence has been transferred to that organisation by its Member States. The Community should therefore make such a declaration at the time of accession to the two instruments.
- (9) Article 55 of the Cape Town Convention provides that a Contracting State may declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. At the time of accession to the said Convention, the Community should make such a declaration.
- (10) Articles X, XI and XII of the Aircraft Protocol apply only where a Contracting State has made a declaration to that effect pursuant to Article XXX of the said Protocol and under the conditions specified by that declaration. At the time of accession to the Aircraft Protocol, the Community should declare that it will not apply Article XII and that it will not be making any declaration pursuant to Article XXX(2) and (3). The competence of the Member States concerning the rules of substantive law as regards insolvency will not be affected.
- (11) The application of Article VIII of the Aircraft Protocol on choice of law is also subject to a declaration which may be made by any Contracting State pursuant to Article XXX(1). At the time of accession to the Aircraft Protocol, the Community should declare that it will not apply Article VIII.
- (12) The United Kingdom will remain bound by the 1980 Rome Convention on the law applicable to contractual obligations <sup>(1)</sup> until such time as it may be bound by the rules of Regulation (EC) No 593/2008. It is assumed that the United Kingdom, if it accedes to the Aircraft Protocol before such time, at the time of accession will make a declaration pursuant to Article XXX(1), which will not prejudice the application of the rules of the said Regulation.
- (13) The United Kingdom and Ireland are taking part in the adoption and application of this Decision.
- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on

European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The Convention on international interests in mobile equipment (hereinafter referred to as the 'Cape Town Convention') and the Protocol on matters specific to aircraft equipment (hereinafter referred to as the 'Aircraft Protocol'), adopted jointly in Cape Town on 16 November 2001, are hereby approved on behalf of the European Community.

The texts of the Cape Town Convention and of the Aircraft Protocol are attached to this Decision.

2. In this Decision, 'Member State' shall mean all the Member States with the exception of Denmark.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the Community, the instruments referred to in Article 47(4) of the Cape Town Convention and in Article XXVI(4) of the Aircraft Protocol.

*Article 3*

1. At the time of accession to the Cape Town Convention, the Community shall make the declarations set out in points I of Annexes I and II.

2. At the time of accession to the Aircraft Protocol, the Community shall make the declarations set out in points II of Annexes I and II.

Done at Luxembourg, 6 April 2009.

*For the Council*

*The President*

J. POSPÍŠIL

<sup>(1)</sup> OJ L 266, 9.10.1980, p. 1.

## ANNEX I

**General declarations concerning the competence of the European Community to be made by the Community at the time of accession to the Convention on international interests in mobile equipment (Cape Town Convention) and the Protocol on matters specific to aircraft equipment (Aircraft Protocol), adopted jointly in Cape Town on 16 November 2001**

- I. Declaration made pursuant to Article 48(2) concerning the competence of the European Community over matters governed by the Convention on international interests in mobile equipment (Cape Town Convention) in respect of which the Member States have transferred their competence to the Community
1. Article 48 of the Cape Town Convention provides that regional economic integration organisations which are constituted by sovereign States and which have competence over certain matters governed by that Convention may accede to it on condition that they make the declaration referred to in Article 48(2). The Community has decided to accede to the Cape Town Convention and is accordingly making that declaration.
  2. The current Members of the Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
  3. However, this Declaration does not apply to the Kingdom of Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community.
  4. This Declaration is not applicable in the case of the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Cape Town Convention by the Member States concerned on behalf and in the interests of those territories.
  5. The Member States of the European Community have transferred their competence to the Community as regards matters which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(2)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(3)</sup>.
  6. At the time of accession to the Cape Town Convention, the Community will not make any of the declarations permitted under the Articles referred to in Article 56 of the said Convention, with the exception of a declaration concerning Article 55. The Member States keep their competence concerning the rules of substantive law as regards insolvency.
  7. The exercise of the competence which the Member States have transferred to the Community pursuant to the Treaty establishing the European Community is, by its nature, liable to continuous development. In the framework of that Treaty, the competent institutions may take decisions which determine the extent of the competence of the Community. The latter therefore reserves the right to amend this Declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Cape Town Convention.
- II. Declaration pursuant to Article XXVII(2) concerning the competence of the European Community over matters governed by the Protocol on matters specific to aircraft equipment (Aircraft Protocol), in respect of which the Member States have transferred their competence to the Community
1. Article XXVII of the Aircraft Protocol provides that regional economic integration organisations which are constituted by sovereign States and which have competence over certain matters governed by that Protocol may accede to it on condition that they make the declaration referred to in Article XXVII(2). The Community has decided to accede to the Aircraft Protocol and is accordingly making that declaration.

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(3)</sup> OJ L 177, 4.7.2008, p. 6.

2. The current Members of the Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
3. However, this Declaration does not apply to the Kingdom of Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community.
4. This Declaration is not applicable in the case of the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Aircraft Protocol by the Member States concerned on behalf and in the interests of those territories.
5. The Member States of the European Community have transferred their competence to the Community as regards matters which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(2)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(3)</sup>.
6. At the time of accession to the Aircraft Protocol, the Community will not make a declaration pursuant to Article XXX(1) concerning the application of Article VIII nor will it make any of the declarations permitted under Article XXX(2) and (3). The Member States keep their competence concerning the rules of substantive law as regards insolvency.
7. The exercise of competence which the Member States have transferred to the Community pursuant to the Treaty establishing the European Community is, by its nature, liable to continuous development. In the framework of that Treaty, the competent institutions may take decisions which determine the extent of the competence of the Community. The latter therefore reserves the right to amend this Declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Aircraft Protocol.

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<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(3)</sup> OJ L 177, 4.7.2008, p. 6.



## ANNEX II

**Declarations to be made by the European Community at the time of accession to the Convention on international interests in mobile equipment (Cape Town Convention) and the Protocol on matters specific to aircraft equipment (Aircraft Protocol) concerning certain provisions and measures contained therein**

- I. Declaration by the European Community pursuant to Article 55 of the Convention on international interests in mobile equipment (Cape Town Convention)

Pursuant to Article 55 of the Cape Town Convention, where the debtor is domiciled in the territory of a Member State of the Community, the Member States bound by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup> will apply Articles 13 and 43 of the Cape Town Convention for interim relief only in accordance with Article 31 of Regulation (EC) No 44/2001 as interpreted by the Court of Justice of the European Communities in the context of Article 24 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters <sup>(2)</sup>.

- II. Declaration by the European Community pursuant to Article XXX of the Protocol on matters specific to aircraft equipment (Aircraft Protocol)

In accordance with Article XXX(5) of the Aircraft Protocol, Article XXI of that Protocol will not apply within the Community and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(3)</sup> will apply to this matter for the Member States bound by the said Regulation or by any other agreement designed to extend its effects.

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<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 299, 31.12.1972, p. 32.

<sup>(3)</sup> OJ L 12, 16.1.2001, p. 1.

**CONVENTION**  
**on international interests in mobile equipment**

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

CHAPTER I

**SPHERE OF APPLICATION AND GENERAL PROVISIONS**

*Article 1*

**Definitions**

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

- |   |   |
|---|---|
| <p>(a) 'agreement' means a security agreement, a title reservation agreement or a leasing agreement;</p> <p>(b) 'assignment' means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;</p> <p>(c) 'associated rights' means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;</p> <p>(d) 'commencement of the insolvency proceedings' means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;</p> | <p>(e) 'conditional buyer' means a buyer under a title reservation agreement;</p> <p>(f) 'conditional seller' means a seller under a title reservation agreement;</p> <p>(g) 'contract of sale' means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;</p> <p>(h) 'court' means a court of law or an administrative or arbitral tribunal established by a Contracting State;</p> <p>(i) 'creditor' means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;</p> <p>(j) 'debtor' means a charger under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;</p> |
|---|---|

- (k) 'insolvency administrator' means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) 'insolvency proceedings' means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) 'interested persons' means:
- (i) the debtor;
- (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (iii) any other person having rights in or over the object;
- (n) 'internal transaction' means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);
- (o) 'international interest' means an interest held by a creditor to which Article 2 applies;
- (p) 'International Registry' means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) 'leasing agreement' means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) 'national interest' means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) 'non-consensual right or interest' means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) 'notice of a national interest' means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) 'object' means an object of a category to which Article 2 applies;
- (v) 'pre-existing right or interest' means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) 'proceeds' means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) 'prospective assignment' means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) 'prospective international interest' means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) 'prospective sale' means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (aa) 'Protocol' means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
- (bb) 'registered' means registered in the International Registry pursuant to Chapter V;
- (cc) 'registered interest' means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (dd) 'registrable non-consensual right or interest' means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;

- (ee) 'Registrar' means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) 'regulations' means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) 'sale' means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) 'secured obligation' means an obligation secured by a security interest;
- (ii) 'security agreement' means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (jj) 'security interest' means an interest created by a security agreement;
- (kk) 'Supervisory Authority' means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) 'title reservation agreement' means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (mm) 'unregistered interest' means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) 'writing' means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person's approval of the record.

#### Article 2

##### The international interest

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under

Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement. An interest falling within subparagraph (a) does not also fall within subparagraph (b) or (c).

3. The categories referred to in the preceding paragraphs are:

- (a) airframes, aircraft engines and helicopters;
- (b) railway rolling stock; and
- (c) space assets.

4. The applicable law determines whether an interest to which paragraph 2 applies falls within subparagraph (a), (b) or (c) of that paragraph.

5. An international interest in an object extends to proceeds of that object.

#### Article 3

##### Sphere of application

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.
2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

#### Article 4

##### Where debtor is situated

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:
  - (a) under the law of which it is incorporated or formed;
  - (b) where it has its registered office or statutory seat;
  - (c) where it has its centre of administration; or
  - (d) where it has its place of business.

2. A reference in subparagraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

#### Article 5

##### Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

#### Article 6

##### Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.

2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

#### CHAPTER II

##### CONSTITUTION OF AN INTERNATIONAL INTEREST

#### Article 7

##### Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;

(c) enables the object to be identified in conformity with the Protocol; and

(d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

#### CHAPTER III

##### DEFAULT REMEDIES

#### Article 8

##### Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
- (b) sell or grant a lease of any such object;
- (c) collect or receive any income or profits arising from the management or use of any such object.

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

3. Any remedy set out in subparagraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.

4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:

- (a) interested persons specified in Article 1(m)(i) and (ii); and
- (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

#### Article 9

##### **Vesting of object in satisfaction; redemption**

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

#### Article 10

##### **Remedies of conditional seller or lessor**

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

(a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or

(b) apply for a court order authorising or directing either of these acts.

#### Article 11

##### **Meaning of default**

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.

2. Where the debtor and the creditor have not so agreed, 'default' for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

#### Article 12

##### **Additional remedies**

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

#### Article 13

##### **Relief pending final determination**

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object; and
- (d) lease or, except where covered by subparagraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.



3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

#### Article 14

##### Procedural requirements

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

#### Article 15

##### Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

#### CHAPTER IV

##### THE INTERNATIONAL REGISTRATION SYSTEM

#### Article 16

##### The International Registry

1. An International Registry shall be established for registrations of:

- (a) international interests, prospective international interests and registrable non-consensual rights and interests;
- (b) assignments and prospective assignments of international interests;
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
- (d) notices of national interests; and
- (e) subordinations of interests referred to in any of the preceding subparagraphs.

2. Different international registries may be established for different categories of object and associated rights.

3. For the purposes of this Chapter and Chapter V, the term 'registration' includes, where appropriate, an amendment, extension or discharge of a registration.

#### Article 17

##### The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.

2. The Supervisory Authority shall:

- (a) establish or provide for the establishment of the International Registry;
- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
- (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
- (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
- (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
- (f) supervise the Registrar and the operation of the International Registry;
- (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
- (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
- (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
- (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).

4. The Supervisory Authority shall own all proprietary rights in the databases and archives of the International Registry.

5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

## CHAPTER V

### OTHER MATTERS RELATING TO REGISTRATION

#### Article 18

##### Registration requirements

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

- (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
- (b) for making searches and issuing search certificates, and, subject thereto;
- (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.

3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry database and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

#### Article 19

##### Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry database so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration shall be searchable in the International Registry database according to the criteria prescribed by the Protocol.

#### Article 20

##### Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.



*Article 21***Duration of registration**

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

*Article 22***Searches**

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the International Registry relating thereto.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

*Article 23***List of declarations and declared non-consensual rights or interests**

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

*Article 24***Evidentiary value of certificates**

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

(a) that it has been so issued; and

(b) of the facts recited in it, including the date and time of a registration.

*Article 25***Discharge of registration**

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

*Article 26***Access to the international registration facilities**

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

## CHAPTER VI

**PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR***Article 27***Legal personality; immunity**

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.

3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.

(b) For the purposes of this paragraph, 'host State' means the State in which the Supervisory Authority is situated.

4. The assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

#### CHAPTER VII

##### LIABILITY OF THE REGISTRAR

###### Article 28

##### Liability and financial assurances

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

#### CHAPTER VIII

##### EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

###### Article 29

##### Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest; and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. The conditional buyer or lessee acquires its interest in or right over that object:

(a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and

(b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

6. Any priority given by this Article to an interest in an object extends to proceeds.

7. This Convention:

- (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
- (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

#### Article 30

##### Effects of insolvency

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. Nothing in this Article affects:

- (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
- (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

#### CHAPTER IX

##### ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS; RIGHTS OF SUBROGATION

#### Article 31

##### Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:

- (a) the related international interest; and
- (b) all the interests and priorities of the assignor under this Convention.

2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.

3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.

5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

#### Article 32

##### Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:

- (a) is in writing;
- (b) enables the associated rights to be identified under the contract from which they arise; and
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.

3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

#### Article 33

##### Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
- (b) the notice identifies the associated rights.

2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in this Article shall affect the priority of competing assignments.

#### Article 34

##### **Default remedies in respect of assignment by way of security**

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

#### Article 35

##### **Priority of competing assignments**

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

#### Article 36

##### **Assignee's priority with respect to associated rights**

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an object.

2. For the purposes of subparagraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding subparagraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

#### Article 37

##### **Effects of assignor's insolvency**

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

#### Article 38

##### **Subrogation**

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

#### CHAPTER X

##### RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING STATES

###### Article 39

###### Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

- (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
- (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under subparagraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

###### Article 40

###### Registrable non-consensual rights or interests

A Contracting State may at any time in a declaration deposited with the Depositary of the Protocol list the categories of non-

consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

#### CHAPTER XI

##### APPLICATION OF THE CONVENTION TO SALES

###### Article 41

###### Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

#### CHAPTER XII

##### JURISDICTION

###### Article 42

###### Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

###### Article 43

###### Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.

2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:

- (a) by the courts chosen by the parties; or
- (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.



*Article 44***Jurisdiction to make orders against the Registrar**

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.

2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

*Article 45***Jurisdiction in respect of insolvency proceedings**

The provisions of this Chapter are not applicable to insolvency proceedings.

## CHAPTER XIII

**RELATIONSHIP WITH OTHER CONVENTIONS***Article 45bis***Relationship with the United Nations Convention on the assignment of receivables in international trade**

This Convention shall prevail over the United Nations Convention on the assignment of receivables in international trade, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

*Article 46***Relationship with the Unidroit Convention on international financial leasing**

The Protocol may determine the relationship between this Convention and the Unidroit Convention on international financial leasing, signed at Ottawa on 28 May 1988.

## CHAPTER XIV

**FINAL PROVISIONS***Article 47***Signature, ratification, acceptance, approval or accession**

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (Unidroit) in Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

*Article 48***Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a 'Contracting State' or 'Contracting States' or 'State Party' or 'States Parties' in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

*Article 49***Entry into force**

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

- (a) as from the time of entry into force of that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of subparagraphs (a), (b) and (c) of the preceding paragraph.

*Article 50***Internal transactions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.

2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

*Article 51***Future Protocols**

1. The Depositary may create working groups, in cooperation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 45bis of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

*Article 52***Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;
- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

#### Article 53

##### **Determination of courts**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant 'court' or 'courts' for the purposes of Article 1 and Chapter XII of this Convention.

#### Article 54

##### **Declarations regarding remedies**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.
2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

#### Article 55

##### **Declarations regarding relief pending final determination**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

#### Article 56

##### **Reservations and declarations**

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depository.

#### Article 57

##### **Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depository to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depository.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

#### Article 58

##### **Withdrawal of declarations**

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depository. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository.
2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

#### Article 59

##### **Denunciations**

1. Any State Party may denounce this Convention by notification in writing to the Depository.



2. Any such denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which notification is received by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

#### Article 60

##### Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.

2. For the purposes of Article 1(v) and of determining priority under this Convention:

(a) 'effective date of this Convention' means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in subparagraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

#### Article 61

##### Review conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than 25 per cent of the States Parties, review conferences of States Parties shall be convened

from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

#### Article 62

##### Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (Unidroit), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) each declaration made in accordance with this Convention, together with the date thereof;

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- (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
- (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.
- IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.
- DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.
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## PROTOCOL

### to the Convention on international interests in mobile equipment on matters specific to aircraft equipment

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the Convention on international interests in mobile equipment (hereinafter referred to as 'the Convention') as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft equipment:

#### CHAPTER I

#### SPHERE OF APPLICATION AND GENERAL PROVISIONS

##### Article I

##### Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. In this Protocol the following terms are employed with the meanings set out below:

(a) 'aircraft' means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

(b) 'aircraft engines' means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1 750 lb of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;

(c) 'aircraft objects' means airframes, aircraft engines and helicopters;

(d) 'aircraft register' means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;

(e) 'airframes' means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2 750 kilograms, together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

(f) 'authorised party' means the party referred to in Article XIII(3);

(g) 'Chicago Convention' means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended, and its Annexes;

(h) 'common mark registering authority' means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organisation on nationality and registration of aircraft operated by international operating agencies;

(i) 'de-registration of the aircraft' means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;

(j) 'guarantee contract' means a contract entered into by a person as guarantor;

- (k) 'guarantor' means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (l) 'helicopters' means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
- (i) at least five (5) persons including crew; or
- (ii) goods in excess of 450 kilograms, together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;
- (m) 'insolvency-related event' means:
- (i) the commencement of the insolvency proceedings; or
- (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor's right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (n) 'primary insolvency jurisdiction' means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be deemed to be the place of the debtor's statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;
- (o) 'registry authority' means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and
- (p) 'State of registry' means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

#### Article II

##### Application of Convention as regards aircraft objects

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. The Convention and this Protocol shall be known as the Convention on international interests in mobile equipment as applied to aircraft objects.

#### Article III

##### Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

— Articles 3 and 4,

— Article 16(1)(a),

— Article 19(4),

— Article 20(1) (as regards registration of a contract of sale or a prospective sale),

— Article 25(2) (as regards a prospective sale), and

— Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

#### Article IV

##### Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. For the purposes of the definition of 'internal transaction' in Article 1 of the Convention:

- (a) an airframe is located in the State of registry of the aircraft of which it is a part;

(b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and

(c) a helicopter is located in its State of registry, at the time of the conclusion of the agreement creating or providing for the interest.

3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX(2)-(4).

#### Article V

##### Formalities, effects and registration of contracts of sale

1. For the purposes of this Protocol, a contract of sale is one which:

(a) is in writing;

(b) relates to an aircraft object of which the seller has power to dispose; and

(c) enables the aircraft object to be identified in conformity with this Protocol.

2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

#### Article VI

##### Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

#### Article VII

##### Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

#### Article VIII

##### Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

#### CHAPTER II

##### DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

#### Article IX

##### Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

(a) procure the de-registration of the aircraft; and

(b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.

2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

4. A chargee giving 10 or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing 'reasonable prior notice' specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a charger a guarantor from agreeing to a longer period of prior notice.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

- (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
- (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

#### Article X

##### Modification of provisions regarding relief pending final determination

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, 'speedy' in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):

'(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom', and Article 43(2) applies with the insertion after the words 'Article 13(1)(d)' of the words '(e)'.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other

interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

6. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

#### Article XI

##### Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

##### Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. For the purposes of this Article, the 'waiting period' shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. References in this Article to the 'insolvency administrator' shall be to that person in its official, not in its personal, capacity.



5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Subparagraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article IX(1):

- (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
- (b) the applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

#### Alternative B

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXX(3) whether it will:

- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
- (b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.

3. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

#### Article XII

##### Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

*Article XIII***De-registration and export request authorisation**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.
3. The person in whose favour the authorisation has been issued (the 'authorised party') or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously cooperate with and assist the authorised party in the exercise of the remedies specified in Article IX.

*Article XIV***Modification of priority provisions**

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

*Article XV***Modification of assignment provisions**

Article 33(1) of the Convention applies as if the following were added immediately after subparagraph (b):

'and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.'

*Article XVI***Debtor provisions**

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:
  - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
  - (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

## CHAPTER III

**REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS***Article XVII***The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.



5. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

#### *Article XVIII*

##### **First regulations**

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

#### *Article XIX*

##### **Designated entry points**

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

#### *Article XX*

##### **Additional modifications to Registry provisions**

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a 24-

hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

#### CHAPTER IV

#### **JURISDICTION**

##### *Article XXI*

##### **Modification of jurisdiction provisions**

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

##### *Article XXII*

##### **Waivers of sovereign immunity**

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

#### CHAPTER V

#### **RELATIONSHIP WITH OTHER CONVENTIONS**

##### *Article XXIII*

##### **Relationship with the Convention on the international recognition of rights in aircraft**

The Convention shall, for a Contracting State that is a party to the Convention on the international recognition of rights in aircraft, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

*Article XXIV***Relationship with the Convention for the unification of certain rules relating to the precautionary attachment of aircraft**

1. The Convention shall, for a Contracting State that is a Party to the Convention for the unification of certain rules relating to the precautionary attachment of aircraft, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.
2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

*Article XXV***Relationship with the Unidroit Convention on international financial leasing**

The Convention shall supersede the Unidroit Convention on international financial leasing, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

## CHAPTER VI

## FINAL PROVISIONS

*Article XXVI***Signature, ratification, acceptance, approval or accession**

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (Unidroit) in Rome until it enters into force in accordance with Article XXVIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

*Article XXVII***Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and

obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a 'Contracting State' or 'Contracting States' or 'State Party' or 'States Parties' in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

*Article XXVIII***Entry into force**

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.
2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

*Article XXIX***Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

#### *Article XXX*

##### **Declarations relating to certain provisions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.
4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

#### *Article XXXI*

##### **Declarations under the Convention**

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

#### *Article XXXII*

##### **Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

#### *Article XXXIII*

##### **Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article XXXIV***Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

*Article XXXV***Denunciations**

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of 12 months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XXXVI***Review conferences, amendments and related matters**

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than 25 per cent of the States Parties, review conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-

based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

*Article XXXVII***Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (Unidroit), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

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## ANNEX

**FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION**

Annex referred to in Article XIII

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner] (\*) of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the 'aircraft').

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] ('the authorised party') under the authority of Article XIII of the Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
  - (a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the Convention on international civil aviation, signed at Chicago, on 7 December 1944, and
  - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall cooperate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

Agreed to and lodged this

By: [insert name of signatory]

[insert date]

Its: [insert title of signatory]

[insert relevant notational details]

(\*) Select the term that reflects the relevant nationality registration criterion.



## III

*(Acts adopted under the EU Treaty)*

## ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

## COUNCIL DECISION

of 6 April 2009

**establishing the European Police Office (Europol)**

(2009/371/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(b), Article 30(2) and Article 34(2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992, and regulated in the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) <sup>(2)</sup>.
- (2) The Europol Convention has been the subject of a number of amendments enshrined in three protocols which have entered into force after a lengthy process of ratification. Consequently, replacing the Convention by a Decision will ease further amendments as necessary.
- (3) Simplification and improvement of Europol's legal framework can be partially achieved by the establishment of Europol as an entity of the Union, funded from the general budget of the European Union, due to the subsequent application of the general rules and procedures.
- (4) Recent legal instruments setting up similar Union entities in the areas covered by Title VI of the Treaty on European Union (Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime <sup>(3)</sup> and Decision 2005/681/JHA of 20 September 2005 estab-

lishing the European Police College (CEPOL) <sup>(4)</sup> have taken the form of Council Decisions, since such Decisions are more easily adaptable to changing circumstances and emerging political priorities.

- (5) Establishing Europol as an entity of the Union, funded from the general budget of the European Union, will enhance the role of the European Parliament in the control of Europol through the involvement of the European Parliament in the adoption of that budget, including the establishment plan, and the discharge procedure.
- (6) Making Europol subject to the general rules and procedures applicable to similar Union entities will ensure administrative simplification, which will allow Europol to devote more of its resources to its core tasks.
- (7) Further simplification and improvement of Europol's functioning can be achieved through measures aimed at widening the possibilities for Europol's assisting and supporting the competent law enforcement authorities of the Member States, without providing for executive powers for Europol staff.
- (8) One such improvement is to ensure that Europol can assist the competent authorities of the Member States in combating specific forms of serious crime, without the current limitation that there must be factual indications that an organised criminal structure is involved.
- (9) The establishment of joint investigation teams should be encouraged and it is important that Europol staff should be able to participate in them. To ensure that such participation is possible in every Member State, it should be guaranteed that Europol staff do not benefit from the application of immunities while they are participating in a support capacity in joint investigation teams. That will be possible after the adoption of a Regulation to that effect on the basis of Article 16 of the Protocol on the Privileges and Immunities of the European Communities.
- (10) Europol national units should have direct access to all data in the Europol Information System to avoid unnecessary procedures.

<sup>(1)</sup> Opinion of 17 January 2008 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 316, 27.11.1995, p. 1.

<sup>(3)</sup> OJ L 63, 6.3.2002, p. 1.

<sup>(4)</sup> OJ L 256, 1.10.2005, p. 63.

- (11) In order to achieve its objectives, Europol processes personal data by automated means or in structured manual files. Accordingly, the necessary steps should be taken to guarantee a level of data protection which corresponds at least to that which results from the application of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981, together with subsequent amendments thereto, once such amendments are in force between the Member States.
- (12) A Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters will be applicable to the transfer of personal data by Member States to Europol. The relevant set of data-protection provisions in this Decision will not be affected by that Framework Decision and this Decision should contain specific provisions on the protection of personal data regulating these matters in greater detail because of the particular nature, functions and competences of Europol.
- (13) There is a need for a Data Protection Officer who should be responsible for ensuring, in an independent manner, the lawfulness of data processing and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff which are protected by Article 24 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(1)</sup>.
- (14) Europol's existing possibilities for the creation and management of information processing systems in support of its tasks should be widened. Such additional information processing systems should be established and maintained in accordance with the general principles of data protection enshrined in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and in Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987, by means of a Management Board decision approved by the Council.
- (15) This Decision allows the principle of public access to official documents to be taken into account.
- (16) For the purpose of fulfilling its mission, Europol should cooperate with European institutions, bodies, offices and agencies, including Eurojust, ensuring an adequate level of data protection.
- (17) Europol should be able to conclude agreements and working arrangements with Union or Community institutions, bodies, offices and agencies in order to increase mutual effectiveness in combating serious forms of crime which come within the respective competence of both parties and to avoid the duplication of work.
- (18) Europol's possibilities for cooperation with third States and organisations should be rationalised in order to ensure consistency with the general policy of the Union in that respect and new provisions on the manner in which such cooperation should take place in future should be laid down.
- (19) The governance of Europol should be improved through simplified procedures, more general descriptions of the tasks of the Management Board and the establishment of a common rule that all decisions should be taken by a majority of two thirds.
- (20) It is also desirable to provide for enhanced control over Europol by the European Parliament in order to ensure that Europol remains a fully accountable and transparent organisation, due account being taken of the need to safeguard the confidentiality of operational information.
- (21) Judicial control over Europol will be exercised in accordance with Article 35 of the Treaty on European Union.
- (22) In order to enable Europol to continue to fulfil its tasks to the best of its abilities, carefully designed transitional measures should be laid down.
- (23) Since the objective of this Decision, namely the establishment of an entity responsible for law-enforcement cooperation at Union level, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty establishing the European Community and referred to in Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Decision does not go beyond what is necessary in order to achieve that objective.

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

(24) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

For the purposes of this Decision, 'competent authorities' shall mean all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

HAS DECIDED AS FOLLOWS:

#### CHAPTER I

### ESTABLISHMENT AND TASKS

#### Article 1

##### Establishment

1. This Decision replaces the provisions of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention).

Europol shall have its seat in The Hague, the Netherlands.

2. Europol, as referred to in this Decision, shall be regarded as the legal successor of Europol, as established by the Europol Convention.

3. Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article 8.

#### Article 2

##### Legal capacity

1. Europol shall have legal personality.

2. In each Member State Europol shall enjoy the most extensive legal and contractual capacity accorded to legal persons under that Member State's law. Europol may, in particular, acquire and dispose of movable and immovable property and may be a party to legal proceedings.

3. Europol shall be empowered to conclude a Headquarters Agreement with the Kingdom of the Netherlands.

#### Article 3

##### Objective

The objective of Europol shall be to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.

#### Article 4

##### Competence

1. Europol's competence shall cover organised crime, terrorism and other forms of serious crime as listed in the Annex affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences.

2. On a recommendation by the Management Board, the Council shall lay down its priorities for Europol, taking particular account of strategic analyses and threat assessments prepared by Europol.

3. Europol's competence shall also cover related criminal offences. The following offences shall be regarded as related criminal offences:

- (a) criminal offences committed in order to procure the means of perpetrating acts in respect of which Europol is competent;
- (b) criminal offences committed in order to facilitate or carry out acts in respect of which Europol is competent;
- (c) criminal offences committed to ensure the impunity of acts in respect of which Europol is competent.

#### Article 5

##### Tasks

1. Europol shall have the following principal tasks:

- (a) to collect, store, process, analyse and exchange information and intelligence;
- (b) to notify the competent authorities of the Member States without delay via the national unit referred to in Article 8 of information concerning them and of any connections identified between criminal offences;
- (c) to aid investigations in the Member States, in particular by forwarding all relevant information to the national units;

- (d) to ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations and to suggest the setting up of joint investigation teams in specific cases;
- (e) to provide intelligence and analytical support to Member States in connection with major international events;
- (f) to prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organised crime threat assessments.

2. The tasks referred to in paragraph 1 shall include providing support to Member States in their tasks of gathering and analysing information from the Internet in order to assist in the identification of criminal activities facilitated by or committed using the Internet.

3. Europol shall have the following additional tasks:

- (a) to develop specialist knowledge of the investigative procedures of the competent authorities of the Member States and to provide advice on investigations;
- (b) to provide strategic intelligence to assist and promote the efficient and effective use of the resources available at national and Union level for operational activities and the support of such activities.

4. Additionally, in the context of its objective under Article 3, Europol may, in accordance with the staffing and budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through support, advice and research in the following areas:

- (a) the training of members of their competent authorities, where appropriate in cooperation with the European Police College;
- (b) the organisation and equipment of those authorities by facilitating the provision of technical support between the Member States;
- (c) crime prevention methods;
- (d) technical and forensic methods and analysis, and investigative procedures.

5. Europol shall also act as the Central Office for combating euro counterfeiting in accordance with Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting<sup>(1)</sup>. Europol may also encourage the coordination of measures carried out in order to fight euro counterfeiting by the competent authorities of the

Member States or in the context of joint investigation teams, where appropriate in liaison with Union entities and third States' bodies. Upon request, Europol may financially support investigations of euro counterfeiting.

#### Article 6

##### Participation in joint investigation teams

1. Europol staff may participate in supporting capacity in joint investigation teams, including such teams set up in accordance with Article 1 of Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams<sup>(2)</sup>, in accordance with Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union<sup>(3)</sup>, or in accordance with Article 24 of the Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations<sup>(4)</sup>, in so far as those teams are investigating criminal offences in respect of which Europol is competent under Article 4 of this Decision.

Europol staff may, within the limits provided for by the law of the Member States in which a joint investigation team is operating and in accordance with the arrangement referred to in paragraph 2, assist in all activities and exchange information with all members of the joint investigation team, in accordance with paragraph 4. They shall not, however, take part in the taking of any coercive measures.

2. The administrative implementation of participation by Europol staff in a joint investigation team shall be laid down in an arrangement between the Director and the competent authorities of the Member States participating in the joint investigation team, with the involvement of the national units. The rules governing such arrangements shall be determined by the Management Board.

3. The rules referred to in paragraph 2 shall specify the conditions under which Europol staff are placed at the disposal of the joint investigation team.

4. In accordance with the arrangement referred to in paragraph 2, Europol staff may liaise directly with members of a joint investigation team and provide members and seconded members of the joint investigation team, in accordance with this Decision, with information from any of the components of the information processing systems referred to in Article 10. In the event of such direct liaison, Europol shall at the same time inform the national units of the Member States represented in the team as well as those of the Member States which provided the information thereof.

<sup>(1)</sup> OJ L 185, 16.7.2005, p. 35.

<sup>(2)</sup> OJ L 162, 20.6.2002, p. 1.

<sup>(3)</sup> OJ C 197, 12.7.2000, p. 3.

<sup>(4)</sup> OJ C 24, 23.1.1998, p. 2.

5. Information obtained by a Europol staff member while part of a joint investigation team may, with the consent and under the responsibility of the Member State which provided the information, be included in any of the components of the information processing systems referred to in Article 10 under the conditions laid down in this Decision.

6. During the operations of a joint investigation team, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

#### Article 7

##### **Requests by Europol for the initiation of criminal investigations**

1. Member States shall deal with any request by Europol to initiate, conduct or coordinate investigations in specific cases and shall give such requests due consideration. The Member States shall inform Europol whether the investigation requested will be initiated.

2. Before making a request for the initiation of criminal investigations, Europol shall inform Eurojust accordingly.

3. If the competent authorities of the Member State decide not to comply with a request made by Europol, they shall inform Europol of their decision and of the reasons therefor unless they are unable to give their reasons because:

(a) to do so would harm essential national security interests; or

(b) to do so would jeopardise the success of investigations under way or the safety of individuals.

4. Replies to requests by Europol for the initiation, conduct or coordination of investigations in specific cases and information for Europol concerning the results of investigations shall be forwarded through the competent authorities of the Member States in accordance with the rules laid down in this Decision and the relevant national legislation.

#### Article 8

##### **National units**

1. Each Member State shall establish or designate a national unit responsible for carrying out the tasks set out in this Article. An official shall be appointed in each Member State as the head of the national unit.

2. The national unit shall be the only liaison body between Europol and the competent authorities of the Member States. Member States, however, may allow direct contacts between designated competent authorities and Europol subject to conditions determined by the Member State in question, including prior involvement of the national unit.

The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relations between the national unit and the competent authorities shall be governed by national law, and in particular, the relevant national constitutional requirements.

3. Member States shall take the measures necessary to ensure that their national units are able to fulfil their tasks and, in particular, have access to relevant national data.

4. The national units shall:

(a) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;

(b) respond to Europol's requests for information, intelligence and advice;

(c) keep information and intelligence up to date;

(d) evaluate information and intelligence in accordance with national law for the competent authorities and transmit that material to them;

(e) issue requests for advice, information, intelligence and analysis to Europol;

(f) supply Europol with information for storage in its databases;

(g) ensure compliance with the law in every exchange of information between themselves and Europol.

5. Without prejudice to the Member States' discharging the responsibilities incumbent upon them with regard to the maintenance of law and order and the safeguarding of internal security, a national unit shall not in any particular case be obliged to supply information or intelligence if that would entail:

(a) harming essential national security interests;



- (b) jeopardising the success of a current investigation or the safety of individuals; or
- (c) disclosing information relating to organisations or specific intelligence activities in the field of State security.

6. The costs incurred by the national units in communications with Europol shall be borne by the Member States and, apart from the costs of connection, shall not be charged to Europol.

7. The heads of the national units shall meet on a regular basis to assist Europol on operational matters, on their own initiative or at the request of the Management Board or the Director, in particular to:

- (a) consider and develop proposals that will improve Europol's operational effectiveness and encourage commitment from Member States;
- (b) evaluate the reports and analyses drafted by Europol in accordance with Article 5(1)(f) and develop measures in order to help to implement their findings;
- (c) provide support in the establishment of joint investigation teams involving Europol in accordance with Article 5(1)(d) and Article 6.

#### Article 9

##### **Liaison officers**

1. Each national unit shall second at least one liaison officer to Europol. Except as otherwise stipulated in specific provisions of this Decision, liaison officers shall be subject to the national law of the seconding Member State.

2. Liaison officers shall constitute the national liaison bureaux at Europol and shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and the provisions applicable to the administration of Europol.

3. Without prejudice to Article 8(4) and (5), liaison officers shall:

- (a) provide Europol with information from the seconding national unit;
- (b) forward information from Europol to the seconding national unit;
- (c) cooperate with Europol staff by providing information and giving advice; and

(d) assist in the exchange of information from their national units with the liaison officers of other Member States under their responsibility in accordance with national law. Such bilateral exchanges may also cover crimes outwith the competence of Europol, as far as allowed by national law.

4. Article 35 shall apply *mutatis mutandis* to the activities of liaison officers.

5. The rights and obligations of liaison officers in relation to Europol shall be determined by the Management Board.

6. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 51(2).

7. Europol shall ensure that liaison officers are fully informed of and associated with all of its activities, as far as that is compatible with their position.

8. Europol shall provide Member States free of charge with the necessary premises in the Europol building and adequate support for the performance of the activities of their liaison officers. All other costs which arise in connection with the secondment of liaison officers shall be borne by the seconding Member State, including the costs of equipment for liaison officers, unless the Management Board recommends otherwise in specific cases when drawing up Europol's budget.

## CHAPTER II

### **INFORMATION PROCESSING SYSTEMS**

#### Article 10

##### **Information processing**

1. In so far as it is necessary for the achievement of its objectives, Europol shall process information and intelligence, including personal data, in accordance with this Decision. Europol shall establish and maintain the Europol Information System referred to in Article 11 and the analysis work files referred to in Article 14. Europol may also establish and maintain other systems processing personal data set up in accordance with paragraphs 2 and 3 of this Article.

2. The Management Board, acting on a proposal from the Director after having taken into account the possibilities offered by existing Europol information processing systems and after consulting the Joint Supervisory Body, shall decide on the establishment of a new system processing personal data. That Management Board decision shall be submitted to the Council for approval.



3. The Management Board decision referred to in paragraph 2 shall determine the conditions and limitations under which Europol may establish the new system processing personal data. The Management Board decision may allow processing of personal data relating to the categories of persons referred to in Article 14(1), but not the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life. The Management Board decision shall ensure that the measures and principles referred to in Articles 18, 19, 20, 27, 29 and 35 are properly implemented. In particular, the Management Board decision shall define the purpose of the new system, access to and the use of the data, as well as time limits for the storage and deletion of the data.

4. Europol may process data for the purpose of determining whether such data are relevant to its tasks and can be included in the Europol Information System referred to in Article 11, in the analysis work files referred to in Article 14 or in other systems processing personal data established in accordance with paragraphs 2 and 3 of this Article. The Management Board, acting on a proposal from the Director and after consulting the Joint Supervisory Body, shall determine the conditions relating to the processing of such data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 27. That Management Board decision shall be submitted to the Council for approval.

#### Article 11

##### Europol Information System

1. Europol shall maintain the Europol Information System.

2. Europol shall ensure compliance with the provisions of this Decision governing operation of the Europol Information System. It shall be responsible for the proper working of the Europol Information System in technical and operational respects and shall, in particular, take all measures necessary to ensure that the measures referred to in Articles 20, 29, 31 and 35 regarding the Europol Information System are properly implemented.

3. The national unit in each Member State shall be responsible for communication with the Europol Information System. It shall, in particular, be responsible for the security measures referred to in Article 35 in respect of the data-processing equipment used within the territory of the Member State in question, for the review provided for in Article 20 and, in so far as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Decision in other respects.

#### Article 12

##### Content of the Europol Information System

1. The Europol Information System may be used to process only such data as are necessary for the performance of Europol's tasks. The data input shall relate to:

- (a) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent or who have been convicted of such an offence;
- (b) persons regarding whom there are factual indications or reasonable grounds under the national law of the Member State concerned to believe that they will commit criminal offences in respect of which Europol is competent.

2. Data relating to the persons referred to in paragraph 1 may include only the following particulars:

- (a) surname, maiden name, given names and any alias or assumed name;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) place of residence, profession and whereabouts of the person concerned;
- (f) social security numbers, driving licences, identification documents and passport data; and
- (g) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change such as dactyloscopic data and DNA profile (established from the non-coding part of DNA).

3. In addition to the data referred to in paragraph 2, the Europol Information System may also be used to process the following particulars concerning the persons referred to in paragraph 1:

- (a) criminal offences, alleged criminal offences and when, where and how they were (allegedly) committed;

- (b) means which were or may be used to commit those criminal offences including information concerning legal persons;
- (c) departments handling the case and their filing references;
- (d) suspected membership of a criminal organisation;
- (e) convictions, where they relate to criminal offences in respect of which Europol is competent;
- (f) inputting party.

These data may also be input when they do not yet contain any references to persons. Where Europol inputs the data itself, as well as when it gives its filing reference, it shall also indicate the source of the data.

4. Additional information held by Europol or national units concerning the persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

Where the additional information concerns one or more related criminal offences as defined in Article 4(3), the data stored in the Europol Information System shall be marked accordingly to enable national units and Europol to exchange information concerning the related criminal offences.

5. If proceedings against the person concerned are definitively dropped or if that person is definitively acquitted, the data relating to the case in respect of which either decision has been taken shall be deleted.

#### Article 13

##### Use of the Europol Information System

1. National units, liaison officers, the Director, Deputy Directors and duly empowered Europol staff shall have the right to input data directly into the Europol Information System and retrieve them from it. Data may be retrieved by Europol where that is necessary for the performance of its tasks in a particular case. Retrieval by the national units and liaison officers shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the accessing party, subject to any additional provisions laid down in this Decision.

2. Only the party which has input data may modify, correct or delete such data. Where another party has reason to believe that data as referred to in Article 12(2) are incorrect or wishes to supplement them, it shall immediately inform the inputting party. The inputting party shall examine such information

without delay and if necessary modify, supplement, correct or delete the data immediately.

3. Where the system contains data as referred to in Article 12(3) concerning a person, any party may input additional data as referred to in that provision. Where there is an obvious contradiction between the data input, the parties concerned shall consult each other and reach agreement.

4. Where a party intends to delete altogether data as referred to in Article 12(2) which it has input concerning a person and data as referred to in Article 12(3) in respect of the same person have been input by other parties, responsibility in terms of data-protection legislation pursuant to Article 29(1) and the right to modify, supplement, correct and delete such data pursuant to Article 12(2) shall be transferred to the next party to have input data as referred to in Article 12(3) on that person. The party intending to delete shall inform the party to which responsibility in terms of data protection is transferred of its intention.

5. Responsibility for the permissibility of retrieval from, input into and modifications within the Europol Information System shall lie with the retrieving, inputting or modifying party. It must be possible to identify that party. The communication of information between national units and the competent authorities of the Member States shall be governed by national law.

6. In addition to the national units and persons referred to in paragraph 1, competent authorities designated to that effect by the Member States may also query the Europol Information System. However, the result of the query shall indicate only whether the data requested are available in the Europol Information System. Further information may then be obtained via the national unit.

7. Information concerning the competent authorities designated in accordance with paragraph 6, including subsequent modifications, shall be transmitted to the General Secretariat of the Council, which shall publish the information in the *Official Journal of the European Union*.

#### Article 14

##### Analysis work files

1. Where this is necessary for the performance of its tasks, Europol may store, modify, and use data concerning criminal offences in respect of which it is competent, including data on the related criminal offences referred to in Article 4(3), in analysis work files. The analysis work files may contain data on the following categories of persons:

- (a) persons as referred to in Article 12(1);

- (b) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;
- (c) persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason to believe that they could be the victims of such an offence;
- (d) contacts and associates; and
- (e) persons who can provide information on the criminal offences under consideration.

The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life shall not be permitted unless strictly necessary for the purposes of the file concerned and unless such data supplement other personal data already input in that file. The selection of a particular group of persons solely on the basis of the abovementioned sensitive data, in breach of the aforementioned rules with regard to purpose, shall be prohibited.

The Council, acting by qualified majority after consulting the European Parliament, shall adopt implementing rules for analysis work files prepared by the Management Board, which shall previously have obtained the opinion of the Joint Supervisory Body, containing additional details, in particular with regard to the categories of personal data referred to in this Article, to the security of the data concerned and to the internal supervision of their use.

2. Analysis work files shall be opened for the purposes of analysis defined as the assembly, processing or use of data with the aim of assisting criminal investigations. Each analysis project shall entail the establishment of an analysis group closely associating the following participants:

- (a) analysts and other Europol staff designated by the Director;
- (b) liaison officers and/or experts from the Member States supplying the information or concerned by the analysis within the meaning of paragraph 4.

Only analysts shall be authorised to input data into the file concerned and modify such data. All participants in the analysis group may retrieve data from the file.

3. At the request of Europol or on their own initiative, national units shall, subject to Article 8(5), communicate to Europol all the information which it may require for the

purpose of a particular analysis work file. Member States shall communicate such data only where processing thereof for the purposes of preventing, analysing or combating offences is also authorised by their national law. Depending on their degree of urgency, data from designated competent authorities may be routed directly to the analysis work file in accordance with Article 8(2).

4. If an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof, in particular through the communication of reports drawn up by Europol.

If the analysis bears on specific cases not concerning all Member States and has a direct operational aim, representatives of the following Member States shall participate therein:

- (a) Member States which were the source of the information giving rise to the decision to open the analysis work file, or those which are directly concerned by that information, and Member States subsequently invited by the analysis group to take part in the analysis because they are also becoming concerned;
- (b) Member States which learn from consulting the index function referred to in Article 15 that they need to be informed and assert that need to know under the conditions laid down in paragraph 5 of this Article.

5. The need to be informed may be claimed by authorised liaison officers. Each Member State shall nominate and authorise a limited number of such liaison officers.

A liaison officer shall claim the need to be informed as provided for in point (b) of the second subparagraph of paragraph 4 by means of a written reasoned statement approved by the authority to which he is subordinate in his Member State and forwarded to all the participants in the analysis. He shall then be associated automatically in the analysis in progress.

If an objection is raised in the analysis group, automatic association shall be deferred until the completion of a conciliation procedure, which shall comprise three stages as follows:

- (a) the participants in the analysis shall endeavour to reach agreement with the liaison officer claiming the need to be informed. They shall have no more than eight days for that purpose;
- (b) if no agreement is reached, the heads of the national units concerned and the Director shall meet within three days and try to reach agreement;

(c) if the disagreement persists, the representatives of the parties concerned on the Management Board shall meet within eight days. If the Member State concerned does not waive its need to be informed, association of that Member State shall be decided on by consensus.

6. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof and shall be entitled to determine the conditions for the handling of the data. Any dissemination or operational use of data communicated shall be decided on by the Member State that communicated the data to Europol. If it cannot be determined which Member State communicated the data to Europol, the decision on dissemination or operational use of data shall be taken by the participants in the analysis. A Member State or an associated expert joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.

7. By way of derogation from paragraph 6, in cases in which Europol finds, after the time of inclusion of data in an analysis work file, that those data relate to a person or object on which data submitted by another Member State or third party were already input in the file, the Member State or third party concerned shall be informed immediately of the link identified, in accordance with Article 17.

8. Europol may invite experts from the entities referred to in Articles 22(1) or 23(1) to be associated with the activities of an analysis group, where:

- (a) an agreement or working arrangement such as referred to in Articles 22(2) and 23(2) which contains appropriate provisions on the exchange of information, including the transmission of personal data, and on the confidentiality of exchanged information, is in force between Europol and the entity concerned;
- (b) the association of the experts from the entity is in the interest of the Member States;
- (c) the entity is directly concerned by the analysis work; and
- (d) all participants agree on the association of the experts from the entity with the activities of the analysis group.

Under the conditions laid down in points (b), (c) and (d) of the first subparagraph, Europol shall invite experts of the European Anti-Fraud Office to be associated with the activities of the analysis group if the analysis project concerns fraud or any other illegal activities affecting the financial interests of the European Communities.

The association of experts from an entity with the activities of an analysis group shall be subject to an arrangement between Europol and the entity. The rules governing such arrangements shall be determined by the Management Board.

Details of the arrangements between Europol and entities shall be sent to the Joint Supervisory Body, which may address any comments it deems necessary to the Management Board.

#### Article 15

##### **Index function**

1. An index function shall be created by Europol for the data stored in the analysis work files.
2. The Director, the Deputy Directors, duly empowered Europol staff, liaison officers and duly empowered members of national units shall have the right to access the index function. The index function shall be such that it is clear to the person using it, from the data being consulted, whether an analysis work file contains data which are of interest for the performance of the tasks of the person using the index function.
3. Access to the index function shall be defined in such a way that it is possible to determine whether or not an item of information is stored in an analysis work file, but not to establish connections or further conclusions regarding the content of the file.
4. The Management Board shall define the detailed procedures for the design of the index function, including the conditions of access to the index function, after obtaining the advice of the Joint Supervisory Body.

#### Article 16

##### **Order opening an analysis work file**

1. For every analysis work file, the Director shall specify in an order opening the file:
  - (a) the file name;
  - (b) the purpose of the file;
  - (c) the groups of persons concerning whom data are stored;
  - (d) the nature of the data to be stored and personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and data concerning health or sex life which are strictly necessary;

- (e) the general context leading to the decision to open the file;
- (f) the participants in the analysis group at the time of opening the file;
- (g) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;
- (h) the time limits for examination of the data and the duration of storage;
- (i) the method of establishment of the audit log.

2. The Management Board and the Joint Supervisory Body shall immediately be informed by the Director of the order opening the file or any subsequent change in the particulars referred to in paragraph 1 and shall receive the dossier. The Joint Supervisory Body may address any comments it deems necessary to the Management Board. The Director may request the Joint Supervisory Body to do that within a specified period of time.

3. The analysis work file shall be retained for a maximum period of three years. Before the expiry of that three-year period, Europol shall review the need for the continuation of the file. When it is strictly necessary for the purpose of the file, the Director may order the continuation of the file for a further period of three years. The Management Board and the Joint Supervisory Body shall immediately be informed by the Director of the elements in the file justifying the strict need for its continuation. The Joint Supervisory Body shall address any comments it deems necessary to the Management Board. The Director may request the Joint Supervisory Body to do that within a specified period of time.

4. At any time the Management Board may instruct the Director to amend an opening order or to close an analysis work file. The Management Board shall decide on what date any such amendment or closure will take effect.

### CHAPTER III

#### COMMON PROVISIONS ON INFORMATION PROCESSING

##### Article 17

##### **Duty to notify**

Without prejudice to Article 14(6) and (7), Europol shall promptly notify the national units and, if the national units

so request, their liaison officers of any information concerning their Member State and of connections identified between criminal offences in respect of which Europol is competent under Article 4. Information and intelligence concerning other serious crime of which Europol becomes aware in the course of its duties may also be communicated.

##### Article 18

##### **Provisions on control of retrievals**

Europol shall establish, in cooperation with the Member States, appropriate control mechanisms to allow the verification of the legality of retrievals from any of its automated data files used to process personal data and to allow Member States access to the audit logs on request. The data thus collected shall be used only for the purpose of such verification by Europol and the supervisory bodies referred to in Articles 33 and 34 and shall be deleted after 18 months, unless the data are further required for ongoing control. The Management Board shall decide on the details of such control mechanisms after consulting the Joint Supervisory Body.

##### Article 19

##### **Rules on the use of data**

1. Personal data retrieved from any of Europol's data processing files or communicated by any other appropriate means shall be transmitted or used only by the competent authorities of the Member States in order to prevent and combat crimes in respect of which Europol is competent, and to prevent and combat other serious forms of crime. Europol shall use the data only for the performance of its tasks.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body stipulates particular restrictions on use to which such data is subject in that Member State, third State or third body, such restrictions shall also be complied with by the user of the data except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the national competent authorities. In such cases, the data shall be used only after consultation of the communicating Member State the interests and views of which shall be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than the national competent authorities shall be possible only after consultation of the Member State which transmitted the data in so far as the national law of that Member State permits.



*Article 20***Time limits for the storage and deletion of data**

1. Europol shall hold data in data files only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. Review of data stored in the Europol Information System and their deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

2. During the review, the units referred to in the third and fourth sentences of paragraph 1 may decide on the continued storage of data until the following review which shall take place after another period of three years if that is still necessary for the performance of Europol's tasks. If no decision is taken on the continued storage of data, those data shall be deleted automatically.

3. Where a Member State deletes from its national data files data communicated to Europol which are stored in other Europol data files, it shall inform Europol accordingly. In such cases, Europol shall delete the data unless it has further interest in them, based on intelligence that is more extensive than that possessed by the communicating Member State. Europol shall inform the Member State concerned of the continued storage of such data.

4. Such data shall not be deleted if this would damage the interests of a data subject who requires protection. In such cases, the data shall be used only with the consent of the data subject.

*Article 21***Access to data from other information systems**

In so far as Europol is entitled under Union, international or national legal instruments to gain computerised access to data from other information systems, of national or international nature, Europol may retrieve personal data by such means if that is necessary for the performance of its tasks. The applicable provisions of such Union, international or national legal instruments shall govern access to and the use of this data by Europol, in so far as they provide for stricter rules on access and use than those of this Decision.

## CHAPTER IV

**RELATIONS WITH PARTNERS***Article 22***Relations with Union or Community institutions, bodies, offices and agencies**

1. In so far as it is relevant to the performance of its tasks, Europol may establish and maintain cooperative relations with

the institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on European Union and the Treaties establishing the European Communities, in particular:

- (a) Eurojust;
- (b) the European Anti-Fraud Office (OLAF) <sup>(1)</sup>;
- (c) the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) <sup>(2)</sup>;
- (d) the European Police College (CEPOL);
- (e) the European Central Bank;
- (f) the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) <sup>(3)</sup>.

2. Europol shall conclude agreements or working arrangements with the entities referred to in paragraph 1. Such agreements or working arrangements may concern the exchange of operational, strategic or technical information, including personal data and classified information. Any such agreement or working arrangement may be concluded only after approval by the Management Board which shall previously have obtained, as far as it concerns the exchange of personal data, the opinion of the Joint Supervisory Body.

3. Before the entry into force of the agreement or working arrangement referred to in paragraph 2, Europol may directly receive and use information, including personal data, from the entities referred to in paragraph 1, in so far as that is necessary for the legitimate performance of its tasks, and it may, under the conditions laid down in Article 24(1), directly transmit information, including personal data, to such entities, in so far as that is necessary for the legitimate performance of the recipient's tasks.

<sup>(1)</sup> Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 20).

<sup>(2)</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

<sup>(3)</sup> Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (OJ L 376, 27.12.2006, p. 1).



4. Transmission by Europol of classified information to the entities referred to in paragraph 1 shall be permissible only in so far as agreement on confidentiality exists between Europol and the recipient.

#### Article 23

##### Relations with third States and organisations

1. In so far as it is necessary for the performance of its tasks, Europol may also establish and maintain cooperative relations with:

- (a) third States;
- (b) organisations such as:
  - (i) international organisations and their subordinate bodies governed by public law;
  - (ii) other bodies governed by public law which are set up by, or on the basis of, an agreement between two or more States; and
  - (iii) the International Criminal Police Organisation (Interpol).

2. Europol shall conclude agreements with the entities referred to in paragraph 1 which have been put on the list referred to in Article 26(1)(a). Such agreements may concern the exchange of operational, strategic or technical information, including personal data and classified information, if transmitted via a designated contact point identified by the agreement referred to in paragraph 6(b) of this Article. Such agreements may be concluded only after the approval by the Council, which shall previously have consulted the Management Board and, as far as it concerns the exchange of personal data, obtained the opinion of the Joint Supervisory Body via the Management Board.

3. Before the entry into force of the agreements referred to in paragraph 2, Europol may directly receive and use information, including personal data and classified information, in so far as that is necessary for the legitimate performance of its tasks.

4. Before the entry into force of the agreements referred to in paragraph 2, Europol may, under the conditions laid down in Article 24(1), directly transmit information other than personal data and classified information to the entities referred to in paragraph 1 of this Article, in so far as that is necessary for the legitimate performance of the recipient's tasks.

5. Europol may, under the conditions laid down in Article 24(1), directly transmit information other than personal data and classified information to the entities referred to in paragraph 1 of this Article which are not on the list referred to in Article 26(1)(a), in so far as that is absolutely necessary in individual cases for the purposes of

preventing or combating criminal offences in respect of which Europol is competent.

6. Europol may, under the conditions laid down in Article 24(1), transmit to the entities referred to in paragraph 1 of this Article:

- (a) personal data and classified information, where that is necessary in individual cases for the purposes of preventing or combating criminal offences in respect of which Europol is competent; and
- (b) personal data, where Europol has concluded with the entity concerned an agreement as referred to in paragraph 2 of this Article which permits the transmission of such data on the basis of an assessment of the existence of an adequate level of data protection ensured by that entity.

7. Transmission by Europol of classified information to the entities referred to in paragraph 1 shall be permissible only in so far as agreement on confidentiality exists between Europol and the recipient.

8. By way of derogation from paragraphs 6 and 7 and without prejudice to Article 24(1), Europol may transmit personal data and classified information which it holds to the entities referred to in paragraph 1 of this Article where the Director considers the transmission of the data to be absolutely necessary to safeguard the essential interests of the Member States concerned within the scope of Europol's objectives or in the interests of preventing imminent danger associated with crime or terrorist offences. The Director shall in all circumstances consider the data-protection level applicable to the body in question with a view to balancing that data-protection level and those interests. The Director shall inform the Management Board and the Joint Supervisory Body as soon as possible of his or her decision and of the basis of the assessment of the adequacy of the level of data protection afforded by the entities concerned.

9. Before the transmission of personal data in accordance with paragraph 8, the Director shall assess the adequacy of the level of data protection afforded by the entities concerned, taking into account all the circumstances relevant to the transmission of personal data, in particular:

- (a) the nature of the data;
- (b) the purpose for which the data is intended;
- (c) the duration of the intended processing;
- (d) the general or specific data-protection provisions applying to the entity;
- (e) whether or not the entity has agreed to specific conditions required by Europol concerning the data.

*Article 24***Transmission of data**

1. If the data concerned were transmitted to Europol by a Member State, Europol shall transmit them to the entities referred to in Article 22(1) and Article 23(1) only with that Member State's consent. The Member State concerned may give its prior consent, in general terms or subject to specific conditions, to such transmission. Such consent may be withdrawn at any time.

If the data were not transmitted by a Member State, Europol shall satisfy itself that transmission of those data is not liable to:

- (a) obstruct the proper performance of the tasks in respect of which a Member State is competent;
- (b) jeopardise the security or public order of a Member State or otherwise prejudice its general welfare.

2. Europol shall be responsible for the legality of the transmission of data. Europol shall keep a record of all transmissions of data under this Article and of the grounds for such transmissions. Data shall be transmitted only if the recipient gives an undertaking that the data will be used only for the purpose for which they were transmitted.

*Article 25***Information from private parties and private persons**

1. For the purpose of this Decision:

- (a) 'private parties' shall mean entities and bodies established under the law of a Member State or a third State, especially companies and firms, business associations, non-profit organisations and other legal persons governed by private law, which do not fall under Article 23(1);
- (b) 'private persons' shall mean all natural persons.

2. In so far as it is necessary for the legitimate performance of its tasks, Europol may process information, including personal data, from private parties under the conditions laid down in paragraph 3.

3. Personal data from private parties may be processed by Europol under the following conditions:

- (a) Personal data from private parties which are established under the law of a Member State may be processed by Europol only if they are transmitted via the national unit of that Member State in accordance with its national law. Europol may not contact private parties in the Member States directly in order to retrieve information.

- (b) Personal data from private parties which are established under the law of a third State with which Europol has, in accordance with Article 23, concluded a cooperation agreement allowing for the exchange of personal data may be transmitted to Europol only via the contact point of that State as identified by, and in accordance with, the cooperation agreement in force.

- (c) Personal data from private parties which are established under the law of a third State with which Europol has no cooperation agreement allowing for the exchange of personal data may be processed by Europol only if:

- (i) the private party concerned is on the list referred to in Article 26(2); and
- (ii) Europol and the private party concerned have concluded a memorandum of understanding on the transmission of information, including personal data, confirming the legality of the collection and transmission of the personal data by that private party and specifying that the personal data transmitted may be used only for the legitimate performance of Europol's tasks. Such a memorandum of understanding may be concluded only after approval by the Management Board which shall previously have obtained the opinion of the Joint Supervisory Body.

If the transmitted data affect interests of a Member State, Europol shall immediately inform the national unit of the Member State concerned.

4. In addition to the processing of data from private parties in accordance with paragraph 3, Europol may directly retrieve and process data, including personal data, from publicly available sources, such as media and public data and commercial intelligence providers, in accordance with the data-protection provisions of this Decision. In accordance with Article 17, Europol shall forward all relevant information to the national units.

5. Information, including personal data, from private persons may be processed by Europol if it is received via a national unit in accordance with national law or via the contact point of a third State with which Europol has concluded a cooperation agreement in accordance with Article 23. If Europol receives information, including personal data, from a private person residing in a third State with which Europol has no cooperation agreement, Europol may forward it only to the Member State or the third State concerned with which Europol has concluded a cooperation agreement in accordance with Article 23. Europol may not contact private persons directly in order to retrieve information.

6. Personal data transmitted to or retrieved by Europol under paragraph 3(c) of this Article may only be processed for the purpose of their inclusion in the Europol Information System referred to in Article 11 and the analysis work files referred to in Article 14 or other systems processing personal data established in accordance with Article 10(2) and (3) if those data are related to other data already entered in one of the aforementioned systems or if they are related to a previous query by a national unit within one of the aforementioned systems.

The responsibility for data processed by Europol, which have been transmitted under the conditions laid down in paragraph 3(b) and (c) and paragraph 4 of this Article, and for the information transmitted via the contact point of a third State with which Europol has concluded a cooperation agreement in accordance with Article 23, shall lie with Europol in accordance with Article 29(1)(b).

7. The Director shall submit a comprehensive report to the Management Board on the application of this Article two years after the date of application of this Decision. On the advice of the Joint Supervisory Body or on its own initiative, the Management Board may take any measure deemed appropriate in accordance with Article 37(9)(b).

#### Article 26

##### Implementing rules governing Europol's relations

1. The Council, acting by qualified majority after consulting the European Parliament, shall:

- (a) determine, in a list, the third States and organisations referred to in Article 23(1) with which Europol shall conclude agreements. The list shall be prepared by the Management Board and reviewed when necessary; and
- (b) adopt implementing rules governing the relations of Europol with the entities referred to in Articles 22(1) and 23(1), including the exchange of personal data and classified information. The implementing rules shall be prepared by the Management Board which shall previously have obtained the opinion of the Joint Supervisory Body.

2. The Management Board shall draw up and review, when necessary, a list determining the private parties with which Europol may conclude memoranda of understanding in accordance with Article 25(3)(c)(ii) and adopt rules governing the content of and the procedure for the conclusion of such memoranda of understanding after obtaining the opinion of the Joint Supervisory Body.

#### CHAPTER V

##### DATA PROTECTION AND DATA SECURITY

###### Article 27

##### Standard of data protection

Without prejudice to specific provisions of this Decision, Europol shall take account of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987. Europol shall observe those principles in the processing of personal data, inter alia, in respect of automated and non-automated data held in the form of data files, especially any structured set of personal data accessible in accordance with specific criteria.

###### Article 28

##### Data Protection Officer

1. The Management Board shall appoint, on the proposal of the Director, a Data Protection Officer who shall be a member of the staff. In the performance of his or her duties, he or she shall act independently.

2. The Data Protection Officer shall in particular have the following tasks:

- (a) ensuring, in an independent manner, lawfulness and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data relating to Europol staff;
- (b) ensuring that a written record of the transmission and receipt of personal data is kept in accordance with this Decision;
- (c) ensuring that data subjects are informed of their rights under this Decision at their request;
- (d) cooperating with Europol staff responsible for procedures, training and advice on data processing;
- (e) cooperating with the Joint Supervisory Body;
- (f) preparing an annual report and communicating that report to the Management Board and to the Joint Supervisory Body.

3. In the performance of his or her tasks, the Data Protection Officer shall have access to all the data processed by Europol and to all Europol premises.

4. If the Data Protection Officer considers that the provisions of this Decision concerning the processing of personal data have not been complied with, he or she shall inform the Director, requiring him or her to resolve the non-compliance within a specified time.

If the Director does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall inform the Management Board and shall agree with the Management Board a specified time for a response.

If the Management Board does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the Joint Supervisory Body.

5. The Management Board shall adopt further implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern selection and dismissal, tasks, duties and powers and safeguards for the independence of the Data Protection Officer.

#### Article 29

##### Responsibility in data protection matters

1. The responsibility for data processed at Europol, in particular as regards the legality of the collection, the transmission to Europol and the input of data, as well as their accuracy, their up-to-date nature and verification of the storage time limits, shall lie with:

- (a) the Member State which input or otherwise communicated the data;
- (b) Europol in respect of data communicated to Europol by third parties, including data communicated by private parties in accordance with Article 25(3)(b) and (c) and Article 25(4) as well as data communicated via the contact point of a third State with which Europol has concluded a cooperation agreement in accordance with Article 23 or which result from analyses conducted by Europol.

2. Data which have been transmitted to Europol but have not yet been input in one of Europol's data files shall remain under the data-protection responsibility of the party transmitting the data. Europol shall, however, be responsible for ensuring the security of the data in accordance with Article 35(2) in that until such data have been input in a data file, they may be accessed only by authorised Europol staff for the purpose of determining whether they can be processed at Europol, or by authorised officials of the party which supplied the data. If Europol, after appraising them, has reason to assume that data supplied are inaccurate or no longer up-to-date, it shall inform the party which supplied the data.

3. In addition, subject to other provisions in this Decision, Europol shall be responsible for all data processed by it.

4. If Europol has evidence that data input into one of its systems referred to in Chapter II are factually incorrect or have been unlawfully stored, it shall inform the Member State or other party involved accordingly.

5. Europol shall store data in such a way that it can be established by which Member State or third party they were transmitted or whether they are the result of an analysis by Europol.

#### Article 30

##### Individual's right of access

1. Any person shall be entitled, at reasonable intervals, to obtain information on whether personal data relating to him or her are processed by Europol and to have such data communicated to him or her in an intelligible form, or checked, in all cases under the conditions laid down in this Article.

2. Any person wishing to exercise his or her rights under this Article may make a request to that effect without excessive costs in the Member State of his or her choice to the authority appointed for that purpose in that Member State. That authority shall refer the request to Europol without delay, and in any case within one month of receipt.

3. The request shall be answered by Europol without undue delay and in any case within three months of its receipt by Europol in accordance with this Article.

4. Europol shall consult the competent authorities of the Member States concerned before deciding on its response to a request under paragraph 1. A decision on access to data shall be conditional upon close cooperation between Europol and the Member States directly concerned by the communication of such data. In any case in which a Member State objects to Europol's proposed response, it shall notify Europol of the reasons for its objection.

5. The provision of information in response to a request under paragraph 1 shall be refused to the extent that such refusal is necessary to:

- (a) enable Europol to fulfil its tasks properly;
- (b) protect security and public order in the Member States or to prevent crime;
- (c) guarantee that any national investigation will not be jeopardised;
- (d) protect the rights and freedoms of third parties.



When the applicability of an exemption is assessed, the interests of the person concerned shall be taken into account.

6. If the provision of information in response to a request under paragraph 1 is refused, Europol shall notify the person concerned that it has carried out checks, without giving any information which might reveal to him or her whether or not personal data concerning him or her are processed by Europol.

7. Any person shall have the right to request the Joint Supervisory Body, at reasonable intervals, to check whether the manner in which his or her personal data have been collected, stored, processed and used by Europol is in compliance with the provisions of this Decision concerning the processing of personal data. The Joint Supervisory Body shall notify the person concerned that it has carried out checks, without giving any information which might reveal to him or her whether or not personal data concerning him or her are processed by Europol.

#### Article 31

##### **Data subject's right to correction and deletion of data**

1. Any person shall have the right to ask Europol to correct or delete incorrect data concerning him or her. If it emerges, either on the basis of the exercise of this right or otherwise, that data held by Europol which have been communicated to it by third parties or which are the result of its own analyses are incorrect or that their input or storage is in breach of this Decision, Europol shall correct or delete such data.

2. If data that are incorrect or processed in breach of this Decision were transmitted directly to Europol by Member States, the Member States concerned shall correct or delete such data in collaboration with Europol.

3. If incorrect data were transmitted by another appropriate means or if the errors in the data supplied by Member States are due to faulty transmission or were transmitted in breach of this Decision or if they result from their being input, taken over or stored in an incorrect manner or in breach of this Decision by Europol, Europol shall correct or delete the data in collaboration with the Member States concerned.

4. In the cases referred to in paragraphs 1, 2 and 3, the Member States or third parties which have received the data shall be notified forthwith. The recipient Member States and the third parties shall also correct or delete those data. Where deletion is not possible, the data shall be blocked to prevent any future processing.

5. The data subject making the request shall be informed by Europol in writing without undue delay and in any case within

three months that data concerning him or her have been corrected or deleted.

#### Article 32

##### **Appeals**

1. In its reply to a request for a check, for access to data, or for correction and deletion of data, Europol shall inform the person making the request that if he or she is not satisfied with the decision, he or she may appeal to the Joint Supervisory Body. Such person may also refer the matter to the Joint Supervisory Body if there has been no response to his or her request within the time limit laid down in Article 30 or 31.

2. If the person making the request lodges an appeal to the Joint Supervisory Body, the appeal shall be examined by that body.

3. Where an appeal relates to a decision as referred to in Article 30 or 31, the Joint Supervisory Body shall consult the national supervisory bodies or the competent judicial body in the Member State which was the source of the data or the Member State directly concerned. The decision of the Joint Supervisory Body, which may extend to a refusal to communicate any information, shall be taken in close cooperation with the national supervisory body or competent judicial body.

4. Where an appeal relates to access to data input by Europol in the Europol Information System or data stored in the analysis work files or in any other system established by Europol for the processing of personal data pursuant to Article 10 and where objections from Europol persist, the Joint Supervisory Body shall be able to overrule such objections only by a majority of two thirds of its members after having heard Europol and the Member State or Member States referred to in Article 30(4). If there is no such majority, the Joint Supervisory Body shall notify the person making the request of the refusal, without giving any information which might reveal the existence of any personal data concerning that person.

5. Where an appeal relates to the checking of data input by a Member State in the Europol Information System or of data stored in the analysis work files or in any other system established by Europol for the processing of personal data pursuant to Article 10, the Joint Supervisory Body shall ensure that the necessary checks have been carried out correctly in close cooperation with the national supervisory body of the Member State which has input the data. The Joint Supervisory Body shall notify the person making the request that it has carried out the checks, without giving any information which might reveal the existence of any personal data concerning that person.

6. Where an appeal relates to the checking of data input by Europol in the Europol Information System or of data stored in the analysis work files or in any other system established by Europol for the processing of personal data pursuant to Article 10, the Joint Supervisory Body shall ensure that the necessary checks have been carried out by Europol. The Joint Supervisory Body shall notify the person making the request that it has carried out the checks, without giving any information which might reveal the existence of any personal data concerning that person.

#### Article 33

##### **National supervisory body**

1. Each Member State shall designate a national supervisory body with the task to monitor independently, in accordance with its national law, the permissibility of the input, the retrieval and any communication to Europol of personal data by the Member State concerned and to examine whether such input, retrieval or communication violates the rights of the data subject. For that purpose, the national supervisory body shall have access, at the national unit or at liaison officers' premises, to the data input by the Member State in the Europol Information System or in any other system established by Europol for the processing of personal data pursuant to Article 10 in accordance with the relevant national procedures.

For the purpose of exercising their supervisory function, national supervisory bodies shall have access to the offices and documents of their respective liaison officers at Europol.

In addition, in accordance with the relevant national procedures, the national supervisory bodies shall supervise the activities of national units and the activities of liaison officers, in so far as such activities are of relevance to the protection of personal data. They shall also keep the Joint Supervisory Body informed of any actions they take with respect to Europol.

2. Any person shall have the right to request the national supervisory body to ensure that the input or communication to Europol of data concerning him or her in any form and the consultation of the data by the Member State concerned are lawful.

This right shall be exercised in accordance with the national law of the Member State in which the request is made.

#### Article 34

##### **Joint Supervisory Body**

1. An independent Joint Supervisory Body shall be set up to review, in accordance with this Decision, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and use of the

data held by Europol. In addition, the Joint Supervisory Body shall monitor the permissibility of the transmission of data originating from Europol. The Joint Supervisory Body shall be composed of a maximum of two members or representatives, where appropriate assisted by alternates, of each of the independent national supervisory bodies, having the necessary abilities and appointed for five years by each Member State. Each delegation shall be entitled to one vote.

The Joint Supervisory Body shall choose a chairman from among its members.

In the performance of their duties, the members of the Joint Supervisory Body shall not receive instructions from any other body.

2. Europol shall assist the Joint Supervisory Body in the performance of the latter's tasks. In doing so, it shall in particular:

- (a) supply the information the Joint Supervisory Body requests and give it access to all documents and paper files as well as to the data stored in its data files;
- (b) allow the Joint Supervisory Body free access at all times to all its premises;
- (c) implement the Joint Supervisory Body's decisions on appeals.

3. The Joint Supervisory Body shall be competent to examine questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and use of personal data, to examine questions relating to checks carried out independently by the national supervisory bodies of the Member States or relating to the exercise of the right of access, and to draw up harmonised proposals for common solutions to existing problems.

4. If the Joint Supervisory Body identifies any violations of the provisions of this Decision in the storage, processing or use of personal data, it shall make any complaints it deems necessary to the Director and shall request him to reply within a specified time limit. The Director shall keep the Management Board informed of the entire procedure. If it is not satisfied with the response given by the Director to its request, the Joint Supervisory Body shall refer the matter to the Management Board.

5. For the fulfilment of its tasks and to contribute to the improvement of consistency in the application of the rules and procedures for data processing, the Joint Supervisory Body shall cooperate as necessary with other supervisory authorities.



6. The Joint Supervisory Body shall draw up activity reports at regular intervals. Such reports shall be forwarded to the European Parliament and to the Council. The Management Board shall have the opportunity to make comments, which shall be attached to the reports.

The Joint Supervisory Body shall decide whether or not to publish its activity report, and, if it decides to do so, shall determine how it should be published.

7. The Joint Supervisory Body shall adopt its rules of procedure by a majority of two thirds of its members and shall submit them to the Council for approval. The Council shall act by qualified majority.

8. The Joint Supervisory Body shall set up an internal committee comprising one qualified representative from each Member State with the right to vote. The committee shall have the task of examining the appeals provided for in Article 32 by all appropriate means. Should they so request, the parties, assisted by their advisers if they so wish, shall be heard by the committee. The decisions taken in this context shall be final as regards all the parties concerned.

9. The Joint Supervisory Body may set up one or more other committees in addition to the one referred to in paragraph 8.

10. The Joint Supervisory Body shall be consulted on that part of Europol's budget which concerns it. Its opinion shall be annexed to the draft budget in question.

11. The Joint Supervisory Body shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.

#### Article 35

##### Data security

1. Europol shall take the necessary technical and organisational measures to ensure the implementation of this Decision. Measures shall be considered necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection.

2. In respect of automated data processing at Europol, each Member State and Europol shall implement measures designed to:

(a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);

(b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(d) prevent the use of automated data-processing systems by unauthorised persons using data-communication equipment (user control);

(e) ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation (data access control);

(f) ensure that it is possible to verify and establish to which bodies personal data may be or have been transmitted using data communication equipment (communication control);

(g) ensure that it is possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);

(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during the transportation of data media (transport control);

(i) ensure that installed systems may, in the event of interruption, be restored immediately (recovery);

(j) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by system malfunctions (integrity).

#### CHAPTER VI

##### ORGANISATION

#### Article 36

##### Organs of Europol

The organs of Europol shall be:

(a) the Management Board;

(b) the Director.

## Article 37

**Management Board**

1. The Management Board shall be composed of one representative of each Member State and one representative of the Commission. Each member of the Management Board shall have one vote. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.

2. The Chairperson and the Deputy Chairperson of the Management Board shall be selected by and from within the group of three Member States who have jointly prepared the Council's eighteen-month programme. They shall serve for the eighteen-month period corresponding to that Council programme. During that period the Chairperson shall no longer act as a representative of his or her respective Member State in the Management Board. The Deputy shall *ex officio* replace the Chairperson in the event of his or her being prevented from attending to his or her duties.

3. The Chairperson shall be responsible for the efficient operation of the Management Board in the performance of its tasks set out in paragraph 9 while ensuring a specific focus on strategic issues and Europol's principal tasks as set out in Article 5(1).

4. The Chairperson shall be supported by the Secretariat of the Management Board. The Secretariat shall in particular:

(a) be closely and continuously involved in organising, coordinating and ensuring the coherence of the Management Board's work. Under the responsibility and guidance of the Chairperson, it shall assist the latter in seeking solutions;

(b) provide the Management Board with the administrative support necessary for it to carry out its duties.

5. The Director shall participate in the meetings of the Management Board, without the right to vote.

6. Members of the Management Board or their alternates and the Director may be accompanied by experts.

7. The Management Board shall meet at least twice a year.

8. The Management Board shall act by a majority of two thirds of its members unless otherwise stipulated in this Decision.

9. The Management Board shall:

(a) adopt a strategy for Europol, which shall include benchmarks to measure whether the objectives set have been reached;

(b) oversee the Director's performance including the implementation of Management Board decisions;

(c) take any decision or implementing measures in accordance with this Decision;

(d) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after seeking agreement from the Commission;

(e) adopt the financial regulation and appoint the accounting officer in conformity with Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>(1)</sup>, after consulting the Commission;

(f) establish the internal audit function and appoint its auditing staff, who shall be members of Europol staff. The Management Board shall adopt further implementing rules concerning the internal audit function. Those implementing rules should, in particular, cover selection, dismissal, tasks, duties, powers and safeguards for the independence of the function. The internal audit function shall be accountable solely to the Management Board and shall have access to all documentation necessary to the performance of its duties;

(g) adopt a list of at least three candidates for the post of Director and the Deputy Directors for submission to the Council;

(h) be responsible for the performance of any other tasks assigned to it by the Council, in particular in provisions implementing this Decision;

(i) establish its rules of procedure, including provisions providing for the independence of the Secretariat.

10. Each year the Management Board shall adopt:

(a) the draft estimate of revenue and expenditure, including the draft establishment plan, to be submitted to the Commission; and the final budget;

(b) a work programme for Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol, after the Commission has delivered an opinion;

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

(c) a general report on Europol's activities during the previous year including the results achieved on the priorities set by the Council.

Those documents shall be submitted to the Council for endorsement. The Council shall forward them to the European Parliament for information.

11. Within four years of the date of application of this Decision and every four years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Decision and of the activities carried out by Europol.

The Management Board shall issue specific terms of reference to that effect.

The report of the evaluation shall be forwarded to the European Parliament, the Council and the Commission.

12. The Management Board may decide to establish working groups. The rules governing the creation and functioning of such working groups shall be laid down in its rules of procedure.

13. The Management Board shall exercise the powers laid down in Article 39(3) in respect of the Director, without prejudice to Article 38(1) and (7).

#### Article 38

##### Director

1. Europol shall be headed by a Director appointed by the Council, acting by qualified majority, from a list of at least three candidates presented by the Management Board, for a four-year period. The Council, acting on a proposal from the Management Board, which shall have evaluated the Director's performance, may extend the term of office of the Director once for not more than four years.

2. The Director shall be assisted by three Deputy Directors appointed for a four-year period extendable once in accordance with the procedure laid down in paragraph 1. Their tasks shall be defined in greater detail by the Director.

3. The Management Board shall establish rules concerning the selection of candidates for the position of Director or Deputy Director, including the extension of their terms of office. Such rules shall be approved by the Council, acting by qualified majority, before their entry into force.

4. The Director shall be responsible for:

(a) performance of the tasks assigned to Europol;

(b) day-to-day administration;

(c) exercising, in respect of the staff and Deputy Directors without prejudice to paragraphs 2 and 7 of this Article, the powers laid down in Article 39(3);

(d) preparing and implementing the Management Board's decisions and responding to requests from the Management Board;

(e) supporting the Chairperson of the Management Board in the preparation of the Management Board meetings;

(f) drawing up the draft estimate of revenue and expenditure, including the draft establishment plan; and the preliminary work programme;

(g) elaborating the report referred to in Article 37(10)(c);

(h) implementing Europol's budget;

(i) informing the Management Board on a regular basis regarding the implementation of the priorities defined by the Council and Europol's external relations;

(j) establishing and implementing, in cooperation with the Management Board, an effective and efficient monitoring and evaluation procedure relating to Europol's performance in terms of the achievement of its objectives. The Director shall report regularly to the Management Board on the results of that monitoring;

(k) performance of all other tasks assigned to the Director in this Decision.

5. The Director shall be accountable to the Management Board in respect of the performance of his duties.

6. The Director shall be Europol's legal representative.

7. The Director and the Deputy Directors may be dismissed by decision of the Council, acting by qualified majority after obtaining the opinion of the Management Board. The Management Board shall establish the rules to be applied in such cases. Such rules shall be approved by the Council, acting by qualified majority, before their entry into force.

### Article 39

#### Staff

1. The Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of the European Communities (hereinafter referred to as the Staff Regulations and the Conditions of employment respectively) laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council <sup>(1)</sup> and the rules adopted jointly by the institutions of the European Communities for the purpose of applying the Staff Regulations and the Conditions of employment shall apply to the Director, the Deputy Directors and to the Europol staff engaged after the date of application of this Decision.

2. For the purpose of implementing the Staff Regulations and the Conditions of employment, Europol shall be considered as an agency within the meaning of Article 1a(2) of the Staff Regulations.

3. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the Conditions of employment shall be exercised by Europol in respect of its staff and of the Director in accordance with Articles 37(13) and 38(4)(c) of this Decision.

4. Europol staff shall consist of temporary staff and/or contract staff. The Management Board shall give its consent on a yearly basis in so far as the Director intends to grant contracts of indefinite duration. The Management Board shall decide which temporary posts provided for in the establishment plan can be filled only by staff engaged from the competent authorities of the Member States. Staff recruited to occupy such posts shall be temporary agents under Article 2(a) of the Conditions of employment and may be awarded only fixed-term contracts renewable once for a fixed period.

5. Member States may second national experts to Europol. The Management Board shall adopt the necessary implementing arrangements for that purpose.

6. Europol shall apply the principles of Regulation (EC) No 45/2001 to the processing of personal data relating to Europol staff.

### CHAPTER VII

#### CONFIDENTIALITY ISSUES

### Article 40

#### Confidentiality

1. Europol and the Member States shall take appropriate measures to protect information subject to the requirement of confidentiality which is obtained by or exchanged with Europol pursuant to this Decision. To that end the Council, acting by qualified majority after consulting the European Parliament, shall adopt appropriate rules on confidentiality prepared by

the Management Board. Those rules shall include provisions concerning the cases in which Europol may exchange information subject to the requirement of confidentiality with third parties.

2. Where Europol intends to entrust persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director, for security screening of their own nationals to be carried out in accordance with their national provisions and to provide each other with mutual assistance for that purpose. The relevant authority under national provisions shall inform Europol only of the results of the security screening. Those results shall be binding on Europol.

3. Each Member State and Europol may entrust the processing of data at Europol only to those persons who have had special training and undergone security screening. The Management Board shall adopt rules for the security clearance of Europol staff. The Director shall regularly inform the Management Board on the state of security screening of Europol staff.

### Article 41

#### Obligation of discretion and confidentiality

1. The members of the Management Board, the Director, the Deputy Directors, employees of Europol and liaison officers shall refrain from any action and any expression of opinion which might be harmful to Europol or prejudice its activities.

2. The members of the Management Board, the Director, the Deputy Directors, employees of Europol and liaison officers, as well as any other person under a particular obligation of discretion or confidentiality, shall be bound not to disclose any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities to any unauthorised person or to the public. This shall not apply to facts or information too insignificant to require confidentiality. The obligation of discretion and confidentiality shall apply even after the termination of office or employment, or after the termination of activities. Notification of the particular obligation referred to in the first sentence shall be given by Europol together with a warning of the legal consequences of any infringement. A written record shall be drawn up of such notification.

3. The members of the Management Board, the Director, the Deputy Directors, employees of Europol and liaison officers, as well as other persons under the obligation provided for in paragraph 2, shall not give evidence in or outside a court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities without reference to the Director or, in the case of the Director himself, to the Management Board.

<sup>(1)</sup> OJ L 56, 4.3.1968, p. 1.

The Management Board or the Director, depending on the case, shall approach the judicial body or any other competent body with a view to ensuring that the necessary measures under the national law applicable to the body approached are taken.

Such measures may either be to adjust the procedures for giving evidence in order to ensure the confidentiality of the information or, provided that the national law concerned so permits, to refuse to make any communication concerning data in so far as it is vital for the protection of the interests of Europol or of a Member State.

Where a Member State's legislation provides for the right to refuse to give evidence, persons referred to in paragraph 2 asked to give evidence shall be required to obtain permission to do so. Permission shall be granted by the Director or, in the case of evidence to be given by the Director, by the Management Board. Where a liaison officer is asked to give evidence concerning information he receives from Europol, such permission shall be given after the agreement of the Member State responsible for the officer concerned has been obtained. The obligation to seek permission to give evidence shall apply even after the termination of office or employment or after the termination of activities.

Furthermore, if the possibility exists that the evidence may extend to information and knowledge which a Member State has communicated to Europol or which clearly involves a Member State, the position of that Member State concerning the evidence shall be sought before permission is granted.

Permission to give evidence may be refused only in so far as that is necessary to protect the overriding interests of Europol or of a Member State or Member States that need protection.

4. Each Member State shall treat any infringement of the obligation of discretion or confidentiality laid down in paragraphs 2 and 3 as a breach of the obligations imposed by its law on official or professional secrets or its provisions for the protection of classified material.

It shall ensure that the rules and provisions concerned also apply to its own employees who have contact with Europol in the course of their work.

## CHAPTER VIII

### BUDGET PROVISIONS

#### Article 42

#### Budget

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from the date of application of this Decision. The financing of Europol shall be subject to an

agreement by the European Parliament and the Council (hereinafter referred to as the budgetary authority) as provided for in the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(1)</sup>.

2. Europol's expenditure shall include its staff, administrative, infrastructure and operational expenses.

3. The Director shall draw up the draft estimate of revenue and expenditure of Europol for the following financial year, including a draft establishment plan, and shall forward it to the Management Board. The draft establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.

4. Revenue and expenditure shall be in balance.

5. The Management Board shall adopt the draft estimate of revenue and expenditure, including the draft establishment plan and accompanied by the preliminary work programme, and forward them by 31 March of each year to the Commission. If the Commission has objections to the draft estimate, it shall inform the Management Board accordingly within 30 days of receiving it.

6. The Commission shall forward the estimate to the budgetary authority together with the preliminary draft general budget of the European Union.

7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union, which it shall place before the budgetary authority, in accordance with Article 272 of the Treaty establishing the European Community, the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to that budget.

8. The budgetary authority shall authorise the appropriations for the subsidy to Europol and the establishment plan when adopting the general budget of the European Union.

9. The Management Board shall adopt Europol's budget and the establishment plan. They shall become definitive following the final adoption of the general budget of the European Union. Where appropriate, they shall be adjusted accordingly by means of the adoption of a revised budget.

10. Any amendment of the budget, including the establishment plan, shall be effected in accordance with the procedure laid down in paragraphs 5 to 9.

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.



11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention of implementing any project that may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. Where a branch of the budgetary authority notifies its intention of delivering an opinion, it shall forward its opinion to the Management Board within six weeks of the date on which it notified the budgetary authority of the project.

#### Article 43

### Implementation and control of the budget

1. The Director shall implement Europol's budget.
2. By 28 February at the latest following each financial year, Europol's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>.
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward Europol's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on Europol's provisional accounts pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, the Director shall draw up Europol's final accounts under his own responsibility and forward them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on Europol's final accounts.
6. By 1 July at the latest following each financial year, the Director shall send the final accounts, together with the opinion of the Management Board, to the European Parliament, the Council, the Commission and the Court of Auditors.
7. The final accounts shall be published.
8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send a copy of that reply to the Management Board.
9. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10. The European Parliament, taking into account a recommendation from the Council acting by qualified majority, shall, before 30 April of year  $n + 2$ , give a discharge to the Director in respect of the implementation of the budget for year  $n$ .

#### Article 44

### Financial regulation

The Management Board shall adopt the financial regulation applicable to Europol after consulting the Commission. It may not depart from Regulation (EC, Euratom) No 2343/2002 unless that is specifically required for Europol's operation. The prior consent of the Commission shall be required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of any such derogations.

#### CHAPTER IX

### MISCELLANEOUS PROVISIONS

#### Article 45

### Rules concerning access to Europol documents

On the basis of a proposal by the Director, and not later than six months after the date of application of this Decision, the Management Board shall adopt rules concerning access to Europol documents, taking into account the principles and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(2)</sup>.

#### Article 46

### EU classified information

Europol shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations <sup>(3)</sup> regarding EU classified information.

#### Article 47

### Languages

1. Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community <sup>(4)</sup> shall apply to Europol.
2. The Management Board shall decide by unanimity on the internal language arrangements of Europol.

<sup>(2)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(3)</sup> OJ L 101, 11.4.2001, p. 1.

<sup>(4)</sup> OJ 17, 6.10.1958, p. 385/58.



3. The translations required for Europol's work shall be provided by the Translation Centre for bodies of the European Union <sup>(1)</sup>.

#### Article 48

##### Informing the European Parliament

The Presidency of the Council, the Chairperson of the Management Board and the Director shall appear before the European Parliament at its request to discuss matters relating to Europol taking into account the obligations of discretion and confidentiality.

#### Article 49

##### Combating fraud

The rules laid down by Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> shall apply to Europol. On the basis of the proposal by the Director, and not later than six months after the date of application of this Decision, the Management Board shall adopt the implementing measures necessary, which may exclude operational data from the scope of OLAF's investigations.

#### Article 50

##### Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for Europol in the headquarters State and the facilities to be made available by that State as well as the particular rules applicable in the Europol headquarters State to the Director, the members of the Management Board, the Deputy Directors, employees of Europol and members of their families shall be laid down in a Headquarters Agreement between Europol and the Kingdom of the Netherlands to be concluded once the approval of the Management Board has been obtained.

#### Article 51

##### Privileges and immunities

1. The Protocol on the Privileges and Immunities of the European Communities and a specific Regulation to be adopted on the basis of Article 16 of the Protocol on the Privileges and Immunities of the European Communities shall apply to the Director and Deputy Directors of Europol and to Europol staff.

2. The Protocol on the Privileges and Immunities of the European Communities shall apply to Europol.

<sup>(1)</sup> Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (O) L 314, 7.12.1994, p. 1).

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 1.

3. The Kingdom of the Netherlands and the other Member States shall agree that liaison officers seconded from the other Member States and members of their families shall enjoy such privileges and immunities as are necessary for the proper performance of the tasks of liaison officers at Europol.

#### Article 52

##### Liability for unauthorised or incorrect data processing

1. Each Member State shall be 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 at Europol. Only the Member State in which the event which gave rise to the damage occurred shall be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under the national law of the Member State concerned. A Member State may not plead that another Member State or Europol had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.

2. If the legal or factual errors referred to in paragraph 1 occurred as a result of the erroneous communication of data or of failure to comply with the obligations laid down in this Decision on the part of one or more Member States or as a result of unauthorised or incorrect storage or processing by Europol, Europol or the other Member State in question shall be bound to reimburse, on request, for the amounts paid as compensation pursuant to paragraph 1 unless the data were used in breach of this Decision by the Member State in the territory of which the damage was caused.

3. Any dispute between the Member State that has paid the compensation pursuant to paragraph 1 and Europol or another Member State over the principle or the amount of the reimbursement shall be referred to the Management Board, which shall settle the matter by a majority of two thirds of its members.

#### Article 53

##### Other liability

1. Europol's contractual liability shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, Europol shall be obliged, independently of any liability under Article 52, to make good any damage caused by the fault of its organs, or of its staff in the performance of their duties, in so far as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.

3. The injured party shall have the right to demand that Europol refrain from or cease any action.

4. The national courts of the Member States competent to deal with disputes involving Europol's liability as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>.

#### Article 54

#### Liability with regard to Europol's participation in joint investigation teams

1. The Member State in the territory of which damage is caused by Europol staff operating in accordance with Article 6 in that Member State during their assistance in operational measures shall make good such damage under the conditions applicable to damage caused by its own officials.

2. Unless otherwise agreed by the Member State concerned, Europol shall reimburse in full any sums that that Member State has paid to the victims or persons entitled on their behalf for damage referred to in paragraph 1. Any dispute between that Member State and Europol over the principle or the amount of the reimbursement shall be referred to the Management Board, which shall settle the matter.

#### CHAPTER X

#### TRANSITIONAL PROVISIONS

#### Article 55

#### General legal succession

1. This Decision shall not affect the legal force of agreements concluded by Europol as established by the Europol Convention before the date of application of this Decision.

2. Paragraph 1 shall apply in particular to the Headquarters Agreement concluded on the basis of Article 37 of the Europol Convention, as well as the agreements between the Kingdom of the Netherlands and the other Member States established on the basis of Article 41(2) of the Europol Convention and to all international agreements, including their provisions on the exchange of information, and to contracts concluded by, liabilities incumbent on and properties acquired by Europol, as established by the Europol Convention.

#### Article 56

#### Director and Deputy Directors

1. The Director and Deputy Directors appointed on the basis of Article 29 of the Europol Convention shall, for the remaining periods of their terms of office, be the Director and Deputy Directors within the meaning of Article 38 of this Decision. If their terms of office end one year or less after the date of application of this Decision, they shall be extended automa-

tically until one year after the date of application of this Decision.

2. Should the Director or one or more of the Deputy Directors be unwilling or unable to act in accordance with paragraph 1, the Management Board shall appoint an interim Director or interim Deputy Director(s) as required for a maximum period of 18 months, pending the appointments provided for in Article 38(1) and (2).

#### Article 57

#### Staff

1. By way of derogation from Article 39, all employment contracts concluded by Europol as established by the Europol Convention and in force on the date of application of this Decision shall be honoured until their expiry date and may not be renewed on the basis of the Europol Staff Regulations <sup>(2)</sup> after the date of application of this Decision.

2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of employment at the various grades as set out in the establishment plan or contract agent contracts under Article 3a of the Conditions of employment.

To that end, an internal selection process limited to staff who have contracts with Europol on the date of application of this Decision shall be carried out after the entry into force and within two years of the date of application of this Decision by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged.

Depending on the type and level of the functions performed, a successful candidate shall be offered either a temporary agent contract or a contract agent contract for a period corresponding at least to the time remaining under the contract concluded before the date of application of this Decision.

3. If a second fixed-term contract was concluded by Europol before the date of application of this Decision and the staff member accepted a temporary agent contract or contract agent contract under the conditions laid down in the third subparagraph of paragraph 2, any subsequent renewal may be concluded only for an indefinite period, in accordance with Article 39(4).

4. If a contract of an indefinite duration was concluded by Europol before the date of application of this Decision and the staff member accepted a temporary agent or contract agent contract under the conditions laid down in the third subparagraph of paragraph 2, that contract shall be concluded for an indefinite period in accordance with the first paragraph of Article 8 and Article 85(1) of the Conditions of employment.

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (OJ C 26, 30.1.1999, p. 23).

5. The Europol Staff Regulations and other relevant instruments shall continue to apply to staff members who are not recruited in accordance with paragraph 2. By way of derogation from Chapter 5 of the Europol Staff Regulations, the percentage rate of the annual adjustment of remuneration decided by the Council in accordance with Article 65 of the Staff Regulations shall apply to Europol staff.

#### Article 58

##### Budget

1. The discharge procedure in respect of the budgets approved on the basis of Article 35(5) of the Europol Convention shall be carried out in accordance with the rules established by Article 36(5) of the Europol Convention and the financial regulation adopted on the basis of Article 35(9) of the Europol Convention.

2. In carrying out the discharge procedure described in paragraph 1, the following shall apply:

(a) for the purpose of carrying out the discharge procedure in respect of the annual accounts for the year preceding the date of application of this Decision, the Joint Audit Committee shall continue to operate in accordance with the procedures established by Article 36 of the Europol Convention. The discharge procedures established by the Europol Convention shall apply to the extent required for this purpose;

(b) the Management Board referred to in Article 36 of this Decision shall have the right to decide upon the substitution of the functions previously performed by the financial controller and the Financial Committee on the basis of the Europol Convention.

3. All expenditure resulting from commitments made by Europol in accordance with the financial regulation adopted on the basis of Article 35(9) of the Europol Convention before the date of application of this Decision which has not yet been paid at that time shall be paid in the manner described in paragraph 4 of this Article.

4. Before the expiry of a period of twelve months after the date of application of this Decision, the Management Board shall establish the amount covering the expenditure referred to in paragraph 3. A corresponding amount, financed from the accumulated surplus of the budgets approved on the basis of Article 35(5) of the Europol Convention, shall be transferred into the first budget established under this Decision and shall constitute an assigned revenue to cover that expenditure.

If the surpluses are not sufficient to cover the expenditure referred to in paragraph 3, Member States shall provide the financing necessary in accordance with the procedures established by the Europol Convention.

5. The remainder of the surpluses of the budgets approved on the basis of Article 35(5) of the Europol Convention shall be paid back to the Member States. The amount to be paid to each of the Member States shall be calculated on the basis of the annual contributions from the Member States to Europol's budgets established on the basis of Article 35(2) of the Europol Convention.

The payment shall be made within three months of the establishment of the amount covering the expenditure referred to in paragraph 3 and the completion of discharge procedures regarding the budgets approved on the basis of Article 35(5) of the Europol Convention.

#### Article 59

##### Measures to be prepared and adopted before the date of application of this Decision

1. The Management Board set up on the basis of the Europol Convention, the Director appointed on the basis of that Convention and the Joint Supervisory Body set up on the basis of that Convention shall prepare the adoption of the following instruments:

(a) the rules regarding the rights and obligations of liaison officers referred to in Article 9(5);

(b) the rules applicable to the analysis work files referred to in the third subparagraph of Article 14(1);

(c) the rules regarding the relations of Europol referred to in Article 26(1)(b);

(d) the implementing rules applicable to Europol staff referred to in Article 37(9)(d);

(e) the rules on the selection and dismissal of the Director and Deputy Directors referred to in Article 38(3) and (7);

(f) the rules on confidentiality referred to in Article 40(1);

(g) the financial regulation referred to in Article 44;

(h) any other instrument necessary for the preparation of the application of this Decision.

2. For the purpose of adopting the measures referred to in paragraph 1(a), (d), (e), (g) and (h), the composition of the Management Board shall be as laid down in Article 37(1). The Management Board shall adopt those measures in accordance with the procedure laid down in the provisions referred to in paragraph 1(a), (d), (e) and (g) of this Article.

The Council shall adopt the measures referred to in paragraph 1(b), (c) and (f) in accordance with the procedure laid down in the provisions referred to in paragraph 1(b), (c) and (f).

## Article 60

**Financial actions and decisions to be taken before the date of application of this Decision**

1. The Management Board, in its composition as laid down in Article 37(1), shall take all financial actions and decisions necessary for the application of the new financial framework.
2. The actions and decisions referred to in paragraph 1 shall be taken in accordance with Regulation (EC, Euratom) No 2343/2002 and shall include, inter alia, the following:
  - (a) the preparation and adoption of all actions and decisions referred to in Article 42 in relation to the first budgetary year after the date of application of this Decision;
  - (b) the appointment of the accounting officer as provided for in Article 37(9)(e) by 15 November in the year preceding the first budgetary year after the date of application of this Decision;
  - (c) the establishment of the internal audit function as provided for in Article 37(9)(f).
3. The authorisation of operations which accrue to the first budgetary year after the date of application of this Decision shall be performed by the Director appointed under Article 29 of the Europol Convention from 15 November in the year preceding the first budgetary year after the date of application of this Decision. From that date onwards, the Director shall also be entitled to delegate the function of authorising officer as necessary. In the performance of the role of authorising officer, the requirements of Regulation (EC, Euratom) No 2343/2002 shall be observed.
4. The *ex-ante* verification of operations that accrue to the first budgetary year following the date of application of this Decision shall be taken by the financial controller established under Article 27(3) of the Europol Convention during the period 15 November to 31 December in the year preceding the first budgetary year following the date of application of this Decision. The financial controller shall perform that function in accordance with Regulation (EC, Euratom) No 2343/2002.
5. A proportion of the transition costs incurred by Europol to prepare for the new financial framework from the year preceding the first budgetary year following the date of application of this Decision shall be borne by the general budget of the European Union. The financing of those costs may take the form of a Community grant.

## CHAPTER XI

## FINAL PROVISIONS

## Article 61

**Transposition**

The Member States shall ensure that their national law conforms to this Decision by the date of application of this Decision.

## Article 62

**Replacement**

This Decision replaces the Europol Convention and the Protocol on the privileges and immunities of Europol, the members of its organs, the Deputy Directors and employees of Europol as of the date of application of this Decision.

## Article 63

**Repeal**

Unless otherwise provided in this Decision, all measures implementing the Europol Convention shall be repealed with effect from the date of application of this Decision.

## Article 64

**Entry into force and application**

1. This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 January 2010 or the date of application of the Regulation referred to in Article 51(1), whichever is the later.

However, the second subparagraph of Article 57(2) and Articles 59, 60 and 61 shall apply from the date of entry into force of this Decision.

Done at Luxembourg, 6 April 2009.

For the Council  
The President  
J. POSPÍŠIL

## ANNEX

List of other forms of serious crime which Europol is competent to deal with in accordance with Article 4(1):

- unlawful drug trafficking,
- illegal money-laundering activities,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- organised robbery,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime,
- illicit trafficking in hormonal substances and other growth promoters.

With regard to the forms of crime listed in Article 4(1) for the purposes of this Decision:

- (a) 'crime connected with nuclear and radioactive substances' means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Treaty establishing the European Atomic Community and in Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation <sup>(1)</sup>;
- (b) 'illegal immigrant smuggling' means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States, contrary to the rules and conditions applicable in the Member States;

<sup>(1)</sup> OJ L 159, 29.6.1996, p. 1.

- (c) 'trafficking in human beings' means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, the production, sale or distribution of child-pornography material, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (d) 'motor vehicle crime' means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles and the spare parts for such vehicles, and the receiving and concealing of such objects;
- (e) 'illegal money-laundering activities' means the criminal offences listed in Article 6(1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;
- (f) 'unlawful drug trafficking' means the criminal offences listed in Article 3(1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

The forms of crime referred to in Article 4 and in this Annex shall be assessed by the competent authorities of the Member States in accordance with the law of the Member States to which they belong.

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