

AGREEMENT

BETWEEN THE MEMBER STATES ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

THE MEMBER STATES,

IN VIEW OF the close relationship between their peoples,

NOTING THE DESIRABILITY of increased judicial co-operation with a view to the creation of a European area without internal frontiers, in which free movement of persons must be ensured under the Single European Act,

CONSIDERING the provisions of Article 21 of the European Convention on mutual assistance in criminal matters concluded at Strasbourg on 20 April 1959,

CONVINCED THAT, in order to facilitate their application, those provisions must be supplemented by more precise rules concerning the transfer of proceedings in criminal matters which contribute to the proper administration of justice and a reduction in cases of conflicting competence,

AWARE THAT the transfer of proceedings in criminal matters must take account of the interests of the persons involved, in particular the victims,

BEARING IN MIND the European Convention on the transfer of proceedings in criminal matters, concluded at Strasbourg on 15 May 1972,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. For the purposes of this Agreement, an "offence" shall mean:

- acts constituting criminal offences;
- acts constituting administrative offences or offences against regulations, which are punishable by a fine provided that, if the offence falls within the competence of an administrative authority. the person concerned shall have the possibility of bringing the case before a judicial body.

2. When signing this Agreement or depositing the instrument of ratification, acceptance or approval thereof, each Member State may state in a declaration those offences which it intends to exclude from the scope of the Agreement. The other Member States may apply the rule of reciprocity.

ARTICLE 2

Any Member State having competence under its law to prosecute an offence may send a request for proceedings to the Member State of which the suspected person is a national, to the Member State where the suspected person currently is or to the Member State in which the suspected person is ordinarily resident.

ARTICLE 3

1. Proceedings may be taken in the requested State only if the act underlying the request for proceedings would be an offence if committed in that State.

2. If the offence has been committed by a person in public service in the requesting State or against a person in public service, an institution or property of a public nature in that State, it shall be treated in the requested State in the same way as an offence committed by a person in public service in that State or against persons, institutions or property corresponding in the latter State to the subject of the offence.

ARTICLE 4

For the purpose of applying this Agreement, the requested State shall have competence to prosecute

under its own law the offences mentioned in the preceding Articles in respect of which a request for proceedings has been made.

ARTICLE 5

Member States shall extend their mutual assistance in criminal matters to include the measures necessary for the implementation of this Agreement with a view to obtaining the observations of the persons involved, in particular the victims.

ARTICLE 6

The requested State shall determine whether action should be taken on the request and shall inform the requesting State thereof without delay. For the purposes of the proceedings the law applicable shall be that of the requested State.

ARTICLE 7

Where the requested State has accepted the request for proceedings against the person suspected of the offence, the requesting State shall discontinue proceedings against him for the same offence. However, the requesting State recovers its jurisdiction when the requested State, which has taken the decision to terminate the proceedings, informs that State in accordance with Article 10 that the decision is not an obstacle to further proceedings according to its law.

ARTICLE 8

Any act for the purposes of proceedings or preparatory inquiries, performed in a Member State in accordance with the provisions which are in force there, or any act interrupting or suspending the period of limitation shall have the same force in the other State as if it had been validly performed in that State.

Where the law of the requested State alone requires that a complaint be lodged or another means of

initiating proceedings be employed, these formalities must be carried out within the time limit laid down by the law of the requested State and the latter must inform the requesting State thereof. The time limit shall begin on the date of acceptance of the request for proceedings in the requested State.

ARTICLE 9

Where the requesting State indicates its decision to forward a request for proceedings, the requested State may apply all the provisional measures, including remand in custody, whose application would be permitted by its law if the offence concerning which the proceedings are requested had been committed within its territory.

Where the requesting State indicates its decision to forward a request for proceedings and where the competence of the requested State is based solely on Article 4, the requested State may apply all the provisional measures under this Agreement at the request of the requesting State. Moreover, the requested State may not remand the suspected person in custody unless:

- a) the laws of the requesting State and of the requested State authorise remand in custody for the offence and
- b) there are reasons to fear that the suspected person might abscond or interfere with the evidence.

For the purposes of provisional measures, the requesting State shall submit to the requested State the necessary documents using any appropriate means of which there is a written record.

When signing this Agreement or depositing the instrument of ratification, acceptance or approval thereof, each Member State may state in a declaration the documents referred to in the third paragraph of this Article which it requires for remand in custody and the time limit within which the request for proceedings, together with the documents referred to in Article 12, must be submitted.

ARTICLE 10

The requested State shall inform the requesting State of the discontinuance of proceedings or of any decision delivered at the end of the proceedings including whether that decision presents an obstacle

to further proceedings according to the law of the requested State. It shall, at the request of the requesting State, forward a copy of the written decision.

ARTICLE 11

In the requested State, the sanction applicable to the offence shall be that laid down by the law of that State unless that law provides otherwise. Where the competence of the requested State is based solely on Article 4, the sanction incurred in that State may not be more severe than the sanction laid down by the law of the requesting State.

ARTICLE 12

The request for proceedings shall be made in writing and accompanied by:

- a) the original or a certified copy of the criminal file, a statement of the facts of the case and, where appropriate, any other relevant documents;
- b) a copy of the relevant legislation or, where this is not possible, a statement of the relevant law.

The requesting State shall also inform the requested State in writing of any procedural act performed or measures taken in the requesting State after the transmission of the request which have a bearing on the proceedings. This information shall be accompanied by any relevant documentation.

ARTICLE 13

The documents to be produced shall be drawn up in the language or one of the languages of the requesting State.

Any Member State may, in a declaration, reserve the right to require that pertinent documents mentioned in Article 9 or 12 be translated in its language or one of its official languages. The other Member States may apply the rule of reciprocity.

ARTICLE 14

1. Requests for proceedings and any relevant communications shall be exchanged between Ministry of Justice of the requesting State and Ministry of Justice of the requested State.
2. By virtue of particular agreements or, in their absence, in case of emergency, requests and relating documents may be transmitted directly between the judicial authorities of the requesting State and those of the requested State.
3. In case of emergency and by virtue of particular agreements, requests for proceedings and relating documents may be transmitted through the international criminal police organisation (Interpol) or through any appropriate channels leaving a written record, including telecopy.
4. As foreseen in paragraphs 2 and 3, a copy of the mentioned documents will be transmitted to the Ministry of Justice of the requested State unless this State has declared that such transmission is not required.
5. The methods of transmission shall not exclude diplomatic channels.

ARTICLE 15

1. In relations between Member States which are parties to the European Convention on mutual assistance in criminal matters, concluded at Strasbourg on 20 April 1959, and the European Convention on the transfer of proceedings in criminal matters concluded at Strasbourg on 15 May 1972, the Benelux Treaty on extradition and mutual assistance in criminal matters, concluded at Brussels on 27 June 1962 and the Treaty between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands on the transfer of proceedings, concluded at Brussels on 11 May 1974, this Agreement shall apply only where it supplements the provisions of those Conventions or facilitates application of the principles enshrined therein.
2. This Agreement shall replace the provisions of previous bilateral agreements governing the same subjects between two Member States. These Member States may, however, mutually agree to

maintain in force certain provisions of these bilateral agreements.

ARTICLE 16

1. This Agreement shall be open for signature by the Member States. It shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Italian Republic.
2. This Agreement shall enter into force 90 days after the deposit of the instruments of ratification, acceptance or approval by all the States which are members of the European Communities at the date on which this Agreement is opened for signature.
3. Each Member State may, when depositing its instrument of ratification, acceptance or approval, or at any later date until the entry into force of this Agreement, declare that this Agreement shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit.
4. A Member State that has not made such a declaration may apply the Agreement with other Contracting Member States on the basis of bilateral agreements.
5. The Ministry of Foreign Affairs of the Italian Republic shall notify all the Member States of any signature, deposit of instruments or declaration.

ARTICLE 17

This Agreement shall be open for accession by any State which becomes a member of the European Communities. The instruments of accession shall be deposited with the Ministry of Foreign Affairs of the Italian Republic. This Agreement shall enter into force for any State acceding thereto 90 days after the deposit of its instrument of accession.

The Ministry of Foreign Affairs of the Italian Republic shall transmit a certified copy to the Government of each Member State.

CHART OF SIGNATURES AND RATIFICATIONS (1992)

BELGIUM	*	
DENMARK	*	
GERMANY		
GREECE	*	
SPAIN	*	
FRANCE	*	
IRELAND		
ITALY	*	
LUXEMBOURG	*	
NETHERLAND		
AUSTRIA		
PORTUGAL	*	
FINLAND		
SWEDEN		
UNITED KINGDOM		
