COMMISSION OF THE EUROPEAN COMMUNITIES

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2004/0187 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signature of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests

(presented by the Commission)

EXPLANATORY MEMORANDUM

Background of the negotiations

The negotiations for an Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, to combat fraud and all other illegal activity to the detriment of their financial interests were conducted by the Commission following the authorisation given by the Council on 14 December 2000.

The Commission respected fully the negotiating directives attached to the Council decision by taking into account, in particular, the current *acquis communautaire* and its future development in the area of co-operation.

This is specifically reflected in Articles 7 and 25 of the Agreement where it is stated that more favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected by the provisions contained in the Agreement.

This is equally the conclusion achieved in the European Union-Switzerland summit on 19 May 2004 (http://www.europa.admin.ch/nbv/medien/2004/d/pr_040519_2_e.pdf) when it was agreed that: "concerning the Agreement on cooperation against fraud, both sides will grant each other full judicial co-operation and administrative assistance on fraud and all other illegal activities, including customs and indirect tax offences in connection with the trade of goods and services. Co-operation against money laundering will be improved considerably, covering in particular also serious cases of fraud and smuggling".

Administrative cooperation will be granted in accordance with the standards of the Convention on mutual assistance and cooperation between customs administrations, OJ C 24, 23.1.1998, p. 2 (the Naples II Convention). Judicial cooperation by means of coercive measures (search and seizure) will be subject to the dual criminality requirement as set out in Article 31 of the Agreement, a provision corresponding to Article 51 of the Convention Implementing the Schengen Agreement (SIC), OJ L 239, 22.9.2000. Should dual criminality for letters rogatory for search and seizure be abandoned in Schengen in the future, the new Schengen rules will fully apply in areas covered by the present Agreement. According to the summit conclusions referred to above, Switzerland has been granted in the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis a derogation concerning the acceptance of future acquis related to letters rogatory for search and seizure only in the field of direct taxation.

Cooperation on matters of money laundering will be granted in line with the material scope of Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77) as amended by Directive 2001/97/CE (OJ L 344, 28.122001, p. 76), which refers in its Article 1 to the concept of serious fraud as defined in Article 2 of the Convention on the protection of the European Communities' financial interests (fraud punishable by penalties involving deprivation of liberty which can give rise to extradition).

Provisions of the Agreement

Title I: General provisions

- Articles 1 and 2 **- "Subject matter" and "Scope"**

These Articles define the subject matter and scope of the Agreement, covering administrative assistance and judicial cooperation for the protection of the Communities' financial interests and certain financial interests of the Member States.

Within the scope of the Agreement the terms "fraud and all other illegal activity" extend to all tax (VAT and excise duties) and customs offences (including smuggling), corruption, bribery and laundering of the proceeds of the activities covered by the Agreement subject to Article 2(3). Money laundering is also covered if the predicate offence is punishable by custody of more than six months, which includes in particular tax fraud and professional smuggling (EU-Switzerland summit conclusions of 19 May 2004).

The first indent of Article 2(1)a makes reference to "trade in goods" irrespective of whether the goods pass through the territory of the other Party (departure, destination or transit). The scope of the Agreement extends to tax offences connected with trade of both goods and services. The term "trade" referred to in the second indent of Article 2(1)a is understood irrespective of whether goods pass through or the services have a link with the territory of the other Party (departure, destination or transit)- (EU-Switzerland summit conclusions of 19 May 2004).

Article 2(2) states that cooperation may not be withheld on the sole ground that the legislation of the requested Party does not contain the same legal classification of the facts as the legislation of the requesting Party. This means that the application of the Agreement is in principle not subject to the dual criminality rule which only applies in the framework of Articles 31 and 32 of the Agreement (EU-Switzerland summit conclusions of 19 May 2004).

- Article 3 - **"Minor cases"**

This Article intends to avoid being faced with an excessively high number of assistance requests relating to minor points.

It takes over the content of Article 50(4) of the Convention Implementing the Schengen Agreement, OJ L 239, 22.9.2000, p.19 (henceforth SIC). However, in respect of judicial cooperation, Article 50(4) SIC and Article 3 of this Agreement will no longer apply with the entry into force of the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union for Switzerland since Article 8 of the Protocol will replace Article 50 SIC. The Protocol will enter into force for Switzerland at the latest on the date of its entry into force for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Protocol.

- Article 4 - **"Public order"**

This Article includes the relevant grounds of public order in accordance with the cooperation Agreements, in particular, with Article 2b) of the European Convention on Mutual assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959).

Banking secrecy does not constitute a reason for refusing mutual assistance in the sense of this Article.

- Article 5 - **"Transmission of information and evidence"**

This Article allows exchange between the Member States and with the Commission of information and evidence obtained from Switzerland and vice versa by way of the assistance provided for by the Agreement.

Article 5(1) makes reference to the rule of confidentiality to which officials are bound. Article 5(2) reflects the subsequent transmission of information and evidence received by the requesting Party as a consequence of the assistance provided by the requested authority. Article 5(3) ensures the effectiveness of this subsequent transmission of information.

- Article 6 **- "Confidentiality**"

This Article refers to the confidentiality requirements applying to the handling of assistance requests by the requested Party.

Title II: Provisions relating to administrative assistance for the protection of financial interests

- Article 7 **- "Relationships with other Agreements**"

The anti-fraud Agreement does not repeal the Protocol on mutual assistance in customs matters signed with Switzerland, OJ L 169, 27.6.97, p. 81 which can continue to apply, especially for customs aspects outside the scope of the anti-fraud Agreement.

- Articles 8 and 9 **- "Scope" and "Powers**"

These Articles of the Agreement correspond to Articles 1 to 3 and 8 of the Convention on mutual assistance and cooperation between customs administrations, OJ C 24, 23.1.98, p. 2 (henceforth the Naples II Convention).

Administrative assistance under the Agreement corresponds to the standards of the Naples II Convention as far as appropriate. This includes the use of information for the purposes of the Agreement (see Article 19 of the agreement) (EU-Switzerland summit conclusions of 19 May 2004). The anti-fraud agreement's scope goes beyond the exclusively customs-related scope of the Convention. The provisions of the Agreement will apply within the limits of the powers conferred by national law on each authority concerned in the framework of national proceedings, and do not amend or extend these powers.

- Article 10 **- "Proportionality**".

This Article reflects the concern already contained in Article 3 but within the limits of the administrative assistance.

- Article 11 - **"Central Departments**"

This Article of the Agreement is in line with the content of Article 5 of the Naples II Convention and reflects the negotiating brief's requirement for clear identification of the relevant authorities at central level.

The central departments empowered to process the requests for administrative assistance are designated by each contracting Party.

- Article 12 - **"Request for information"-,** Article 13 - **"Request for surveillance"- and** Article 14 **-"Notification and transmission by post" (1) and (2).**

These Articles of the Agreement are in line with the content of Articles 10, 11 and 13 of the Naples II Convention.

- Article 14(3) aims to ensure that grant recipients and contractors for the Communities residing in Switzerland may be contacted directly by the awarding institution and may respond to requests for documents and information directed to them by the latter in connection with the grants and contracts concerned. In the absence of any basis in an international instrument, such transmission of information would be likely to be caught by certain Swiss rules on the violation of business secrets and economic espionage.

- Article 15 - **"Request for investigations"- and Article 16- "Presence of authorised staff of the authority of the requesting contracting Party"**

These Articles are in line with the content of Article 12 of the Naples II Convention. The use of all investigation facilities allowed by the legal system of the requested Party as referred in Article 15(2) includes questioning persons, searches of premises and means of transport, copies of documents, requests for information and seizures of objects, documents and items of value.

Article 16 covers the possibility of authorised staff to be present during the execution of the request for assistance and to consult the documents, to propose questions and suggest measures of investigation in order to contribute to the efficiency of mutual assistance and, where appropriate, to have access to the same premises and documents and information as the staff of the requested authority (EU-Switzerland summit conclusions of 19 May 2004).

- Article 17 - **"Duty to cooperate**"

This Article is a corollary of Articles 15 and 16 of the Agreement and reflects similar obligations on traders in the Member States in respect of investigations conducted by their authorities.

- Article 18 – **"Form and content of the request for assistance**"

This Article is in line with the content of Article 9 of the Naples II Convention.

- Article 19 - **"Use of information**"

This Article is similar to Article 11 of the Protocol on mutual assistance in customs matters signed with Switzerland (OJ L 169, 27.6.97, p. 81) and it reflects a speciality rule. The use of

information will remain confined to the protection of the Parties' financial interests as defined in Article 2 (EU-Switzerland summit conclusions of 19 May 2004).

- Article 20 **- "Spontaneous assistance**"

This provision is broader than similar provisions contained in the Naples II Convention.

- Article 21 to Article 23 **– "Special forms of cooperation**"

These Articles are in line with the content of some of the measures covered in Title IV of the Naples II Convention. They are drafted in such a way as to leave their application to the discretion of the Parties' authorities.

- Article 24 **- "Recovery**"

This Article takes over the essence of Articles 6, 7, 9, 10, and 13 of Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, OJ 19.3.76 L73, p. 18.

Title III: Provisions relating to mutual legal assistance in criminal matters for the protection of financial interests

- Article 25 **- "Relationships with other Agreements**"

This Article is based on the same rationale of the complementarity of international instruments as Article 48 of the SIC and Article 1 of the Convention on Mutual Assistance in Criminal Matters between the Members of the European Union of 29 May 2000, OJ C 197, 12.7.2000, p. 1.

The concept of multilateral Agreements between the Contracting Parties under the terms of Article 25, paragraph 2 of the Agreement, includes in particular, once it has entered into force, the Agreement between the European Union, the European Community and the Swiss Confederation on the involvement of the Swiss Confederation in the implementation, application and development of the Schengen acquis.

- Article 26 **- "Procedures in which assistance is given**"

This Article is in line with the content of Article 49 of the SIC and Article 3 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

This Article is now focused on the proceedings where judicial assistance is afforded (including as regards those facts or offences for which a legal person could be liable). Paragraph 2 has been maintained with the aim of extending the measures laid down in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 8.11.1990) to offences covered by the anti-fraud Agreement.

- Article 27 **- "Transmission of requests**"

This Article takes a flexible approach to transmission allowing both centralised transmission of requests and direct transmission to the executing authority. It is especially suited to the

Swiss case, where the existence of two levels of jurisdiction (federal and cantonal) means that the possibility of centralised transmission may prove useful in certain situations.

The direct transmission of requests is in line with Article 6 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and will avoid unnecessary delays. Article 27(5) provides for the necessary measures to identify the competent central authorities.

- Article 28 **- "Service by post**"

This Article is in line with the content of Article 52 of the SIC and Article 5 of the Convention of 29 May of 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

- Article 29 **- "Provisional measures**"

This Article corresponds to Article 24 of the Second Additional Protocol of 8 November 2001 to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959). Paragraph 2 corresponds to Article 11 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 8.11.1990).

- Article 30 **- "Presence of the authorities of the requesting Contracting Party**"

This Article is in line with Article 4 of the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959) and Article 2 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg 8.11.2001). It is also inspired on Article 12(2) of the Naples II Convention. The aim of this Article is to facilitate the execution of the requests of judicial assistance in order to avoid supplementary requests that would delay the effectiveness of cooperation.

As it was said for the administrative assistance (Article 16) this covers the possibility for the authorities and authorised staff of the requesting Contracting Party to be present during the execution of the request for assistance and to consult the documents, to propose questions and suggest measures of investigation in order to contribute to the efficiency of mutual assistance and, where appropriate, to have access to the same premises and documents and information as the staff of the requested authority (EU-Switzerland summit conclusions of 19 May 2004).

This provision does not however oblige the requested authorities to address an invitation to the requesting authorities to assist the execution of the measures requested by letter rogatory.

- Article 31 **- "Search and seizures**"

Judicial cooperation, including search and seizures, will be granted, including in matters of indirect taxation and smuggling (EU-Switzerland summit conclusions of 19 May 2004).

Article 31(1)a reproduces the wording of Article 51(a) of the SIC.

Article 31(2) corresponds to the Community anti-laundering standards under Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering as amended by Directive 2001/97/EC (OJ L 344, 28.12.01, p. 76)and under the Second Protocol to the Convention on the protection of the European Communities' financial

interests (OJ C 222, 19.7.97, p. 12). Letters rogatory for search and seizure in respect of money laundering offences have to be executed provided that the predicate offence is punishable by custody of more than six months according to the law of the requesting and the requested Party. This means that tax fraud and professional smuggling will be covered (EU-Switzerland summit conclusions of 19 May 2004).

- Article 32 **- "Request for banking and financial information**"

Requests for information on bank accounts, on banking transactions and requests for the monitoring of banking transactions will be treated in compliance with the standards laid down in the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1, including, if necessary, the non-disclosure to the person concerned of investigative measures (see Articles 1 to 4 of the Protocol) (EU-Switzerland summit conclusions on 19 May 2004).

- Article 33 **- "Controlled deliveries**".

This Article is modelled on Article 12 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

- Article 34 - **"Handing over for confiscation or return"**

This Article is in line with Article 8 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

- Article 35 – **"Speeding up mutual assistance"**

This Article reflects the negotiating directives adopted by the Council on 14 December 2000 as regards avoiding excessively long cooperation procedures. The text is in full compliance with Article 4 (2), (3) and (4) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

By execution of the request for judicial assistance under the terms of Article 35, paragraph I, it is also understood to cover the transmission of information and evidence to the authority of the requesting Contracting Party.

- Article 36 - "**Use of evidence**"

This Article is to be interpreted in full respect of the data protection rules contained in the *acquis communautaire* and, in particular, in accordance with Article 23 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Members of the European Union.

- Article 37 - "**Spontaneous transmission of evidence"**

This Article is based on Article 7 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. The additional reference in the Agreement to spontaneous transmission of evidence does not presuppose any substantive change compared with existing rules since the evidential value will of course be determined by criminal procedural law in the country of prosecution**.**

- Article 38 - **"Procedures in the requested Party"**

This Article is justified by Swiss case law, according to which a foreign country joining a civil action to criminal proceedings in Switzerland may be refused access to the file as civil party if in addition to these proceedings the Swiss authorities are handling a request for mutual assistance from a judicial authority in that country in respect of the same case (*Abacha*, judgment of the Public Law Court of 5 June 2001). The provision is designed to ensure that the Community or the Member States could enjoy their full rights as a party in proceedings should they join a civil claim to criminal proceedings in Switzerland.

Title IV: Final provisions

- Article 39 - "**Joint Committee**"

This Article sets up a joint committee for managing the Agreement, settling disputes (Article 40) and making recommendations on revising the Agreement (Article 42).

- Article 40 - "**Dispute settlement**"

- Article 41 - "**Reciprocity**"

This Article sets out that no unilateral measures will be taken without prior consultation of the Joint Committee.

- Article 42 -"**Revision**"

- Article 43 -"**Territorial scope**"

This Article is in line with the standard provisions on the matter. However, the Commission will send to the Swiss an indicative list of territories in which the Agreement applies.

- Article 44 - "**Entry into force**"

Where a declaration is to be made under Article 44(3) it is clear that it could only be the Community which could make a declaration on matters of Community competence and that any declaration could not concern relations between the Member States but only the relations with Switzerland.

- Article 45 -"**Withdrawal**"

This Article contains the possibilities of denouncing the Agreement.

- Article 46 -"**Application over time**"

This Article contains a clause for the application the Agreement to requests concerning illegal activities committed six months after the signature of the Agreement.

- Article 47 - **"Extension of the Agreement to the new Members of the EU"**

This Article is designed to make it easier to extend the Agreement to the new Member States.

- Article 48 - "**Authentic texts**".

Proposal for a

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concerning the signature of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 280 in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[1],

Whereas:

(1) Following the authorisation by the Council on 14 December 2000 the Commission has negotiated, on behalf of the Community and its Member States, with the Swiss Confederation an Agreement to counter fraud and all other illegal activities affecting the financial interests of the Community and its Member States, including value added tax and excise duties.

(2) Subject to its conclusion at a later date, it is desirable to sign the Agreement that was initialled on 25 June 2004,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person empowered to sign on behalf of the European Community the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests and the accompanying Final Act.

Done at Brussels,

For the Council
The President

[1] OJ C […] […], p. […].

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THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 280 in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Parliament[3],

Whereas:

(1) On 14 December 2000, the Council authorised the Commission to negotiate with the Swiss Confederation an Agreement to counter fraud and all other illegal activities affecting the financial interests of the Community and its Member States, including value added tax and excise duties.

(2) According to Council Decision …./…./CE of ……2004, and subject to its conclusion at a later date, the Agreement was signed on behalf of the European Community on ….2004.

(3) The Agreement establishes a Joint Committee with decision-making powers in certain areas and it is thus necessary to specify who represents the Community within this Committee.

(4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities

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2 OJ C […] […], p. […].
3 OJ C […] […], p. […]..

affecting their financial interests and the accompanying Final Act are hereby approved on behalf of the European Community.

The text of the Agreement and the Final Act are attached to this Decision.

Article 2

The Community shall be represented on the Joint Committee set up under Article 39 of the Agreement by the Commission.

The position to be taken by the Community in the course of the implementation of the Agreement as regards decisions or recommendations of the Joint Committee shall be laid down by the Council, acting by qualified majority, on a proposal from the Commission.

Article 3

The President of the Council shall effect the notification provided for in Article 44(2) of the Agreement on behalf of the European Community[4].

Article 4

This Decision shall be published in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President

[4] The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

ANNEX

Cooperation Agreement

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

to combat fraud and any other illegal activity to the detriment of their financial interests

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THE EUROPEAN COMMUNITY,

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, of the one part,

and

THE SWISS CONFEDERATION, of the other part,

Hereinafter referred to as the Contracting Parties,

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

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

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

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

RECOGNISING the importance of combating money laundering,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

TITLE I GENERAL PROVISIONS

Article 1 - Objective

The objective of this Agreement is to extend administrative and judicial assistance in criminal matters between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, so as to combat the illegal activities to which Article 2 applies.

Article 2 - Scope

1. This Agreement is applicable to:

   (a) the administrative and criminal prevention, detection, investigation, prosecution and repression of fraud and any other illegal activity to the detriment of the Contracting Parties' respective financial interests concerning:

   – trade in goods contrary to customs and agricultural legislation;

   – trade contrary to tax legislation applicable to value added tax, special taxes on consumption and excise duties;

   – the charging or retention of funds – including their use for purposes other than those for which they were initially granted – from the budget of the Contracting Parties or budgets managed by them or on their behalf, such as grants and refunds;

   – procedures for the award of contracts by the Contracting Parties;

   (b) the seizure and recovery of amounts due or wrongly received as a result of the illegal activities referred to in point (a).

2. Cooperation within the meaning of Titles II (Administrative assistance) and III (Judicial assistance) may not be withheld on the sole ground that the request relates to an offence treated as a tax offence in the requested Contracting Party or that the legislation of the requested Contracting Party does not provide for the same type of levy or expenditure or does not contain the same type of rules or the same legal characterisation of the facts as the legislation of the requesting Contracting Party.

3. The scope of this Agreement includes the laundering of the proceeds of the activities covered by the Agreement provided that the activities which constitute the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum of more than six months.

4. Direct taxes are excluded from the scope of this Agreement.

Article 3 Minor cases

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

2. The authority of the requested Contracting Party shall inform the authority of the requesting Contracting Party without delay of its reasons for refusing the request for cooperation.

Article 4 Public policy

Cooperation may be withheld if the requested Contracting Party considers that execution of the request would be contrary to its sovereignty, security, public policy or other vital interests.

Article 5 Transmission of information and evidence

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

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

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

3. The transmission of information and evidence obtained pursuant to this Agreement by a Contracting Party to another Contracting Party or to more than one Contracting Party may not be open to appeal in the Contracting Party initially requested.

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

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

Article 6 Confidentiality

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

Title II ADMINISTRATIVE ASSISTANCE

Chapter 1 General provisions

Article 7 Relationship with other Agreements

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

Article 8 Scope

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

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

   If a criminal investigation is conducted by or under the direction of a judicial authority, such authority shall determine whether related requests for mutual assistance or cooperation have been presented on the basis of the provisions applicable to judicial assistance in criminal matters or on the basis of this Title.

Article 9 Powers

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

   They shall proceed as if they were acting on their behalf or at the request of another authority of the same Contracting Party. To that end they shall exercise all the legal powers which they enjoy under their domestic law in meeting the request.

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

Article 10 Proportionality

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

(a) the number and nature of the requests made by the requesting Contracting Party in the course of a given period impose disproportionate administrative burdens on the authority of the requested Contracting Party;

(b) the authority of the requesting Contracting Party has not exhausted the usual sources of information which, in the circumstances, it could have used to obtain the information sought without running the risk of jeopardising the chances of achieving the desired result.

Article 11 Central departments

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

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

2. The central departments shall communicate directly with each other.

3. The activities of the central departments shall not, especially in urgent cases, preclude direct cooperation between the other authorities in the Contracting Parties having power to act in matters to which this Agreement applies. The central departments shall be informed of all action in which a call is made on such direct cooperation.

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

Chapter 2 Assistance on request

Article 12 Requests for information

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

2. The reports and other documents, or certified copies of or extracts from the reports or documents, on which the information notified is based and which are available to the

authorities of the requested Contracting Party or which have been produced or obtained to meet the request shall be attached to the information that is supplied.

3. By Agreement between the authority of the requesting Contracting Authority and the authority of the requested Contracting Party, and in accordance with the latter's detailed instructions, staff duly authorised for the purpose by the authority of the requesting Contracting Party may have access to documents and information to which paragraph 1 applies, held in the offices of the authorities of the requested Contracting Party, which refers to specific illegal activities falling within the scope of this Agreement. Such staff shall be authorised to make copies of that documentation.

Article 13 Requests for surveillance

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

Article 14 Notification and transmission by post

1. At the request of the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall notify the addressee or cause him to be notified, in accordance with the domestic provisions of the requested Contracting Party, of all instruments or decisions emanating from the relevant authorities of the requesting Contracting Party which are within the scope of this Agreement.

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

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

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

Article 15 Requests for investigations

1. At the request of the requesting Contracting Party, the requested Contracting Party shall undertake all useful investigations, or order such investigations to be undertaken, into operations or forms of conduct that constitute illegal activities to which this Agreement applies or which prompt the requesting Contracting authority to suspect on reasonable grounds that such illegal activities have been committed.

2. The requested Contracting Party shall make use of all investigation facilities allowed by its legal system as if it were acting on its own behalf or at the request of another

internal authority, including the involvement or authorisation of the judicial authorities where required.

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

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

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

Article 16 Presence of authorised staff from the authority of the requesting Contracting Party

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

2. Staff of the authority of the requested Contracting Party shall at all times conduct the investigations. Staff of the authority of the requesting Contracting Party may not of their own motion exercise the powers conferred on the staff of the authority of the requested Contracting Party.

However, they shall have access to the same premises and the same documents as the staff of the authority of the requested Contracting Party, through them and for the sole purposes of the investigation in hand.

3. Conditions may be attached to the authorisation.

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

Article 17 Duty to cooperate

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

Article 18 Form and content of requests for assistance

1. Requests for assistance shall be made in writing. They shall be accompanied by such documents as are regarded as helpful to the reply.

In cases of urgency, oral requests shall be accepted, but they must be confirmed in writing at the earliest possible opportunity.

2. Requests shall be accompanied by the following information:

(a) the requesting authority;

(b) the measure requested;

(c) the object and the grounds for the request;

(d) the legislation, rules and other legal materials concerned;

(e) the clearest and fullest indications possible of the natural or legal persons to be investigated;

(f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 14.

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

4. Incorrect or incomplete requests may be corrected or completed. The measures needed to act on the request shall be carried out in the meantime.

Article 19 Use of information

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

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

3. The Contracting Parties may use the information obtained and the documents consulted in accordance with this Agreement by way of evidence in their reports and depositions and in proceedings and prosecutions in the courts.

Chapter 3 Spontaneous assistance

Article 20 Spontaneous assistance

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

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

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

Chapter 4 Special forms of cooperation

Article 21 Joint operations

1. On imports, exports and transit of goods, where the volume of transactions and the resultant risks in terms of taxes and grants are such that there are likely to be major losses to the budget of the Contracting Parties, those Parties may agree to conduct joint cross-border operations for the prevention and prosecution of illegal activities to which this Agreement applies.

2. The coordination and planning of such cross-border operations shall be the responsibility of the central department or of an office designated by it.

Article 22 Joint special investigation teams

1. The authorities of several Contracting Parties may by Agreement among themselves establish a joint special investigation team located in a Contracting Party.

2. The joint team shall conduct difficult investigations entailing the mobilisation of substantial resources and shall coordinate joint actions.

3. Participation in such a team shall not have the effect of conferring on the representatives of the participating Contracting Parties' authorities the power to act in the territory of the Contracting Party in which the investigations are conducted.

Article 23 Liaison officers

1. The competent authorities of the Contracting Parties may decide on the secondment, for a fixed or indefinite period, of liaison officers of a Contracting Party to the competent departments of another Contracting Party in order to provide mutual support in the execution of administrative assistance.

2. Liaison officers shall have the task of providing advice and assistance. They shall have no independent power to act in the territory of the host Contracting Party. With the Agreement or at the request of the competent authorities of the Contracting Parties, they may:

   (a) facilitate and accelerate the exchange of information;

   (b) provide assistance with investigations;

   (c) assist in the processing of requests for assistance;

   (d) advise and assist the host country in preparing and carrying out cross-border operations;

(e) perform any other task on which the Contracting Parties may agree among themselves.

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

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

Chapter 5 Recovery

Article 24 Recovery

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

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

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

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

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

Title III JUDICIAL ASSISTANCE

Article 25 Relationship with other Agreements

1. The purpose of this Title is to complement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, and to facilitate their application between the Contracting Parties.

2. More favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected.

Article 26 Procedures in which assistance is given

1. Judicial assistance shall also be given:

(a) in proceedings for offences that are punishable in one of the two Contracting Parties or in both Contracting Parties as infringements of the rules of law being

prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) in civil actions joined to criminal proceedings, as long as the criminal court has not given a final judgment;

(c) for facts or offences for which a legal person of the requesting Contracting Party may be liable.

2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

Article 27 Transmission of requests

1. Requests under this Title shall be presented by the authority of the requesting Contracting Party either via a relevant central authority of the requested Contracting Party or direct to the Contracting Party's authority which is empowered to execute the requesting Contracting Party's request. The authority of the requesting Contracting Party and, where appropriate, the authority of the Contracting Party requested shall send a copy of the request to its central authority for information.

2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent direct to the authority of the requesting Contracting Party.

3. If the authority of the Contracting Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.

4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Contracting Party. The authority of the Contracting Party requested shall inform the authority of the requesting Contracting Party of the defects and allow it time to regularise them.

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

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

Article 28 Service by post

1. As a rule the Contracting Parties shall, in proceedings for illegal activities covered by this Agreement, address procedural documents directly by post to persons who are in the territory of the other Contracting Party.

2. If the authority of the Contracting Party that issued the papers knows or has reason to believe that the addressee understands only some other language, the papers, or at

least the most important passages thereof, shall be accompanied by a translation into that other language.

3. The authority of the serving Contracting Party shall advise the addressee that no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Contracting Party.

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

Article 29 Provisional measures

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

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

Article 30 Presence of the authorities of the requesting Contracting Party

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

   Conditions may be attached to the authorisation.

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

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

Article 31 Searches and seizures

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

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

(b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

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

Article 32 Requests for banking and financial information

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

(a) the identification of and information concerning bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;

(b) the identification of and information concerning banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.

2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Contracting Party may order surveillance of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Contracting Party. The decision to monitor transactions and transmit the results shall be taken case by case by the relevant authorities of the requested Contracting Party and shall comply with that Contracting Party's national legislation. The practical monitoring measures shall be determined by Agreement between the relevant authorities of the requesting and requested Contracting Parties.

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

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

(a) state the reasons why it considers that the information requested is likely to be vital for the investigation of the offence;

(b) state the reasons why it suspects that banks in the requested Contracting Party hold the relevant accounts and, if it has evidence, indicate which banks might be concerned;

(c) transmit all such information as may facilitate the execution of the request.

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

Article 33 Controlled deliveries

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

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

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

Article 34 Handing-over for confiscation or return

1. At the request of the requesting Contracting Party, all objects, documents, funds or other items of value that have been seized on a precautionary basis may be handed over for confiscation or for return to the rightful owner.

2. The requested Contracting Party may not refuse to return funds on the sole ground that they correspond to a tax or customs debt.

3. Rights asserted by a third party in good faith shall remain reserved.

Article 35 Speeding up assistance

1. The authority of the requested Contracting Party shall execute the request for judicial assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Contracting Party. That Contracting Party shall explain the reasons for the deadline.

2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall promptly inform the authority of the requesting Contracting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Contracting Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

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

Article 36 Use of evidence

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

(a) in criminal proceedings in the requesting Contracting Party against other persons who participated in the commission of the offence for which assistance was given;

(b) where the facts on which the request is based constitute another offence for which assistance ought also to be given;

(c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of facts for which assistance had been given.

Article 37 Spontaneous transmission

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

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

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

Article 38 Procedures in the requested Contracting Party

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

TITLE IV FINAL PROVISIONS

Article 39 Joint Committee

1. A Joint Committee shall be established, consisting of representatives of the Contracting Parties, and shall be responsible for the sound application of this Agreement. To that end, it shall make recommendations and take decisions in the cases provided for by the Agreement. It shall act by mutual Agreement.

2. The Joint Committee shall adopt its Rules of Procedure, which shall include provisions governing the convening of meetings, the designation of the Chair and the determination of his or her functions.

3. The Joint Committee shall meet as required but no less than once every year. Any Contracting Party may request that a meeting be convened.

4. The Joint Committee may decide to establish working parties or expert groups to assist it in the performance of its tasks.

Article 40 Dispute settlement

1. Each Contracting Party may submit to the Joint Committee a dispute relating to the interpretation or application of this Agreement, in particular if it considers that another Contracting Party is failing repeatedly to take action on requests for cooperation made to it.

2. The Joint Committee shall endeavour to settle the dispute as quickly as possible. The Joint Committee shall be supplied with all relevant items of information to assist its detailed examination of the situation with a view to identifying a satisfactory solution. To that end, the Joint Committee shall examine all possibilities of preserving the sound operation of this Agreement.

Article 41 Reciprocity

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

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

Article 42 Revision

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

Article 43 Territorial scope

This Agreement shall apply in the Swiss Confederation and in the territories to which the Treaty establishing the European Community is applicable in accordance with the conditions provided for by that Treaty.

Article 44 Entry into force

1. This Agreement is concluded for an indefinite period.

2. It shall be ratified or approved by the Contracting Parties in accordance with their respective procedures. It shall enter into force on the first day of the second month after the last notification of instruments of ratification or approval.

3. Until the entry into force of this Agreement, each Contracting Party may, at the time of the notification referred to in paragraph 2 or at any other subsequent time, declare that it shall consider itself bound by the Agreement in its relations with any other Contracting Party having made the same declaration. These declarations shall take effect ninety days after the date of receipt of the notification.

Article 45 Withdrawal

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

Article 46 Application over time

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

Article 47 Extension of the Agreement to the new Member States of the EU

1. Any State which becomes a Member State of the European Union may, by written notification to the Contracting Parties, become a Contracting Party to this Agreement.

2. The text of the Agreement in the language of the new acceding Member State as established by the Council of the European Union shall be authenticated by an exchange of letters between the European Community and the Swiss Confederation. It shall be considered to be authentic within the meaning of Article 48.

3. This Agreement shall enter into force in relation to any new Member State of the European Union which accedes to it ninety days after the receipt of its instrument of accession, or on the date of entry into force of this Agreement if it was not yet in force when that ninety-day period expired.

4. If this Agreement is not yet in force when the newly acceding State notifies its instrument of accession, Article 44(3) shall apply.

Article 48 Authentic texts

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovene, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.

Signatures

Final Act of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests

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The plenipotentiaries of

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

THE EUROPEAN COMMUNITY, of the one part,

and of

THE SWISS CONFEDERATION, of the other part,

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

Joint declaration on money laundering,

Joint declaration on cooperation by the Swiss Confederation with Eurojust and, if possible, with the European Judicial Network.

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

Done at ……..., …….....

Signatures

Joint declaration on money laundering

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

Joint declaration on cooperation by the Swiss Confederation with Eurojust and, if possible, with the European Judicial Network

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

Agreed Minute

of the negotiations on the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests

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The Contracting Parties have agreed as follows:

Ad Article 2(1)(a)

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

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

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

Ad Article 15(2)

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

Ad second subparagraph of Article 16(2)

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

Ad Article 25(2)

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

Ad Article 35(1)

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

Ad Article 43

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

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Anti-fraud cooperation with Switzerland

Activit(y/ies):

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION CONCERNING THE SIGNATURE OF THE AGREEMENT BETWEEN THE EC, ITS MEMBERS STATES AND SWITZERLAND TO COUNTER FRAUD.

1. BUDGET LINE(S) + HEADING(S)µ

24.01.2006 – fight against fraud

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

2.2. Period of application:

(start and expiry years)

From its ratification by EC and all Member States

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million (*to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure*(see point 6.1.2)*

Commitments							
Payments							
Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

Commitments/ payments							

TOTAL a+b+c							
Commitments							
Payments							

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

Proposal has financial impact – the effect on revenue is as follows:

(NB All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.)

(€ million to one decimal place)

		Prior to action	Situation following action					
Budget line	Revenue	[Year n-1]	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
	a) Revenue in absolute terms							
	b) Change in revenue	*Δ*						

(Please specify each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions form applicant countries	Heading in financial perspective
Non-comp	Non-diff	NO	NO	NO	**No**

4. LEGAL BASIS

280 (4); 300 (1) EC Treaty

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention [5]

Provide a more effective legal basis for administrative and judicial cooperation with Switzerland against EC-fraud, including VAT and excise fraud and money laundering of relevant proceeds.

5.1.1. Objectives pursued

(Describe the problem(s)/need(s) (in measurable terms) that the intervention is designed to solve/satisfy (the baseline situation against which later progress can be measured). Describe the objectives in terms of expected outcomes (for example as a change in the above baseline situation).)

5.1.2. Measures taken in connection with ex ante *evaluation*

(This involves:

(a) explaining how and when the ex ante *evaluation was conducted (author, timing and where the report(s) is/are available) or how the corresponding information was gathered;*[6]

(b) describing briefly the findings and lessons learnt from the ex ante *evaluation.)*

5.1.3. Measures taken following ex post *evaluation*

(Where a programme is being renewed the lessons to be learned from an interim or ex post *evaluation should also be described briefly.)*

5.2. Action envisaged and budget intervention arrangements

(This point should describe the logic behind the proposal. It should specify the main actions to achieve the general objective. Each action should have one or more specific objectives. These should indicate the progress expected over the proposed period. They should also look

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5 For further information, see separate explanatory note.

6 For minimum information requirements relating to new initiatives, see SEC 2000 (1051)

beyond immediate outputs but be sufficiently precise to allow concrete results to be identified. Specify for each main action:

– *the target population(s) (specify number of beneficiaries if possible);*

– *the specific objectives set for the programming period (in measurable terms);*

– *the concrete measures to be taken to implement the action ;*

– *the immediate outputs of each action; and*

– *the contribution of these outputs to the expected outcomes in terms of satisfying needs or solving problems*

Information should also be given on the budget intervention arrangements (rate and form of the required financial assistance).)

5.3. Methods of implementation

(Specify the methods to be used to implement the planned actions: direct management by the Commission using either regular or outside staff or by externalisation. In the latter case, give details of the arrangements envisaged for this externalisation (TAO, Agencies, Offices, decentralised executive units, management shared with Member States - national, regional and local authorities.)

Indicate the effect of the externalisation model chosen on the financial intervention, management and support resources and on human resources (seconded officials, etc.).)

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: *of which for construction and maintenance of computerised management systems*							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)[7]

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1…n)	Average unit cost	Total cost (total for years 1…n)
	1	2	3	4=(2X3)
Action 1				
- *Measure 1*				
- *Measure 2*				
Action 2				
- *Measure 1*				
- *Measure 2*				
- *Measure 3*				
etc.				
TOTAL COST				

If necessary explain the method of calculation

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A B C				*If necessary, a fuller description of the tasks may be annexed.*
Other human resources					
Total					

[7] For further information, see separate explanatory note.

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials Temporary staff		
Other human resources (specify budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) 010211 – Other Management Expenditure	100.000	One meeting per year of the mixed Committee provided for under art. 39 and as needed
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

[1] Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€
II.	Duration of action	years
III.	Total cost of action (I x II)	€

(In the estimate of human and administrative resources required for the action, DGs/Services must take into account the decisions taken by the Commission in its orientation/APS debate and when adopting the preliminary draft budget (PDB). This means that DGs must show that human resources can be covered by the indicative pre-allocation made when the PDB was adopted.

Exceptional cases (i.e. those where the action concerned could not be foreseen when the PDB was being prepared) will have to be referred to the Commission for a decision on whether and how (by means of an amendment of the indicative pre-allocation, an ad hoc redeployment exercise, a supplementary/amending budget or a letter of amendment to the draft budget) implementation of the proposed action can be accommodated.)

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

(Adequate follow-up information must be collected, from the start of each action, on the inputs, outputs and results of the intervention. In practice this means (i) identifying the indicators for inputs, outputs and results and (ii) putting in place methods for the collection of data).

8.2. Arrangements and schedule for the planned evaluation

(Describe the planned schedule and arrangements for interim and ex post *evaluations to be carried out in order to assess whether the intervention has achieved the objectives set. In the case of multiannual programmes, at least one thorough evaluation in the life cycle of the programme is needed. For other activities* ex post *or mid-term evaluations should be carried out at intervals not exceeding six years.)*

9. ANTI-FRAUD MEASURES

(Article 3(4) of the Financial Regulation: "In order to prevent risk of fraud or irregularity, the Commission shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures.")