

SCHEDULE 5

Preamble

THE CONVENTION RELATING TO EXTRADITION BETWEEN MEMBER STATES OF THE EUROPEAN UNION (“THE 1996 CONVENTION”)

The High Contracting Parties to this Convention, Member State of the European Union, Referring to the Act of the Council of the European Union of twenty-seventh day of September in the year one thousand nine hundred and ninety six.

Desiring to improve judicial co-operation between Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

Recognising the importance of extradition in judicial co-operation for the achievement of these objectives,

Stressing that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly insofar as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4th November 1950,

Expressing their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

Bearing in mind that by Act of 10th March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

Taking account of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

Considering that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

Have agreed as follows:

ARTICLE 1

GENERAL PROVISIONS

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

- of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as “European Convention on Extradition”),
- the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as “European Convention on the Suppression of Terrorism”),
- the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are party to that Convention, and
- the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the “Benelux Treaty”) in relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28(3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or

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reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

ARTICLE 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2(2) of the European Convention on Extradition and Article 2(2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

ARTICLE 3

CONSPIRACY AND ASSOCIATION TO COMMIT OFFENCES

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

- (a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism; or
- (b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2)(b) of the European Convention on Extradition or in Article 11 (2)(b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18(2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional

and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

ARTICLE 4

ORDER FOR DEPRIVATION OF LIBERTY IN A PLACE OTHER THAN A PENITENTIARY INSTITUTION

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12(2)(a) of the European Convention on Extradition or Article 11(2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

ARTICLE 5

POLITICAL OFFENCES

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.
2. Each Member State may, when giving the notification referred to in Article 18(2), declare that it will apply paragraph 1 only in relation to:
 - (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, and
 - (b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3(4) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.
3. The provisions of Article 3(2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.
4. Reservations made under Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

ARTICLE 6

FISCAL OFFENCES

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.
2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.
3. When giving the notification referred to in Article 18(2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

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ARTICLE 7

EXTRADITION OF NATIONALS

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.
2. When giving the notification referred to in Article 18(2), any Member State may declare that it will not grant extradition of its nationals or will authorise it only under certain specified conditions.
3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However, such reservations may be renewed for successive periods of the same duration.

12 months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

ARTICLE 8

LAPSE OF TIME

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.
2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

ARTICLE 9

AMNESTY

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

ARTICLE 10

OFFENCES OTHER THAN THOSE UPON WHICH THE REQUEST FOR EXTRADITION IS BASED

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:
 - (a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

- (b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;
- (c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty; or
- (d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1(d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1(d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6(3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6(3).

ARTICLE 11

PRESUMPTION OF CONSENT OF THE REQUESTED STATE

Each Member State, when giving the notification referred to in Article 18(2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14(1)(a) of the European Convention on Extradition and Article 13(1)(a) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10(1) still applies.

ARTICLE 12

RE-EXTRADITION TO ANOTHER MEMBER STATE

1. Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18(2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union provides otherwise or where the person concerned consents to be re-extradited to another Member State.

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ARTICLE 13

CENTRAL AUTHORITY AND TRANSMISSION OF DOCUMENTS BY FACSIMILE

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18(2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

ARTICLE 14

SUPPLEMENTARY INFORMATION

When giving the notification referred to in Article 18(2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorised to communicate to communicate and receive such supplementary information.

ARTICLE 15

AUTHENTICATION

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case,

copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

ARTICLE 16

TRANSIT

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

- (a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited;
 - the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgement;
 - the nature and the legal description of the offence;
 - a description of the circumstances in which the offence was committed, including the date and place;
- (b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;
- (c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);
- (d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

ARTICLE 17

RESERVATIONS

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

ARTICLE 18

ENTRY INTO FORCE

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.

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3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

ARTICLE 19

ACCESSION OF NEW MEMBER STATES

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

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

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

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18(4) shall apply to acceding Member States.

ARTICLE 20

DEPOSITARY

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

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