

European Union

Convention on the Fight  
Against Corruption

*(Acts adopted under Title VI of the Treaty on European Union)*

COUNCIL ACT

of 26 May 1997

drawing up, on **the** basis of Article **K.3 (2)** (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

(97/C 195/01)

THE COUNCIL **.OF** THE EUROPEAN UNION,

Having regard to the Treaty **on** European Union, and in particular Article K.3 (2) (c) thereof,

whereas the Member States regard the improvemnt of judicial cooperation as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

Whereas, to that end, it is necessary **to** draw up a Convention on the fight against corruption involving officials of the European Communities or officials of Member Stares of the European Union in the light of the provisions of the Protocol to the Convention on the Protection of the European Communities' Financial Interests <sup>(1)</sup>;

**HAVING DECIDED** that the Convention, the text of which is **attached** and which is signed this day by the Representatives of the Governments of the Member States of the European Union, is hereby drawn up;

**RECOMMENDS** that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 May 1997.

*For the Council*  
*The President*  
W. SORGDRAGER

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(1) OJ No C 313, 23. 10. 1996, p. 2.

## CONVENTION

drawn up on the basis of Article **K.3** (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

THE HIGH CONTRACTING PARTIES to this **Convention**, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 May 1997,

**WHEREAS** the Member States consider the improvement of judicial cooperation **in** the fight against corruption to be a matter of common interest, coming under the cooperation provided for in Title VI of the Treaty;

**WHEREAS** by its Act of 27 September 1996 the Council drew up a Protocol directed in particular at acts of corruption involving national or Community officials and damaging or likely to damage the European Communities' financial **interests**;

**WHEREAS**, for the purpose of improving **judicial** cooperation in **criminal** matters between Member States, it is necessary to go further than the said Protocol and to draw up a Convention directed at acts of corruption involving officials of the European Communities or officials of the Member States in general;

**DESIROUS** of ensuring consistent and effective application of this Convention **throughout** the European Union,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

### *Article 1*

equivalent to those **performed** by European Community officials or other servants.

#### Definitions

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities do not apply to them;

For the purposes of this **Convention**:

(a) 'official' shall mean any Community or national official, including any national official of another Member State;

(b) 'Community official' shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities,
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions

(c) 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

*Article 2*

## Passive corruption

1. For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind **whatesoever**, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in **accordance** with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal **offence**.

*Article 3*

## Active corruption

1. For the purposes of this Convention, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him **to** act or refrain from acting in accordance with his duty or *in* the exercise of his functions in breach of his official duties shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal **offence**.

*Article 4***Assimilation**

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the **offences** referred to in Articles 2 and 3 committed by or against its Government Ministers, **elected** members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such **offences** are committed by or against Members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European **Communités** **respectively** in the exercise of their duties.

2. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their **special** political position in that Member State, Paragraph 1 may not apply to such legislation, provided that the Member State ensures that Members of the

Commission of the European Communities are also covered by the criminal legislation implementing Articles 2 and 3.

3. Paragraphs 1 and 2 shall be without prejudice to the provisions applicable in each Member **State** concerning criminal proceedings and the determination of the competent court.

4. This Convention shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

*Article 5*

## Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the **competent** authorities against national officials or Community officials. In determining the penalty to be imposed, **the** national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on **the** same person for the same conduct.

*Article 6*Criminal **liability** of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared **criminally liable** in accordance with the principles defined by its national law in cases of corruption, as referred to in Article 3, by a person under their authority acting on behalf of the business.

*Article 7*

## Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the **offences** it has established in accordance with the obligations arising out of Articles 2, 3 and 4 where:

- (a) the **offence** is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its **officials**;
- (c) the **offence** is committed against one of the persons referred to in Article 1 or a member of one of the European Community institutions referred to in Article 4 (1) who is at the same time one of its nationals;
- (d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.

2. Each Member State *may* declare, when giving the notification provided for in **Article 13 (2)**, that it **will** not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c) and (d).

### Article 8

#### Extradition and **prosecution**

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the **offences** it has established in accordance with the obligations arising out of **Articles 2, 3 and 4**, when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State an **offence** established in accordance with the **obligations** arising out of **Articles 2, 3 and 4** and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take **place**, the files, information and exhibits relating to the **offence** shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition of 13 December 1957. **The** requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. For the purposes of this **Article**, the term '**national**' of a Member State shall be construed in accordance with any declaration made **by that** State under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of that Article.

### Article 9

#### Cooperation

1. If any procedure in connection with an **offence** established in accordance with the obligations arising out of Articles 2, 3 and 4 concerns at **least** two Member **States**, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an **offence based on** the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member States where possible.

### Article 10

#### *Ne bis in idem*

1. Member States shall apply, in their national criminal laws, the *ne bis in idem* rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can **no longer be** enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 13 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

- (a) if the facts which were the subject of the judgment rendered abroad took place in its own territory either in whole or in **part**; in the latter case this exception shall not apply if those facts took place **partly** in the territory of the Member State where the judgment was rendered;
- (b) if the facts which were the subject of the judgment rendered abroad constitute an **offence** directed against the security or other equally essential interests of that Member State;
- (c) if the facts which were the subject of the judgment rendered abroad were committed by an official of that Member State contrary to the duties of his office.

3. If a further prosecution is brought in a Member State against a person whose trial, in respect of the same facts, has been finally disposed of in another Member State, any period of deprivation of liberty **served** in the **latter** Member State arising from those facts shall be deducted from any sanction imposed. To the extent

permitted by national law, sanctions not involving deprivation of liberty shall also be taken **into account** insofar as they have been enforced.

4. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

5. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

### Article 11

#### Internal provisions

No provision in this Convention **shall** prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

### Article 12

#### Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention which it has proved impossible to resolve bilaterally must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. If no solution has been found within six months, the **matter** may be referred to the Court of Justice of the European Communities by one of the parties to the dispute.

2. **Any** dispute between one or more Member States and the Commission of the European Communities concerning **Article 1**, with the exception of point (c), or Articles 2, 3 and 4, insofar as **it** concerns a question of **Community law** or the Communities' financial interests, or involves members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the European **Communities, which** it has proved impossible to settle through negotiation, may be submitted to the Court of Justice **by** one of the parties to the dispute.

3. Any court in a Member State may ask **the Court** of Justice to give a preliminary ruling on a matter concerning the **interpretation** of Articles 1 to 4 and 12 to 16 raised in a case pending before **it** and involving members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the **European** Communities, acting in the exercise of their

functions, if it considers that a decision on that matter is necessary to enable it to give judgment.

4. The **competence** of the Court of Justice provided **for** in paragraph 3 shall be subject to its acceptance by the Member State concerned in a declaration to that effect made at the time of the notification referred to in Article **13** (2) or at any subsequent time.

5. A Member State making a declaration under paragraph 4 may restrict the possibility of asking the Court of Justice to give a preliminary ruling to those of its courts **against** the decisions of which there is no judicial remedy under national law.

6. The Statute of the Court of Justice of the European Community and its Rules of Procedure shall apply. In accordance with those Statutes, any Member State, or the Commission, whether or not it has made a declaration pursuant to paragraph 4, **shall** be entitled to submit statements of case or written observations to the Court of Justice in cases which arise under paragraph 3.

### Article 13

#### 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 procedures laid down by their respective constitutional requirements for adopting this Convention.

3. This Convention shall enter into force ninety days after the notification, referred to in paragraph 2, by the last Member State **to fulfil** that formality.

4. Until the entry into force of this Convention, any Member State may, when giving the notification referred **to** in paragraph 2 or at any time **thereafter**, declare **that** this Convention, with the exception of **Article 12** thereof, shall apply to it in its relationships with those Member States which have made the same declaration. This Convention shall become applicable in respect of the Member State that makes such a declaration on the first day of the month following the **expiry** of a period of ninety days after the date of deposit of its declaration.

5. A Member State that has not made any declaration as referred to in paragraph 4 may apply this Convention with respect **to** the other contracting Member States on the basis of bilateral agreements.

*Article 14*

## 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. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State acceding to it ninety days after **the date** of deposit of its instrument of accession or on the **date** of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of ninety days.
5. If this Convention has not yet entered into force when the instrument of accession is deposited, **Article 13** (4) shall apply to acceding States.

*Article 15*

## Reservations

1. No reservation shall be authorized with the exception of those provided for in **Articles 7** (2) and 10 (2).
2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

*Article 26***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 any other notification concerning this Convention.

En fe de lo **cual, los plenipotenciarios abajo firmantes** suscriben **el** presente Convenio.

**Hecho** en Bruselas, **el veintiséis** de mayo de **mil** novecientos noventa y siete, en un ejemplar **único** en **lenguas** alemana, danesa, **española, finesa**, francesa, griega, **inglesa, irlandesa**, italiana, neerlandesa, **portuguesa** y sueca, siendo **cada uno de estos textos** igualmente **auténtico**, que **será** depositado en **los archivos** de la **Secretaría General del** Consejo de la Unión **Europea**.

Til **bekræftelse** heraf har **undertegnede befuldmægtigede** underskrevet denne konvention.

Udfærdiget i Bruxelles, den seksogtyvende **maj nitten** hundrede og syvoghalvfems, i **ét** eksemplar pi dansk, engelsk, **finsk**, fransk, **græsk**, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og **tyisk**, hvilke tekster **alle** har **samme** gyldighed, og deponeret i arkiveme i Generalsekretariatet for **Rådet** for Den Europæiske Union.

Zu Urkund dessen **haben die Bevollmächtigten** ihre Unterschriften unter dieses **Übereinkommen gesetzt**.

**Geschehen zu Brüssel** am sechsundzwanzigsten **Mai neunzehnhundertsiebenundneunzig** in einer Urschrift in **dänischer**, deutscher, englischer, finnischer, **französischer**, griechischer, **irischer**, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder **Wortlaut gleichermaßen** verbindlich **ist**; die **Urschrift** wird im **Archiv** des **Generalsekretariats** des Rates der **Europäischen Union** **hinterlegt**.

**Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.**

**Έγινε στις Βρυξέλλες, στις είκοσι έξι Μαΐου χίλια εννιακόσια ενενήντα επτά, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά: κατατίθεται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.**

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hand.

Done at Brussels, on the twenty-sixth day of May in the year one thousand nine hundred and ninety-seven in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

En foi de quoi, **les plénipotentiaires** ont **apposé leurs** signatures au bas de la **présente** convention.

Fait à Bruxelles, **le vingt-six mai** mil neuf cent quatre-vingt-dix-sept, en **un** exemplaire unique, en **langues** allemande, **anglaise**, danoise, **espagnole**, finnoise, **française**, grecque, irlandaise, italienne, **néerlandaise**, portugaise et **suédoise**, **tous** ces **textes** faisant **également** foi, exemplaire qui est **déposé** dans **les** archives du Secretariat **général** du Conseil de l'**Union européenne**.

Da **fhianú sin, chuir na Lánchumbachtaigh thíos-síithe a lámh leis an gCoibhinsiún seo.**

**Arna dhéanamh sa Bhruiséil, ar an séú lá** is fiche de Bhealtaine sa bhliain **mile** naoi **gcéad nócha** a seacht i **scríbhinn bhunaidh amháin, sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmiinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingilís, sa Spáinnis agus sa tSualainnis agus comhúdarás** ag na **réacsanna** i ngach ceann de **na** teangacha sin; **déanfar** an scríbhinn bhunaidh sin a thaisceadh i gcartlann **Ardrúnaíocht** Chomhairle on Aontais Eorpaigh.

In fede di **che, i plenipotenziari** hanno apposto **le loro firme** in **calce** alla **presente convenzione**.

**Fatto** a Bruxelles, **addì ventisei** maggio **millenovecentonovantasette**, in un **esemplare** unico **nelle lingue** danese, **finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca**, ciascuna di **esse facente** ugualmente **fede, che è** depositato negli **archivi del** Segretariato generale **del** Consiglio **dell'Unione europea**.

Ten **blijke** waarvan de ondergetekende gevolmachtigden hun handtekening onder deze **overeenkomst** hebben **gesteld**.

Gedaan te **Brussel**, de zesentwintigste **mei** negentienhonderd zevenennegentig, opgesteld in **één** exemplaar in de Deense, de Duitse, de Engelse, de **Finse**, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de **Portugese**, de **Spaanse** en de Zweedse **taal**, zijnde alle teksten gelijkelijk authentiek, dat **wordt** nedergelegd in her archief van **het Secretariaat-generaal** van de Raad van de Europese **Unie**.

Em **fé** do que, os **plenipotenciários** abaixo assinados apuseram as suas assinaturas no final da presença **convenção**.

Feito em Bruxelas, em vinte e seis de Maio de **mil** novecentos e noventa e sete, em exemplar **único**, nas **línguas alemã**, dinamarquesa, espanhola, finlandesa, **francesa**, **grega**, **inglesa**, **irlan-**desa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente **fé** todos os **textos**, depositado nos arquivos do **secretariado-geral** do Conselho da **União** Europeia.

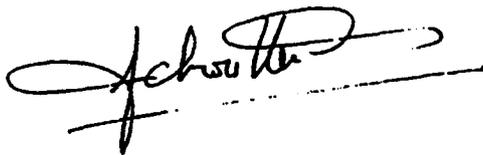
Tämän vakuudeksi alla **mainitut täysivaltaiset edustajat** ovat **allekirjoittaneet tämän yleissopimuksen**.

Tehty Brysselissä **kahdentenkymmenentenäkuudentena päivänä** t o u k o k u u t a **vuonna** **tuharyhdeksänsataayhdeksänkymmentäseitsemän yhtenä** ainoana kappaleena **englannin**, espanjan, **hollannin**, iirin, **italian**, kreikan, pottugalin, ranskan, **ruotsin**, **saksan**, suomen ja tanskan kielellä, ja jokainen näistä teksteistä on **yhtä** todistusvoimainen; **tämä** kappale **talletetaan** Euroopan **unionin** neuvoston **pääsihteeristön** arkistoon.

Till bevis pi **detta** har **undertecknade befullmäktigade** undertecknat **denna** konvention.

Utfärdad i Bryssel den **tjugosjätte maj** **nittonhundra**nittiosju i ett **enda** original **på danska**, engelska, **finländska**, franska, grekiska, **irländska**, **italienska**, nederländska, portugisiska, spanska, svenska och tyska, **vilka samtliga** texter **är** lika **giltiga**. Originalen **skall** deponents i arkiven hos generalsekretariatet **för** Europeiska **unionens råd**.

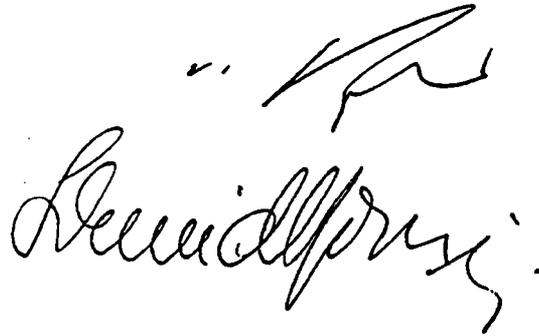
Pour le **gouvernement** du royaume de Belgique  
Voor **de regering** van her Koninkrijk **België**  
Für die Regierung des **Königreichs** **Belgien**



For regeringen for Kongeriget **Danmark**

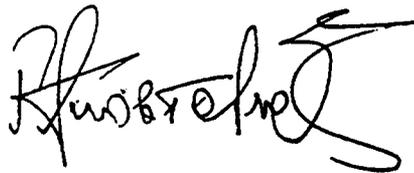


Für die Regierung der Bundesrepublik Deutschland



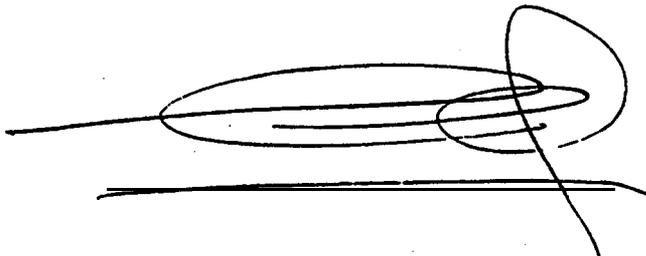
Helmut Kohl

Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Kostas Karamanlis

Por el Gobierno del Reino de España



Felipe González

Pour le gouvernement de la République française



Jean-Pierre Audo

Thar ceann Rialtas na hÉireann  
For the Government of Ireland

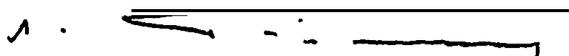


Mary McAleese

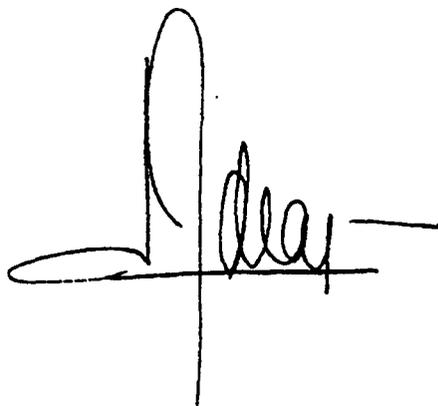
Per il **governo della** Repubblica italiana



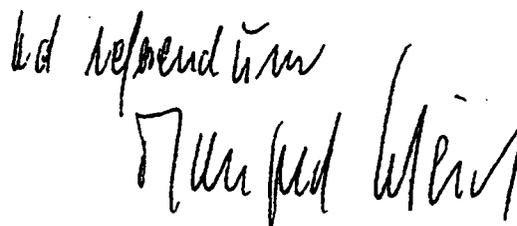
Pour le **gouvernement du** grand-duché de Luxembourg



Voor de **regering** van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



Pelo **Governo da** República Portuguesa



Suomen hallituksen puolesta  
På finska regeringens vägnar



Pi svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



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