

## SCHEDULE 8

### RESERVATIONS, DECLARATIONS AND STATEMENTS MADE BY THE PARTIES TO THE 1996 CONVENTION **ANNEX TO THE 1996 CONVENTION**

#### *Joint Declaration on the right of asylum*

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognised by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28th July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28th September 1954 and by the Protocol relating to the Status of Refugees of 31st January 1967.

#### *Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention*

Denmark, Finland and Sweden confirm that—as indicated during their negotiations on accession to the Schengen agreements—they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6(1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

#### *Declaration on the concept of “nationals”*

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21st March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3(4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7(2) of this Convention.

#### *Declaration by Greece re Article 5*

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities for freedom, and
- distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

#### *Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order*

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

## AUSTRIA

### **Article 3**

Austria reserves the right not to apply paragraph 1 where the offence for which extradition is requested is not punishable under Austrian law.

### **Article 5**

Austria declares that it will apply Article 5(1) only in relation to offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and 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.

### **Article 7**

Pursuant to Section 12(1) of the Extradition and Mutual Legal Assistance Act the extradition of Austrian nationals is not permissible. This rule has the rank of a constitutional provision. Austria will therefore not grant extradition of its own nationals.

### **Article 11**

Austria declares 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 of 13 December 1957 (Federal Gazette No. 320/1969) is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

### **Article 13**

The Federal Ministry of Justice will be the central authority within the meaning of Article 13(1).

### **Article 14**

Austria declares that, in its relations with other Member States which have made the same declaration, the judicial authorities before which extradition proceedings are pending may make requests directly for supplementary information in accordance with Article 13 of the European Convention on Extradition. In Austria, the higher district courts (“Landesgerichte”) will be authorised to communicate and receive such supplementary information.

### **Article 18**

Austria declares that this Convention will apply to its relations with those Member States that have made the same declaration 90 days after the date of deposit of the declaration.

## BELGIUM

### **Article 3**

Belgium reserves the right not to apply Article 3(1).

### **Article 7**

The extradition of nationals will be granted only under the following conditions:- the possibility of extradition will be confined to extradition for the purposes of prosecution;—the requesting Member

State must, prior to extradition, give its agreement to transfer to Belgium the person to be extradited so that that person serves his sentence there if a penalty involving deprivation of liberty or a detention order is imposed; the provisions in force concerning the inter-State transfer of sentenced persons shall apply, including the consent of the sentenced person;—and it is subject to reciprocity.

#### **Article 12**

Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty shall continue to apply in respect of Belgium.

#### **Article 13**

The central authority is the Individual Cases Section of the International Judicial Co-operation Department in the Directorate-General for Criminal Legislation and Human Rights of the Ministry of Justice.

#### **Article 14**

In the case of Belgium, the judicial authorities authorised to request or to communicate and receive supplementary information following a request for extradition are: the public prosecutor's offices;—the national magistrates.

#### **Article 18**

As far as Belgium is concerned, this Convention shall apply to its relations with Member States that have made the same declaration.

### DENMARK

#### **Article 3**

A request for extradition may be refused if the offence for which extradition is requested is not regarded as an offence under Danish law, even if the offence is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by deprivation of liberty for at least twelve months and even if the conspiracy or the association is to commit one of the offences referred to in Article 3(1)(a) or (b).

#### **Article 5**

Article 5(1) will apply only in relation to the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and offences that can be defined as 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.

#### **Article 7**

Extradition may be refused if the person claimed is a Danish national.

#### **Article 12**

Article 15 of the European Convention on Extradition shall continue to apply in the case of Denmark, unless the person extradited had, when agreeing to be extradited from Denmark to the Member State to which extradition occurred, indicated his/her agreement to being called to account and re-extradited to a third Member State for punishable offences committed before extradition other than

those for which the person was extradited, or unless the person extradited has indicated his/her agreement to re-extradition at a court hearing in the Member State to which extradition has occurred.

### **Article 13**

The designated central authority is the Ministry of Justice, Slotsholmsgade 10, 1216 København K.

### **Article 14**

In those Member States which have made a declaration to Denmark pursuant to the first paragraph of Article 14, the judicial authorities or other competent authorities may make requests directly to Denmark's 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.

The courts and public prosecution authorities are authorised to request, communicate and receive the supplementary information referred to in the first paragraph of Article 14. Under the Danish Administration of Justice Act, public-prosecution authorities comprise the Ministry of Justice, Director of Public Prosecutions, Public Prosecutors, Commissioner of the Copenhagen Police and Chief Constables.

### **Article 18**

In the case of Denmark, the Convention shall apply to its relations with Member States that have made the same declaration with regard to Denmark, 90 days after the date of deposit thereof. The Convention shall not, in the case of Denmark, apply to the Faroe Islands and Greenland until otherwise provided.

## **FINLAND**

### **Article 7**

Finland will grant extradition of its nationals only under the following conditions: at the discretion of the Ministry of Justice, a Finnish national may be extradited to a Member State of the European Union to stand trial for a crime the most severe punishment for which, under Finnish law, is at least four years imprisonment if committed under similar circumstances in Finland; a condition of extradition is that, once the judgement has become final, the requesting Member State undertake immediately to return an extradited Finnish national to Finland for possible imprisonment if he consents to serve his sentence in Finland; no Finnish vessel on the high seas or in a Finnish aircraft; no Finnish national may be prosecuted or punished for a crime other than that referred to in the application for extradition, without the authorisation of the Ministry of Justice; no Finnish national may be re-extradited to another State.

### **Article 12**

Finland will continue to apply Article 15 of the European Convention on Extradition 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 whose extradition is requested has consented to re-extradition.

### **Article 13**

The central authority in Finland pursuant to Article 13(1) is the Ministry of Justice.

#### **Article 14**

Supplementary information as referred to in Article 13 of the European Convention on extradition may be communicated directly between the competent authorities in the manner referred to in Article 14. In Finland, the Ministry of Justice, the Central Criminal Police and the Supreme Court are entitled under Article 14 of the Convention to request, communicate and receive supplementary information.

#### **Article 18**

The Convention may apply, before it enters into force internationally, in relations with those Member States which have made a similar declaration.

### GERMANY

#### **Article 7**

Pursuant to Article 16(2) of the Basic Law, no German may be extradited from the Federal Republic of Germany to a foreign country; the Federal Republic of Germany must therefore refuse extradition of its nationals under any circumstances.

#### **Article 11**

The Federal Government declares that in the Federal Republic of Germany's relations with all other Member States which have made the same declaration, consent for the purposes of Article 14(1) (a) of the European Convention on Extradition is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

#### **Article 13**

For the purposes of Article 13(1), the central authorities will be the Federal Minister for Justice and the Justice Ministers and Senators of the Länder. However, where the documents referred to in Article 13(1) are received or transmitted by facsimile, the Federal Minister for Justice is to be regarded as the sole central authority.

#### **Article 14**

The Federal Government declares that in the Federal Republic of Germany's relations with other Member States which have made the same declaration, requests for supplementary information pursuant to Article 13 of the European Convention on Extradition may be made directly to the competent judicial authorities or other competent authorities and answered by them directly. Where the Federal Republic of Germany is the requested Member State, the public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte] will be responsible for requesting and receiving supplementary information. Where Germany is the requesting Member State, the responsibility for requesting and transmitting supplementary information will lie with the head of the prosecution department [Generalbundesanwalt] at the Federal Supreme Court [Bundesgerichtshof], the public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte] and the public prosecutor's offices at the District Courts [Landgerichte]. Requests for information should be made directly to the prosecuting authority dealing with the particular extradition case.

#### **Article 18**

In accordance with Article 18(4), the Federal Government declares that as far as it is concerned, the Convention will apply to the Federal Republic of Germany's relations with Member States which have made the same declaration, 90 days after the date of deposit of the declaration.

## GREECE

### **Article 5**

Greece will apply Article 5(1) only with regard 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.

### **Article 6**

Greece 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.

### **Article 7**

Greece will not grant extradition of its nationals.

### **Article 12**

Greece will continue to apply Article 15 of the European Convention on Extradition, except where the person concerned who has consented to being extradited has waived, by way of an express declaration, the benefit of the rule of speciality.

### **Article 13**

The Ministry of Justice is designated as central authority.

## LUXEMBOURG

### **Article 3**

The Government of the Grand Duchy of Luxembourg declares that the conditions of Article 3(1) are fulfilled if the participation of the person to be extradited, in addition to meeting the requirements of Articles 66 and 67, meets those of Articles 324 and 324b of the Penal Code or those of Article 11 of the amended Law of 19 February 1973 concerning the sale of medicinal substances and the fight against drug addiction.

### **Article 5**

The Government of the Grand Duchy of Luxembourg declares that it will apply Article 5(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 to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

### **Article 6**

The Government of the Grand Duchy of Luxembourg declares 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.

#### **Article 7**

The Government of the Grand Duchy of Luxembourg declares that it will not grant extradition of its nationals and, in its relations with the States Parties to this Convention, will uphold the effect of the reservation and the declaration made in the framework of Articles 6 and 21 of the European Convention on Extradition.

#### **Article 12**

The Government of the Grand Duchy of Luxembourg declares that Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters shall continue to apply except where the person extradited consents to be re-extradited to another Member State in accordance with this Convention.

#### **Article 13**

The Government of the Grand Duchy of Luxembourg declares that the Ministry of Justice is designated to perform the function of central authority in the Grand Duchy of Luxembourg within the meaning of Article 13 of the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, signed on 27 September 1996.

#### **Article 14**

The Government of the Grand Duchy of Luxembourg declares 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 the Principal Public Prosecutor of the State for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters. Where Luxembourg is the requested State, the authority to request such supplementary information lies with the Ministry of Justice, the Principal Public Prosecutor (of the State) and the judicial authorities responsible for the extradition procedure.

#### **Article 18**

The Government of the Grand Duchy of Luxembourg declares that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration.

NETHERLANDS

#### **Article 3**

The Netherlands Government declares pursuant to Article 3(3) that Article 3(1) shall not be applied.

#### **Article 5**

The Netherlands Government declares pursuant to Article 5(2) that Article 5(1) shall be applied only in respect of the offences referred to in Article 5(2)(a) and (b).

#### **Article 7**

The Netherlands Government declares pursuant to Article 7(2) that no extradition or transit of Netherlands nationals shall be granted for the purpose of execution of a sentence or other measure. However, Netherlands nationals may be extradited for the purpose of prosecution insofar as the requesting State offers the guarantee that the person claimed will be transferred back to the

Netherlands in order to serve his sentence there if, after extradition, a sentence involving deprivation of liberty, other than a provisional sentence, or a detention order is imposed on him. As regards the Kingdom of the Netherlands, for the purposes of applying this Convention, Netherlands nationals are understood to be persons of Netherlands nationality and foreigners who are integrated into Netherlands society insofar as they may be prosecuted in the Netherlands for offences which form the grounds of the extradition request and insofar as it may reasonably be assumed that such foreigners will not lose their right of residence in the Netherlands as a result of a sentence or measure imposed upon them after extradition.

#### **Article 12**

The Netherlands Government declares pursuant to Article 12(2) that Article 15 of the European Convention on Extradition of 13 December 1957 and Article 14(1) 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 shall continue to apply insofar as the person claimed is a Netherlands national within the meaning of the declaration made pursuant to Article 7(2).

#### **Article 14**

With a view to obtaining supplementary information as referred to in Article 13 of the European Convention on Extradition and Article 12 of the Benelux Extradition Treaty, with regard to: (a) extradition requests emanating from the Netherlands: the authorities referred to in the declaration by the requested Member State may make requests directly to the judicial authority referred to in the Netherlands extradition request, which may also provide the information requested directly, and (b) extradition requests addressed to the Netherlands: the Netherlands judicial authorities which are responsible for dealing with the extradition request may, in urgent cases, make requests directly to the authorities referred to in the declaration by the requesting Member State. The Netherlands judicial authorities as referred to in (b) are the public prosecutor at the District Court who is responsible for dealing with the request for extradition and the Public Prosecutor's Office at the State Council of the Netherlands (Hoge Raad der Nederlanden).

#### **Article 18**

As far as the Netherlands is concerned the Convention shall apply 90 days after the deposit of this declaration to its relations with other Member States of the European Union that have made the same declaration.

### PORTUGAL

#### **Article 7**

Portugal declares that it will authorise extradition of Portuguese nationals from national territory only under the conditions laid down in the Constitution of the Portuguese Republic: (a) in cases of terrorism and international organised crime; and (b) for the purposes of prosecution, provided that the requesting State guarantees the extradited person's return to Portugal, to serve the sentence or penalty imposed unless that person expresses his opposition by an explicit declaration. For the purposes of carrying out the sentence in Portugal, the procedures set out in the declaration made by Portugal in connection with the Council of Europe Convention on the Transfer of Sentenced Persons shall be observed.

### **Article 12**

Portugal declares that it is not necessary to obtain its consent to the re-extradition of a person to another Member State, if the person concerned has consented to be re-extradited to that State, in accordance with this Convention.

### **Article 13**

Portugal designates the Office of the Public Prosecutor of the Republic as the central authority within the meaning of Article 13(1).

### **Article 18**

Portugal declares that this Convention applies to its relations with Member States that have made the same declaration.

## SPAIN

### **Article 7**

Spain declares that it will grant extradition of its nationals provided that the act concerned also constitutes an offence in Spain and that the requesting State guarantees that such persons will, if sentenced, be transferred forthwith to Spain to serve their sentences.

### **Article 13**

Spain designates the Technical General Secretariat of the Ministry of Justice as the central authority.

### **Article 14**

Spain declares that, in its relations with the States which have made the same declaration, requests for supplementary information may be made directly to the judicial body which requested extradition.

### **Article 18**

Spain declares that, as far as it is concerned, this Convention shall, once the notification referred to in Article 18(2) has been made, apply to its relations with the Member States which have made the same declaration 90 days after the date of deposit of said declaration.

## SWEDEN

### **Article 3**

Sweden will not apply Article 3(1).

### **Article 7**

A Swedish national may be extradited, for the purposes of prosecution and enforcement of sentence, in accordance with the conditions set out below. In all cases, however, Sweden reserves the right to refuse to extradite a Swedish national. (a) In order for a Swedish national to be extradited for the purpose of prosecution, the person whose extradition is requested must have been permanently resident in the requesting State for at least two years at the time of the offence, or the offence for which extradition is requested must constitute a criminal offence punishable under Swedish law by imprisonment for more than four years. If the offence has been committed entirely within Sweden, extradition for the purpose of prosecution may be granted only if the offence involves complicity in a criminal offence committed outside the country or if extradition is granted for an offence committed

outside the country as well. If extradition is granted, Sweden may impose a condition that the person extradited be returned to Sweden to serve any sentence involving deprivation of liberty or other form of detention order on account of the offence. Such return will be governed by the provisions of Swedish law relating to transfer of the enforcement of criminal judgements. (b) In order for a Swedish national to be extradited for the purpose of enforcement of sentence, the person whose extradition is requested must have been permanently resident in the requesting State for at least two years at the time of the offence or must have consented to extradition, in the presence of a Swedish prosecutor. (c) In the case of extradition of a Swedish national, Articles 5, 8 and 10 to 12 will not apply. (d) In the case of extradition of a Swedish national, in accordance with the Convention on simplified extradition procedure between the Member States of the European Union, Article 9 of that Convention will not apply. (e) Sweden's declaration, under Article 6(1) of the European Convention on Extradition, that non-Nordic nationals resident in Sweden, Denmark or Finland will be treated by Sweden in the same way as Swedish nationals will not be invoked by Sweden in relation to Member States which ensure equal treatment.

#### **Article 12**

Article 15 of the European Convention on Extradition will continue to apply, except in cases under the simplified extradition procedure in which the person extradited expressly waives protection from re-extradition or where anyone otherwise extradited expressly waives protection from re-extradition.

#### **Article 13**

The Ministry of Justice is to be the central authority in extradition cases.

#### **Article 14**

The Prosecutor-General or any other prosecutors dealing with extradition cases are empowered to communicate directly with their counterparts in other countries.

#### **Article 18**

Sweden will apply the Convention, even before it enters into force, in relation to other Member States which have made a similar declaration.